



Queensland

# Environmental Protection (Air) Policy 2008

## Explanatory Notes for SL 2008 No. 441

made under the

*Environmental Protection Act 1994*

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## General outline

### Short title

*Environmental Protection (Air) Policy 2008.*

### Authorising law

Chapter 2 of the *Environmental Protection Act 1994*.

### Policy objectives of the legislation

The object of the *Environmental Protection Act 1994* is to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends.

The objective of the *Environmental Protection (Air) Policy 2008* is to identify the environmental values of the air environment to be enhanced or protected and to achieve the object of the *Environmental Protection Act 1994*, i.e. ecologically sustainable development.

## **How policy objectives are to be achieved**

The policy objectives of this policy are to be met by—

- 1 identifying environmental values to be enhanced or protected
- 2 stating indicators and air quality objectives for enhancing or protecting the environmental values
- 3 providing a framework for making consistent, equitable and informed decisions about the air environment.

## **Consistency with other legislation**

This policy is consistent with the policy objectives of other legislation.

The *Statutory Instruments Act 1992* requires that a Regulatory Impact Statement be prepared if the subordinate legislation is likely to impose appreciable costs on the community or part of the community. The Queensland Office of Regulatory Efficiency advised that this policy (subordinate legislation) will not impose appreciable costs and therefore a Regulatory Impact Statement is not required.

## **Consistency with authorising Act**

This policy is consistent with the *Environmental Protection Act 1994* and the object of that Act.

## **Possible alternative approach**

Alternative means of achieving the policy objectives were considered. No suitable alternative was identified.

## **Consistency with fundamental legislative principles**

The *Legislative Standards Act 1992* outlines a number of fundamental legislative principles. These principles require that the legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament. This policy is consistent with these and the other fundamental legislative principles, including natural justice, appropriate review and delegation of administrative power, clarity and precision of

legislation, adequacy of the head of power to make subordinate legislation and consistency with its primary Act.

### **Benefits and costs of implementation**

The implementation of the policy is undertaken as part of the administration and enforcement of the *Environmental Protection Act 1994*. There are no costs directly associated with the implementation of the policy. Costs occur through the implementation of the *Environmental Protection Act 1994* and the *Environmental Protection Regulation 2008*.

A Regulatory Impact Statement was not required for this policy.

### **Consultation**

Information on the broad proposals for the remake of the *Environmental Protection (Air) Policy 1997* was released for public comment. Key stakeholders including local governments and industry peak bodies were consulted on the proposals for the new policy. All comments made during consultation were considered and, where appropriate, this policy reflects these comments.

## **Notes on Provisions**

### **Part 1 Preliminary**

#### **Section 1 Short Title**

This section states the short title of this legislation is the *Environmental Protection (Air) Policy 2008*.

#### **Section 2 Commencement**

This section states that the commencement date of this policy is 1 January 2009.

### **Section 3 Definitions**

This section states that words in this policy are defined in the dictionary in schedule 2.

## **Part 2                      Application and purpose of policy**

This part identifies where the policy applies, the purpose of the policy and how the purpose of the policy is to be achieved

### **Section 4 Application of policy**

The policy applies to the whole of Queensland's air environment. Air environment is defined in the dictionary in schedule 2 as the part of the environment of an area or place characterised by the air emissions that may be experienced there.

The *Environmental Protection (Air) Policy 2008* as a whole is to be considered when considering the standard criteria under the *Environmental Protection Act 1994*. The standard criteria are considered when assessing whether—

- an environmental impact statement is required
- the environmental impact statement is sufficient
- an environmental management plan is required
- the environmental management plan is sufficient
- to approve or refuse a development application and on what conditions
- to approve or refuse an environmental authority and on what conditions
- to approve or refuse an application to amend an environmental authority
- to approve the surrender of a registration certificate or environmental authority

- to approve or refuse a transitional environmental program
- to issue an environmental protection order
- to approve or refuse a disposal permit and on what conditions.

### **Section 5 Purpose of policy**

The purpose of the policy is to achieve the object of the *Environmental Protection Act 1994* in relation to the air environment.

The object of the *Environmental Protection Act 1994* is to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends.

Consequently, the objective of this policy is to identify the environmental values of the air environment to be enhanced or protected to achieve the object of the *Environmental Protection Act 1994*, i.e. ecologically sustainable development.

### **Section 6 How purpose of policy is achieved**

The purpose of the policy is achieved by—

- identifying environmental values to be enhanced or protected
- stating indicators and air quality objectives for enhancing or protecting the environmental values
- providing a framework for making consistent, equitable and informed decisions about the air environment.

## **Part 3 Environmental values and air quality objectives**

An environmental value is defined in section 9 of the *Environmental Protection Act 1994* to be a quality or physical characteristic of the environment that is conducive to ecological health or public amenity or safety, or another quality of the environment identified and declared to be an environmental value under an environmental protection policy or

regulation. This part identifies the environmental values for the air environment to be enhanced and protected and the air quality objectives for helping to protect the environmental values.

Section 28 of the *Environmental Protection Act 1994* states that an environmental protection policy must identify the environmental values to be enhanced or protected under the policy. The *Environmental Protection Act 1994* also states that an environmental protection policy may state the objectives to be achieved and maintained under the policy or the indicators to be used in deciding any quality or condition of the environment.

The environmental values in this policy are to inform whether environmental harm under the *Environmental Protection Act 1994* has been caused, as environmental harm is an adverse impact on an environmental value.

The environmental values and air quality objectives are also considered when complying with a regulatory requirement under the *Environmental Protection Act 1994*. Regulatory requirements are defined in the *Environmental Protection Regulation 2008* and include a requirement to consider the environmental values and quality objectives in any relevant environmental protection policy.

As mentioned in the explanatory notes to section 4 of this policy (above), this policy as a whole (including this section) is to be considered when considering the standard criteria under the *Environmental Protection Act 1994*.

Specifically, the air quality objectives must be considered in assessment processes and help inform the decision, including any conditions that may be placed on approvals for environmentally relevant activities. The air quality objectives are not individual point source emission standards but are total levels of air emissions in the surrounding environment.

The *Environmental Protection Act 1994* defines a regulatory requirement as a requirement under a regulation for the administering authority to—

- (a) grant or refuse to grant, or follow stated procedures for evaluating, any of the following applications—
  - (i) a development application for which the administering authority is the assessment manager or a referral agency under the *Integrated Planning Act 1997*
  - (ii) an environmental authority application

- (iii) an application for approval of a transitional environmental program
- (b) impose, change or cancel a condition on a development approval for a chapter 4 activity, an environmental authority or an approval of a transitional environmental program.

Chapter 4 of the *Environmental Protection Regulation 2008* prescribes the regulatory requirements with which the administering authority is required to comply for making environmental management decisions. The *Environmental Protection Regulation 2008* defines an environmental management decision as a decision under the *Environmental Protection Act 1994* for which the administering authority making the decision is required to comply with regulatory requirements. Under section 51 of the *Environmental Protection Regulation 2008* the administering authority must consider—

- (a) each of the following under any relevant environmental protection policies—
  - (i) the management hierarchy
  - (ii) environmental values
  - (iii) quality objectives
  - (iv) the management intent.

Under section 52 of the *Environmental Protection Regulation 2008* the administering authority must, for making an environmental management decision relating to an activity, consider whether to impose conditions about—

- (i) protecting environmental values, and meeting quality objectives, under relevant environmental protection policies.

The environmental values and quality objectives recognise the need for protection of health and biodiversity of ecosystems; human health and wellbeing; aesthetics; and agricultural use. The values and objectives were developed following research of national and international approaches to the managing the air environment. After considering the unique characteristics of Queensland's air environment, the EPA developed objectives informed by the National Environmental Protection (Ambient Air Quality) Measure, the National Environmental Protection (Air Toxics) Measure and World Health Organisation recommendations.

## **Section 7 Environmental values for air environment**

Section 28 of the *Environmental Protection Act 1994* states that an environmental protection policy must identify the environmental values to be enhanced or protected under the policy. This section outlines the environmental values of the air environment to be enhanced or protected.

The environmental values of the air environment to be enhanced or protected under this policy are—

- the qualities of the air environment that are conducive to protecting the health and biodiversity of ecosystems
- the qualities of the air environment that are conducive to human health and wellbeing
- the qualities of the air environment that are conducive to protecting the aesthetics of the environment, including the appearance of buildings, structures and other property
- the qualities of the air environment that are conducive to protecting agricultural use of the environment.

The environmental values apply across Queensland's air environment.

This policy has expanded the list of environmental values from the *Environmental Protection (Air) Policy 1997* to provide a more prescriptive list of the values that are important to Queenslanders.

As mentioned above, the environmental values are—

- considered when complying with regulatory requirements including when assessing environmentally relevant activities
- to inform decisions when identifying environmental harm

under the *Environmental Protection Act 1994*.

As mentioned in the explanatory notes to section 4 of this policy (above), this policy as a whole (including this section) is to be considered when considering the standard criteria under the *Environmental Protection Act 1994*.

## **Section 8 Air quality objectives for indicators**

Air quality objective (as defined in the dictionary), for an area or area, means—



- (a) for an air quality objective for an indicator that is the amount of visibility in the air environment—the minimum amount of visibility that should be in the air environment of the area or place despite the presence of an indicator
- (b) otherwise—the maximum level that an indicator should be in the air environment of the area or place.

The air quality objectives for enhancing or protecting the environmental values are outlined in schedule 1.

Air quality objectives are stated for indicators. Indicators (as defined in the dictionary) are contaminants that may be present in the air environment.

The air quality objectives are in schedule 1, column 3 for an indicator in schedule 1, column 1. The air quality objective is worked out as an average over the period stated in schedule 1, column 4 for the objective.

The air quality objectives are prescribed for enhancing or protecting the environmental values in schedule 1, column 2.

An environmental value may still be enhanced or protected if the objective for an indicator is more than the objective in schedule 1, column 3 for the indicator for not more than the number of days in schedule 1, column 5.

The air quality objectives adopted in schedule 1 have been informed by the National Environmental Protection (Ambient Air Quality) Measure, the National Environmental Protection (Air Toxics) Measure, and by interstate and international data, including World Health Organisation recommendations.

It is not intended that, as part of achieving the air quality objectives, any part of the existing air environment be allowed to deteriorate. It is intended that the air quality objectives be progressively achieved as part of achieving the purpose of this policy over the long term.

As mentioned above, the air quality objectives are—

- considered when complying with regulatory requirements including when assessing environmentally relevant activities
- to inform decisions when identifying environmental harm
- under the *Environmental Protection Act 1994*.

As mentioned in the explanatory notes to section 4 of this policy (above), this policy as a whole (including this section) is to be considered when

considering the standard criteria under the *Environmental Protection Act 1994*.

The air quality objectives are not point source air emission levels but rather inform what the point source air emission level as a condition of approval for a particular activity at a site may be.

The air quality objectives are to inform the decision making process including any conditions relating to air emission levels in relation to the decision. The objectives assist in identifying whether the environmental values are protected. However, meeting the objectives does not always mean that the environmental values are protected and not meeting the objectives does not always mean that the environmental values are not protected.

The air quality objectives do not apply for an air emission that may be experienced within a dwelling or workplace if the air emission is released within the dwelling or workplace. Workplace is defined by reference to section 9 of the *Workplace Health and Safety Act 1995*.

It is intended that the air quality objectives be progressively achieved as part of achieving the purpose of this policy over the long term.

## **Part 4**                                    **Avoiding, recycling, minimising or managing air emissions**

This part sets out the management hierarchy for an activity involving air emissions.

Chapter 4 of the *Environmental Protection Regulation 2008* prescribes the regulatory requirements with which the administering authority is required to comply for making environmental management decisions. The *Environmental Protection Regulation 2008* defines an environmental management decision as a decision under the *Environmental Protection Act 1994* for which the administering authority making the decision is required to comply with regulatory requirements. Under section 51 of the *Environmental Protection Regulation 2008* the administering authority must consider —

- (a) each of the following under any relevant environmental protection policies—

- (i) the management hierarchy
- (ii) environmental values
- (iii) quality objectives
- (iv) the management intent.

As mentioned in the explanatory notes to section 4 of this policy (above), this policy as a whole (including this part) is to be considered when considering the standard criteria under the *Environmental Protection Act 1994*.

### **Section 9 Management hierarchy for air emissions**

This section sets out the management hierarchy for an activity involving air emissions. The management hierarchy is referred to in section 51 of the *Environmental Protection Regulation 2008* as a matter that must be considered by the administering authority when making an environmental management decision.

The management hierarchy establishes an approach to avoiding, recycling, minimising or managing air. Air emissions must be dealt with, to the extent it is reasonable to do so, in the following order of preference—

- 1 avoid—emphasis should be placed on avoiding the creation of air emissions, including through selection of low risk substances and processes, and the use of technology that avoids air emissions
- 2 recycle—where avoidance is not possible, re-use the contaminant in another industrial process or turn the contaminant into another product to be re-used.
- 3 minimise—where recycling is not possible, treatment and disposal measures should be implemented in a manner that minimises environmental harm
- 4 manage—where minimising is not possible, select a suitable area for an activity producing air emissions to minimise the impact of the air emissions on sensitive receptors.

The purpose of the air emissions management hierarchy is to—

- manage behaviours in the context of protecting the environment and promoting the achievement of ecologically sustainable development

- provide high level principles to guide decision making
- describe preferred pathways in decision making to—
  - enhance the environment
  - protect the environment
  - minimise harm to the environment.

## **Part 5                      Miscellaneous**

### **Section 10 Repeal**

This section repeals the *Environmental Protection (Air) Policy 1997*—SL No. 468.

## **Schedule 1              Air quality objectives**

Schedule 1, column 3 outlines the air quality objectives for protecting the environmental values in column 2.

Sources for quality objectives were chosen in the following order of priority—

- 1 National Environment Protection Measures
- 2 other Australian national bodies
- 3 World Health Organisation
- 4 other jurisdictions (provided a reasonable, relevant and transparent process has been used to develop the objective).

Air quality objectives are stated for indicators. Indicators (as defined in the dictionary) are contaminants that may be present in the air environment.

The air quality objectives are in schedule 1, column 3 for an indicator in schedule 1, column 1. The air quality objective is worked out as an average over the period stated in schedule 1, column 4 for the objective.

The air quality objectives are prescribed for enhancing or protecting the environmental values in schedule 1, column 2.

An environmental value may still be enhanced or protected if the objective for an indicator is more than the objective in schedule 1, column 3 for the indicator for not more than the number of days in schedule 1, column 5.

It is not intended that as part of achieving the air quality objectives, any part of the existing air environment be allowed to deteriorate.

As mentioned earlier, Chapter 4 of the *Environmental Protection Regulation 2008* prescribes the regulatory requirements with which the administering authority is required to comply for making environmental management decisions. The *Environmental Protection Regulation 2008* defines an environmental management decision as a decision under the *Environmental Protection Act 1994* for which the administering authority making the decision is required to comply with regulatory requirements. Under section 51 of the *Environmental Protection Regulation 2008*, the administering authority must consider—

- (a) each of the following under any relevant environmental protection policies—
  - (i) the management hierarchy
  - (ii) environmental values
  - (iii) quality objectives
  - (iv) the management intent.

Under section 52 of the *Environmental Protection Regulation 2008*, the administering authority must, for making an environmental management decision relating to an activity, consider whether to impose conditions about —

- (i) protecting environmental values, and meeting quality objectives, under relevant environmental protection policies.

As mentioned in the explanatory notes to section 4 of this policy, this policy as a whole (including the objectives in schedule 1) is to be considered when considering the standard criteria under the *Environmental Protection Act 1994*.

The air quality objectives are not point source air emission levels but rather inform what the point source air emission level as a condition of approval for a particular activity at a site may be.

The air quality objectives are to inform the decision making process including any conditions relating to air emission levels in relation to the decision. The objectives assist in identifying whether the environmental values are protected. However, meeting the objectives does not always mean that the environmental values are protected and not meeting the objectives does not always mean that the environmental values are not protected.

## **Schedule 2      Dictionary**

Schedule 2 defines certain terms for the purposes of this policy.

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### ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Environmental Protection Agency.

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