

Environmental Legislation (ERA Standards and Other Matters) Amendment Regulation 2018

Explanatory notes for SL 2018 No. 97

made under the

Environmental Offsets Act 2014

Environmental Protection Act 1994

General Outline

Short title

Environmental Legislation (ERA Standards and Other Matters) Amendment Regulation 2018

Authorising law

Section 93 of the *Environmental Offsets Act 2014*

Section 580 of the *Environmental Protection Act 1994*

Policy objectives and the reasons for them

The objectives of the *Environmental Legislation (ERA Standards and Other Matters) Amendment Regulation 2018* (the amendment regulation) are to amend the *Environmental Offsets Regulation 2014* and *Environmental Protection Regulation 2008* to:

- give effect to an updated Queensland Environmental Offsets Policy;
- correct an anomaly by amending provisions prescribing the annual fee for an environmental authority for specific resource activities;
- update standards by approving a new standard for the eligibility criteria and standard conditions for regulated waste transport;
- update terminology and cross-references, and remove redundant provisions, following miscellaneous past amendments; and
- clarify the intent of particular provisions.

Achievement of policy objectives

New version of the Environmental Offsets Policy

The amendment regulation contains a minor amendment to the *Environmental Offsets Regulation 2014* to prescribe a new version of the Queensland Environmental Offsets Policy (version 1.6), which makes minor administrative amendments to the current prescribed version of the policy (version 1.5).

The majority of the amendments to the policy are correcting formatting, grammar and cross-referencing errors. Other amendments are to ensure consistent terms are used, improve readability, clarify the intent of particular provisions, and address omissions.

One amendment addresses an omission which incorrectly calculates the financial settlement offset for aquatic threatened animals and marine wetlands as if these were terrestrial matters. This results in the inclusion of a landholder incentive payment in the calculation which is not applied for other marine and aquatic matters, and is not required as there is generally no private landholder for marine and aquatic matters. Addressing this omission will ensure consistent application of the financial settlement offset calculation for all marine and aquatic matters.

Annual fees

The amendment regulation corrects an anomaly in the drafting of provisions for annual fees for particular resource activities. The amendment clarifies which resource activities are subject to the \$652 annual fee prescribed in section 120 of the pre-amended *Environmental Protection Regulation 2008*.

Prior to 31 March 2013, resource activities were specified as being either Level 1 or Level 2 activities. Level 2 activities were considered to be of a lower environmental risk than Level 1 activities. Due to the lower risk profile, the Level 2 activities had a low fixed annual fee of approximately \$600 (a fee which was subject to annual indexation).

The removal of the distinction between Level 1 and Level 2 activities created an unintended anomaly in the *Environmental Protection Regulation 2008* whereby former Level 2 activities became subject to the annual fee previously paid for Level 1 activities. This anomaly also extended to environmental authorities granted for resource activities for a standard or variation application approved after 31 March 2013. Amendments to section 120 of the *Environmental Protection Regulation 2008* are intended to clarify the annual fees payable for these environmental authorities.

An amendment is also included to ensure that, with the above changes to section 120, all fees in this section will be subject to the approved Government indexation factor (3.5% for 2018-19). The indexation will have effect from 1 July 2018.

Regulated waste transport

Under the *Environmental Protection Act 1994*, the chief executive may make a standard for the eligibility criteria and standard conditions for an environmentally relevant activity (ERA) (known as an ‘ERA standard’).

A new ERA standard has been made for regulated waste transport (ERA 57). The ERA standard will replace the ‘Code of environmental compliance for certain aspects of regulated waste’ that is currently prescribed in the *Environmental Protection Regulation 2008*. The new ERA standard is more outcome focused than the existing code, allowing new operators to pursue more flexible, innovative and potentially more cost-effective management techniques for achieving specified outcomes.

The amendment regulation gives effect to the new ERA standard by including it in the list in Schedule 3B of the *Environmental Protection Regulation 2008*. It also deletes the reference to the existing code in Schedule 3 of the *Environmental Protection Regulation 2008*.

Consequential amendments

As a result of miscellaneous past amendments, consequential amendments to the *Environmental Protection Regulation 2008* are required in order to update terminology and cross-references, and to remove now redundant provisions.

The amendment regulation omits section 24AB of the *Environmental Protection Regulation 2008*. Due to amendments made by the *Environmental Protection (Underground Water Management) and Other Legislation Amendment Act 2016*, this provision (only expanded to include mining) now forms part of section 215 of the *Environmental Protection Act 1994*. The omission of section 24AB by this amendment regulation reduces duplication of provisions.

Section 81A of the *Environmental Protection Regulation 2008* is amended to delete the reference to ‘rare wildlife’. This class of wildlife is no longer used in the *Nature Conservation Act 1992*, and so the reference in section 81A is redundant.

The *Environmental Protection Act 1994* was amended in 2014 so that eligibility criteria and standard conditions for environmentally relevant activities are now referred to as an ‘ERA standard’. This amendment also resulted in re-numbering of some provisions in the *Environmental Protection Act 1994*. There are various provisions in the *Environmental Protection Regulation 2008* which are amended through this amendment regulation to reflect the change in terminology and numbering.

An amendment to section 98 of the *Environmental Protection Regulation 2008* is made to correct a cross-reference to the *Environmental Protection Act 1994*, which should have been updated following the *Environmental Protection and Other Legislation Amendment Act 2014*.

The amendment regulation amends Item 6 of Schedule 2A of the *Environmental Protection Regulation 2008* to replace the terms ‘high hazard dam’ and ‘significant hazard dam’ with the terms ‘high consequence dam’ and ‘significant consequence dam’. In 2015, the definitions for ‘high hazard dam’ and ‘significant hazard dam’ in Schedule 12 of the *Environmental Protection Regulation 2008* were omitted and replaced with definitions for ‘high consequence dam’ and ‘significant consequence dam’ to reflect the change in terminology in the new manual

for these dams. While the terminology in Schedule 12 was corrected, the terminology in Schedule 2A was overlooked. The amendment regulation corrects this oversight.

Schedule 3 of the *Environmental Protection Regulation 2008* is amended to omit all codes of environmental compliance in Part 2 of the schedule, which listed the codes of environmental compliance for mining activities. Under section 707A(2)(a) of the *Environmental Protection Act 1994*, codes of environmental compliance transition to ERA standards until these codes are reviewed and updated with new ERA standards. Since the *Environmental Protection Amendment Regulation (No. 1) 2016* prescribed new ERA standards to replace the existing codes of environmental compliance in Part 2 of Schedule 3, these codes can be deleted from the *Environmental Protection Regulation 2008*.

Clarification of intent

The amendment regulation contains an amendment to section 120(2)(a) of the *Environmental Protection Regulation 2008* to clarify that the annual fee for an environmental authority is based on the activities authorised under the environmental authority, as opposed to the activities proposed to be carried out, or the activities actually carried out, under the environmental authority.

An amendment to Schedule 2A of the *Environmental Protection Regulation 2008* is also made to clarify that Item 6 (Petroleum activities carried out on a site containing a high hazard dam or significant hazard dam) only applies where the dam forms part of the petroleum activity. Item 6 does not apply where the dam forms part of another activity that may also be on the site of the petroleum activity. If the dam was carried out as part of a non-petroleum activity, the environmental risk of the activity should be managed under the relevant environmental authority for this activity. Therefore, it is not intended to be captured within Item 6 of Schedule 2A.

Consistency with policy objectives of authorising law

The amendment regulation is consistent with the purpose of the *Environmental Offsets Act 2014*, which is to counterbalance the significant residual impacts of particular activities on prescribed environmental matters through the use of environmental offsets.

The amendment regulation is also consistent with the object of the *Environmental Protection Act 1994*, which 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 (ecologically sustainable development).

Inconsistency with policy objectives of other legislation

The amendment regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

In relation to the amendment to the *Environmental Offsets Regulation 2014*, one of the amendments to the Queensland Environmental Offsets Policy addresses an omission which incorrectly calculates the financial settlement offset for aquatic threatened animals and marine

wetlands as if these were terrestrial matters. This results in the inclusion of a landholder incentive payment in the calculation which is not applied for other marine and aquatic matters. This is not required as there is generally no private landholder for marine and aquatic matters. Addressing this omission will ensure consistent application of the financial settlement offset calculation for all marine and aquatic matters. This amendment will be in the favour of any future applicants as it will result in smaller financial settlement offsets for these matters. The financial implications of this amendment for the State will be minor as most offsets for marine and aquatic matters will be on State land. In rare cases where private land is to be used to deliver offsets for these matters, the offset delivery would be negotiated as it is for other marine and aquatic matters.

The amendments to the annual fees provisions will not have any financial impacts as the amendments simply clarify which activities the existing annual fees in the *Environmental Protection Regulation 2008* apply to.

The new ERA standard for regulated waste transport is more outcome-focused than the existing code, allowing new operators to pursue more flexible, innovative and potentially more cost-effective management techniques for achieving specified outcomes. Compared to the existing code, the ERA standard will either not add to the regulatory burden for industry or slightly reduce the regulatory burden. The new ERA standard will not apply retrospectively so there will be no impact upon existing licensed operators of ERA 57.

The other amendments in this amendment regulation are considered minor in nature and will not have any significant impacts on government or other stakeholders.

Consistency with fundamental legislative principles

The amendment regulation is considered to be consistent with fundamental legislative principles.

In particular, the amendment regulation is considered to have sufficient regard to the institution of Parliament. The majority of amendments are considered to be administrative. The amendment to the *Environmental Offsets Regulation 2014* is within the power of section 12 of the *Environmental Offsets Act 2014*, which enables an environmental offset policy to be prescribed and amended under a regulation. The amendment to approve a new ERA standard is considered to be within the power of the *Environmental Protection Act 1994*. Apart from the broad regulation-making power contained in section 580 of the Act, section 318D of the Act is considered to contain implicit powers to make a regulation about this specific subject matter.

The amendment regulation does not insert any new fees, rather it clarifies which activities the existing annual fees in the *Environmental Protection Regulation 2008* apply to, and ensures the indexation of those fees in accordance with the approved Government indexation factor.

Consultation

A copy of the proposed ERA standard for regulated waste transport was published online for consultation between 16 May and 28 June 2016. This consultation was undertaken in accordance with sections 318A(1), 318A(2) and 318B of the *Environmental Protection Act 1994*. As the ERA standard will not apply to existing environmental authorities for regulated

waste transport, the procedure identified in sections 318A(4) and 318A(5) of the Act were not followed. Four submissions were received on the proposed ERA standard. All submissions received were considered in developing the final ERA standard.

No public consultation was undertaken for the other amendments as they are considered to be administrative in nature.

In accordance with *The Queensland Government Guide to Better Regulation* (the guidelines), the Office of Best Practice Regulation (OBPR) within the Queensland Productivity Commission was consulted in relation to the following amendments:

- correcting the anomaly in relation to the annual fees for an environmental authority for specific resource activities;
- approving the ERA standard for regulated waste transport; and
- clarifying that Item 6 of Schedule 2A of the *Environmental Protection Regulation 2008* only applies where a consequence dam forms part of the petroleum activity.

OBPR advised that the amendments would not benefit from any further assessment under the guidelines.

The department considered the other amendments to fall within the following agency-assessed exclusion categories under the guidelines:

- Category A—Regulatory proposals that make consequential amendments;
- Category F—Regulatory proposals that correct technical errors;
- Category G—Regulatory proposals that are of a machinery nature; and
- Category H—Regulatory proposals that put forward standard annual fee variations in line with or below a government endorsed indexation factor.