

Environmental Protection (Waste ERA Framework) Amendment Regulation 2018

Explanatory notes for SL 2018 No. 198

made under the

Environmental Protection Act 1994

General Outline

Short title

Environmental Protection (Waste ERA Framework) Amendment Regulation 2018

Authorising law

Section 580 of the *Environmental Protection Act 1994*

Policy objectives and the reasons for them

In Queensland the *Environmental Protection Act 1994* (EP Act) and its subordinate legislation, the *Environmental Protection Regulation 2008* (EP Regulation) provide a framework for regulating activities that have the potential to cause environmental harm. These activities are called environmentally relevant activities (ERA) and are prescribed within Schedule 2 of the EP Regulation.

Schedule 2 of the EP Regulation contains 12 ERAs that relate to waste management. Each ERA has a corresponding annual fee determined by the level of environmental risk posed by the activity being undertaken. The overall risk of an activity is generally determined by a combination of factors, including the risk associated with the waste type(s) being managed, the amount of waste being managed and the type of process being undertaken.

For example, a facility receiving a regulated waste, such as tyres, would be considered to be of a higher risk than a facility that receives only paper or cardboard, which are a low risk general waste. Similarly, incineration of a waste has a higher potential to produce harmful emissions than processing of the same waste using a mechanical shredding process. Increasing the scale of the activity may also contribute to potentially higher levels of risk and emission releases.

The schedule of waste-related ERAs has remained largely unchanged since its introduction in the 1990s. Since this time there have been significant changes in waste management practices, the emergence of new waste technologies and improvements in risk-based waste classification that were not considered when the current waste-related ERAs were developed. The ERAs also do not always take into account the scale of an activity, meaning that small-scale facilities are often subject to the same annual fee as larger facilities.

Introducing a new waste-related ERA framework with the *Environmental Protection (Waste ERA Framework) Amendment Regulation 2018* (amendment regulation) will allow the overall risk of waste management activities to be more accurately assessed, determined by the classification of waste and the type and scale of the process being undertaken, so that an appropriate level of regulation can be applied. The new waste-related ERA framework will also provide improved regulation and clear regulatory support for new and emerging technologies and is expected to provide cost savings for facilities that manage low-risk or low volumes of waste.

Public consultation and submissions on a Consultation Regulatory Impact Statement (Consultation RIS) were sought to inform the outcomes of the waste-related ERA review. A Decision Regulatory Impact Statement (Decision RIS) describes the outcomes of the consultation process and the changes to the waste-related ERA framework.

Achievement of policy objectives

The objective of this amendment regulation is to amend the EP Regulation to reform and modernise the waste-related ERAs to provide improved risk-based regulation of waste management activities.

The amendment regulation will achieve the policy objective by providing:

1. improved risk-based regulation for waste management activities;
 2. improved support for new and emerging waste management technologies;
 3. clearer regulatory requirements and expectations for all waste management activities;
- and
4. consistent application of the regulatory requirements across all waste management activities.

Consistency with policy objectives of authorising law

The amendment regulation is consistent with the objective of the EP Act, 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.

Alternative ways of achieving policy objectives

The Consultation RIS provided two options for achieving the policy objective. Option 1 was to maintain the status quo. Option 2 was to adopt a new rationalised framework with a list of contemporary ERAs together with a risk based regulated waste classification system. Option 2 specifically provided for introducing three risk-based regulated waste categories and a not-regulated category for wastes that were demonstrated to be low risk.

All submissions were in support of option 2 and overall the proposed framework received positive support. Feedback on the Consultation RIS prompted further review by the Department of Environment and Science. This included a reduction of the number of risk-based regulated waste categories and the development of an amended schedule of waste-related ERAs.

Although alternative options were considered through the regulatory impact assessment, the amendment regulation approach is supported by key stakeholders who have been thoroughly consulted about this review.

Benefits and costs of implementation

The most recent assessment of costs and benefits of this Amendment Regulation and alternative approaches are listed and discussed in the Decision RIS.

Consistency with fundamental legislative principles

The *Legislative Standards Act 1992* was considered during the drafting of this amendment regulation and the amendments are consistent with fundamental legislative principles.

Consultation

A Consultation RIS was released on 30 June 2017 proposing two policy options. The Consultation RIS considered the impact of the proposed options on the administering authorities, industry, holders of existing ERA approvals and the community. The Consultation RIS was open for comment for a period of eight weeks.

During July 2017, the former Department of Environment and Heritage Protection held seven workshops with stakeholders to explore the options proposed and give stakeholders an opportunity to share their views on the proposed arrangements.

In response to the Consultation RIS, 36 submissions were received from individual companies, local governments, utility providers as well as industry bodies representing the waste industry, local government and the agricultural and resource sectors. The results of Consultation on the RIS are discussed in the Decision RIS.

Subsequent targeted consultation on the changes to option 2 were also undertaken with key stakeholders and peak waste industry groups including the Waste Recycling Industry Association of Queensland and Waste Management Association of Australia.

In accordance with *The Queensland Government Guide to Better Regulation* the Office of Best Practice Regulation (OBPR), within the Queensland Productivity Commission, was consulted during the development of both the Consultation RIS and Decision RIS. OBPR has assessed the Decision RIS and considers it adequately contains a summary of the results of consultation and details what regulatory proposals have been amended following stakeholder responses. OBPR also notes that where a regulatory proposal imposes a cost, that these impacts are clearly presented and discussed. Given this, OBPR considers the Decision RIS is adequate to support the consideration of the proposal.

Notes on provisions

Part 1 Preliminary

Clause 1. Short Title

This section provides for the short title of the Amendment Regulation.

Clause 2. Commencement

This section provides commencement dates for parts of the Amendment Regulation to commence.

Clause 3. Regulation amended

This section provides that this Amendment Regulation amends the *Environmental Protection Regulation 2008*.

Part 2 Amendments commencing on notification

This part provides for the amendments required to establish the new waste-related ERA framework including, transitional arrangements and definitions required to introduce new ERAs that will commence immediately on notification of this Amendment Regulation.

The new ERAs commencing on notification include –

- 53 (organic material processing)
- 60 (waste disposal)

Existing ERA 62 (waste transfer station operation) is also amended to insert a new licensing category for storing end-of-life tyres and to provide a licensing exemption for facilities that operate a container refund point under the *Waste Reduction and Recycling Act 2011*.

Clause 4. Amendment of s 21 (Untreated clinical waste disposal)

This section amends existing section 21 to ensure that the provisions relating to untreated clinical waste disposal align with the requirements specified in ERA 60 (waste disposal).

Clause 5. Insertion of new ch 9, pt 12

This section provides for the insertion of new chapter 9, part 12.

Part 12 Transitional provisions for Environmental Protection (Waste ERA Framework) Amendment Regulation 2018

This part provides transitional provisions for amendments that commence on notification of the regulation.

Section 182 Definition for part

New section 182 contains definitions for words and phrases used in this part.

Section 183 Existing environmental authorities for particular prescribed ERAs

New section 183 provides that holders of existing EAs for certain former prescribed ERAs will be taken to hold a replacement EA for a new prescribed ERA. This will apply from the commencement of this regulation.

Any conditions on the existing environmental authority will transfer to and continue to apply on the replacement environmental authority. This is an administrative process and does not enable changes to be made to the conditions of an existing environmental authority that would alter, either by increasing or decreasing, the scale or nature of the activities that are authorised to be undertaken or the types of waste that may be received.

This section also states that the anniversary day of the replacement environmental authority will be the same as the anniversary day of the existing environmental authority. The annual fee will continue to be payable on this day. The new annual fee associated with the replacement environmental authority will not be payable until the first anniversary day that falls after 15 November 2019. If the next anniversary day falls before 15 November 2019 the annual fee of the existing environmental authority will apply.

Section 184 Existing applications for particular prescribed ERAs

New section 184 provides provisions for existing applications that were properly made, but not decided, before the commencement of this regulation amendment.

This section applies to any application that relates to a prescribed ERA that has been replaced by a new prescribed ERA on commencement of this regulation amendment. In these cases the application will be taken to be an application for the new prescribed ERA.

Clause 6. Replacement of sch 2, s 53 (Composting and soil conditioner manufacturing)

This section amends schedule 2 to replace existing prescribed ERA 53 (composting and soil conditioner manufacturing) with the new prescribed ERA 53 (organic material processing). The provisions of the new prescribed ERA will apply on commencement of this regulation.

Section 53 Organic material processing

New section 53 includes composting and anaerobic digestion activities. The existing threshold for this ERA has not changed and a facility that receives greater than 200t or more of organic material in a year will be required to obtain an environmental authority.

An environmental authority will not be required if the organic material is generated on and subsequently composted or anaerobically digested on a site where agricultural or livestock production activities are carried out.

However, an environmental authority will still be required if organic material is received from a source other than from an agricultural or livestock production activity, or if a fee is charged for receiving the organic material, processing the organic material or for the subsequent product that is produced.

An environmental authority to carry out anaerobic digestion is not required under this section, if the activity is undertaken at a facility that holds an existing environmental authority under section 63 (sewage treatment plant).

Clause 7. Replacement of sch 2, s 60 (Waste disposal)

This section amends schedule 2 to replace existing prescribed ERA 60 (waste disposal) with the new prescribed ERA 60 (waste disposal). The provisions of the new prescribed ERA apply on commencement of this regulation.

Section 60 Waste disposal

This ERA involves operating a facility for the disposal of inert waste, general waste or regulated waste. It also includes maintaining a decommissioned waste disposal facility that no longer accepts waste for the purpose of disposal.

This ERA introduces new low-risk thresholds for facilities that dispose of only inert waste. Disposal of material that meets the definition of 'inert waste' will require an environmental authority under this section. Disposal of clean earth or using clean earth as fill does not require an environmental authority under this section.

An environmental authority is not required under this section for decommissioned waste disposal facilities that have surrendered their environmental authority or for historic waste disposal facilities that pre-date EP Act licensing requirements.

If waste transfer or resource recovery activity or another waste-related activity is being undertaken at the waste disposal facility, the facility must be licensed for all relevant ERAs.

Clause 8. Amendment of sch 2, s 62 (Waste transfer station operation)

This section amends existing section 62 (waste transfer station operation) to introduce new provisions that will require persons storing greater than 4 tonnes or 500 equivalent passenger units (EPUs) of end-of-life tyres to obtain an environmental authority.

This section also introduces provisions to exempt persons operating a container refund point under the *Waste Reduction and Recycling Act 2011* from requiring an environmental authority under this section.

The amendments to this section apply on commencement of this regulation.

Clause 9. Amendment of sch 12 (Dictionary)

This section provides for amendments to schedule 12, part 2 to define the terms for ‘*clean earth*’ and ‘*end-of-life tyre*’ used in the new sections.

Part 3 Amendments commencing on 4 February 2019

Part 3 provides for a single amendment to be made to schedule 2E (trackable waste and waste codes) that will commence on 4 February 2019.

Clause 10. Amendment of sch 2E (Trackable waste and waste codes)

This section amends schedule 2E to insert a new waste description and waste tracking code for per- and poly-fluoroalkyl substances. This amendment commences on 4 February 2019.

Part 4 Amendments commencing on 1 July 2019

This part provides for the amendments required to establish new sections, transitional provisions and definitions required to introduce new ERAs that will commence on 1 July 2019.

The new ERAs commencing on 1 July 2019 include –

- 33 (crushing, milling, grinding or screening)
- 54 (mechanical waste reprocessing)
- 55 (other waste reprocessing or treatment)
- 57 (regulated waste transport)
- 61 (thermal waste reprocessing or treatment)
- 62 (resource recovery and transfer facility operation)

Clause 11. Amendment of s 101 (Particular prescribed ERAs)

Existing section 101 describes prescribed ERAs that are devolved to local government for administration and enforcement. This section amends existing section 101 to remove prescribed ERAs 20 (metal recovery) and 61 (waste incineration and thermal treatment) that are no longer devolved to local government.

Clause 12. Insertion of new ch 8, pt 3, div 4

This section provides for the insertion of new chapter 8, part 3, division 4.

Division 4 Supplementary annual fee for regulated waste transport

Division 4 provides for a pro-rated supplementary annual fee to be paid for prescribed ERA 57 (regulated waste transport) if additional vehicle(s) are registered during an anniversary period.

Section 135. Supplementary annual fee for regulated waste transport

New section 135 provides the criteria used to determine if a supplementary annual fee is required when a holder of an environmental authority for ERA 57 (regulated waste transport) increases the number of regulated waste transport vehicles registered with the administering authority.

The section also provides the calculations that are used to determine the amount of the supplementary annual fee.

Clause 13. Insertion of new ch 9, pt 12, div 3

This section provides for the insertion of new chapter 9, part 12, division 3.

Division 3 Transitional provisions for amendments commencing on 1 July 2019

This part provides transitional provisions for amendments commencing on 1 July 2019.

Section 185. Administration and enforcement

New section 185 provides provisions to determine when a local government may exercise powers or functions in relation to activities that will no longer be devolved to local government under new section 101 from 1 July 2019.

Under this section a local government that commenced exercising a devolved power or function in relation to former ERAs 20 (metal recovery) or 61 (waste incineration and thermal treatment) prior to 1 July 2019 may continue to exercise that power or function as if this amendment regulation had not commenced.

Section 186. Existing environmental authorities for particular prescribed ERAs

New section 186 provides criteria to determine the new prescribed ERA required for persons who, immediately before commencement of this Amendment Regulation, held an existing environmental authority for a former prescribed ERA.

Any conditions on the existing environmental authority will transfer to and continue to apply on the replacement environmental authority. This is an administrative process and does not enable changes to be made to the conditions of an existing environmental authority that would alter, either by increasing or decreasing, the scale or nature of the activities that are authorised to be undertaken or the types of waste that may be received.

This section also states that the anniversary day of the replacement environmental authority will be the same as the anniversary day of the existing environmental authority. The annual fee will continue to be payable on this day. The new annual fee associated with the replacement environmental authority will not be payable until the

first anniversary day that falls after 15 November 2019. If the next anniversary day falls before 15 November 2019 the annual fee of the existing environmental authority will apply.

Section 187. Application of s 135

New section 187 clarifies that the supplementary annual fee for regulated waste transport under section 135 does not apply if the previous annual fee was calculated for the former prescribed ERA 57 (regulated waste transport) prior to commencement of the Amendment Regulation on 1 July 2019.

Section 188. Existing applications for particular prescribed ERAs

New section 188 provides provisions for existing applications that were properly made, but not decided, before 1 July 2019.

This section applies to any properly made environmental authority application that relates to an existing prescribed ERA that is replaced by a new prescribed ERA on 1 July 2019. In these cases the application will be taken to be an application for the new prescribed ERA.

Clause 14. Omission of sch 2, s 20 (Metal recovery)

This section provides for the removal of existing prescribed ERA 20 (metal recovery) as it is no longer required.

Clause 15. Amendment of sch 2, s 33 (Crushing, milling, grinding or screening)

This section provides for the amendment of existing prescribed ERA 33 (crushing, milling, grinding or screening) so that it no longer permits processing of waste.

Clause 16. Omission of sch 2, s 52 (Battery recycling)

This section provides for the removal of existing prescribed ERA 52 (battery recycling) as it is no longer required.

Clause 17. Insertion of new sch 2, s 54

This section provides for the insertion of the new prescribed ERA 54 (mechanical waste reprocessing).

Section 54 Mechanical waste reprocessing

New section 54 provides for an ERA for operating a facility that reprocesses waste using mechanical processes. Mechanical reprocessing includes crushing, milling, grinding or screening waste material.

The ERA includes the following categories of waste –

- inert, non-putrescible waste or green waste
- general waste
- category 2 regulated waste
- category 1 regulated waste

The sections provides that provide an environmental authority is required if the activity involves reprocessing greater than 5,000 tonnes per annum of inert, non-putrescible waste or green waste. To recognise that small, medium and large scale activities pose variable levels of environmental risk, annual thresholds based on tonnage are included for reprocessing general waste, category 2 regulated waste or category 1 regulated waste –

- 5,000t or less
- More than 5,000t but not more than 10,000t
- 10,000t or more

If the reprocessing activity processes more than one category of waste, or reprocesses different categories of waste in different amounts, the facility should be licensed for all relevant thresholds.

Activities authorised to be carried out under the new prescribed ERA 33 (crushing, milling, grinding or screening) may also be undertaken under this ERA within the specified thresholds.

Mobile and temporary operations are included.

This ERA does not include reprocessing of liquid waste(s).

Clause 18. Replacement of sch 2, s 55 (Regulated waste recycling or reprocessing)

This section provides for the removal of existing prescribed ERA 55 (regulated waste recycling or reprocessing) and the insertion of the new prescribed ERA 55 (other waste reprocessing or treatment).

Section 55 Other waste reprocessing or treatment

New section 55 provides for an ERA that relates to operating a facility that reprocesses or treats waste using processes other than those included within ERAs 53 (organic material processing), 54 (mechanical waste reprocessing), 61 (thermal waste reprocessing or treatment) or 62 (resource recovery and transfer facility operation).

This new ERA includes thresholds for the following categories of waste –

- general waste
- category 2 regulated waste
- category 1 regulated waste
- clinical waste or quarantine waste

To recognise that small, medium and large scale activities pose different levels of environmental risk, annual thresholds based on tonnage are included for reprocessing general waste, category 2 regulated waste or category 1 regulated waste –

- 5,000t or less
- More than 5,000t but not more than 10,000t
- 10,000t or more

If the activity involves reprocessing or treating more than one category of waste, or different categories of waste in different amounts, the facility should be licensed for all relevant thresholds.

Mobile and temporary operations are included.

Clause 19. Omission of sch 2, s 56 (Regulated waste storage)

This section provides for the removal of existing prescribed ERA 56 (regulated waste storage) as it is no longer required.

Clause 20. Replacement of sch 2, s 57 (Regulated waste transport)

This section provides for the replacement of existing prescribed ERA 57 (regulated waste replacement) with new prescribed ERA 57 (regulated waste transport).

Section 57 Regulated waste transport

New section 57 provides for an ERA for transporting any quantity of regulated waste in a vehicle.

There are two thresholds, one for transporting end-of-life tyres and the other for transporting regulated waste. Transporting end-of-life tyres has a fixed aggregate environmental score of 2 irrespective of the number of vehicles that are being used to transport end-of-life tyres.

The aggregate environmental score for transporting regulated waste, other than end-of-life tyres, is 1 for each regulated waste transport vehicle that is registered with the department. This enables the annual fee that is determined by the aggregate environmental score, to increase linearly for each additional vehicle that is registered. The maximum aggregate environmental score for this threshold is 36, after which additional vehicles may be registered and incur no further increase in the annual fee.

This ERA does not include the transportation of regulated waste by a government entity or their agents, where the waste is moved from one government parcel of land to another. For example, moving illegally dumped tyres from a road reserve to a transport maintenance depot.

This ERA does not include transporting less than 175kg of asbestos in a vehicle or a self-haul load of regulated waste weighing less than 250kg.

Clause 21. Omission of sch 2, ss 58 and 59

This section provides for the removal of the following existing prescribed ERAs as they are no longer required –

- 58 Regulated waste treatment
- 59 Tyre recycling

Clause 22. Replacement of sch 2, ss 61 and 62

This section provides for the removal of existing prescribed ERAs 61 (waste incineration and thermal treatment) and 62 (waste transfer station operation) their replacement with new prescribed ERAs 61 (thermal waste reprocessing and treatment) and 62 (resource recovery and transfer facility operation).

Section 61 Thermal waste reprocessing and treatment

New section 61 provides for an ERA for operating a facility that reprocesses or treats waste using thermal processes. Thermal processes include any process that results in a change in the chemical composition of waste. This includes processes such as incineration, gasification, pyrolysis or using a plasma arc.

The ERA includes the following categories of waste –

- general waste
- category 2 regulated waste
- category 1 regulated waste
- clinical waste or quarantine waste

To recognise that small, medium and large scale activities pose different levels of environmental risk, annual thresholds based on tonnage are included for reprocessing general waste, category 2 regulated waste or category 1 regulated waste –

- 5,000t or less
- More than 5,000t but not more than 10,000t
- 10,000t or more

If the activity involves reprocessing or treating more than one category of waste, or different categories of waste in different amounts, the facility should be licensed for all relevant thresholds.

Mobile and temporary operations are included.

Section 62 Resource recovery and transfer facility operation

New section 62 provides for an ERA for operating a resource recovery and transfer facility operation. The ERA includes facilities that receive and sort, dismantle, bale or temporarily store waste.

The ERA includes the following categories of waste –

- scrap steel, non-putrescible waste or green waste
- general waste
- category 2 regulated waste
- category 1 regulated waste
- end-of-life tyres

There is no threshold for this ERA and an environmental authority is required for all facilities that undertake the activity. Exemptions are provided for facilities that only store waste and that do not exceed the following quantities of waste at any one time–

- 6t or 6m³ of general waste
- 4t or 4m³ of category 2 regulated waste
- 1t or 1m³ of category 1 regulated waste

This new ERA does not include local government operated facilities that receive less than 11,000t or 11,000m³ of waste of any category or type in a year.

This new ERA does not include receiving and storing waste on state land where the waste was generated by a government entity or their agents and as result of activities undertaken in relation to construction or maintenance of a state-controlled road or local government road. For example, material generated from activities on a state-controlled road or local government road such as construction and demolition, asphalt milling, vegetation clearing or the collection of illegally dumped waste may be stored on or moved to other state land.

Clause 23. Amendment of sch 3B (Approved ERA standards for environmentally relevant activities)

This section provides for the removal of the item listed in Schedule 3B relating to eligibility criteria and standard conditions for existing prescribed ERA 59 (tyre recycling). This is required as the prescribed ERA 59 has been deleted.