

Environmental Protection (Financial Provisioning) and Other Legislation Amendment Regulation 2019

Explanatory notes for SL 2019 No. 19

made under the

Environmental Protection Act 1994
State Penalties Enforcement Act 1999

General Outline

Short title

Environmental Protection (Financial Provisioning) and Other Legislation Amendment Regulation 2019

Authorising law

Sections 226 and 580 of the *Environmental Protection Act 1994*
Section 165 of the *State Penalties Enforcement Act 1999*

Policy objectives and the reasons for them

The policy objective of the *Environmental Protection (Financial Provisioning) and Other Legislation Amendment Regulation 2019* (Amendment Regulation) is to amend the *Environmental Protection Regulation 2008* and the *State Penalties Enforcement Regulation 2014* to be consistent with the *Environmental Protection Act 1994* as amended by the *Mineral and Energy Resources (Financial Provisioning) Act 2018*.

Specifically, the Amendment Regulation will amend the *Environmental Protection Regulation 2008* to:

- clarify that fees for amendment applications will be unchanged as a result of the introduction of Progressive Rehabilitation and Closure plans (PRC plans), even where the application relates to amendment of both an environmental authority and a Progressive Rehabilitation and Closure Plan schedule (PRCP schedule);

- provide that where a PRCP schedule is amended as a standalone application, the amendment fee will be the same as the amendment fee for a standalone environmental authority amendment application;
- update references from ‘financial assurance’ to ‘surety’ and ‘administering authority’ to ‘scheme manager’ and cross-references to sections following amendments by the *Mineral and Energy Resources (Financial Provisioning) Act 2018*; and
- state the date by which the holder of an environmental authority for an intensive animal industry activity (animal feed-lotting, pig keeping or poultry farming) or devolved to a local government must give an annual return.

The Amendment Regulation will amend the *State Penalties Enforcement Regulation 2014* to:

- prescribe new infringement notice offences (for example, in relation to offences for non-compliance with PRCP schedules) to ensure consistency with the rest of the *Environmental Protection Act 1994* and provide an appropriate enforcement tool for when non-compliances are identified;
- amend existing penalty infringement references to reflect re-numbered sections in the *Environmental Protection Act 1994*; and
- correct references to offences under the *Environmental Protection Act 1994* to ensure consistency following previous amendments.

Achievement of policy objectives

As a result of the *Mineral and Energy Resources (Financial Provisioning) Act 2018*, consequential amendments to the *Environmental Protection Regulation 2008* are required to update terminology, amend cross-references to section numbers, and omit a division that is no longer required.

Clause 4 deletes Chapter 3, Part 1, Division 2A of the *Environmental Protection Regulation 2008*, which prescribed financial assurance guidelines for sections 294 and 295 of the pre-amended *Environmental Protection Act 1994*. This guideline will be replaced and will be made by a new guideline making power in section 550 of the *Environmental Protection Act 1994*.

Clauses 5 and 6 correct cross-references in the *Environmental Protection Regulation 2008* to re-numbered sections of the *Environmental Protection Act 1994*:

- section 125(1)(n) was re-inserted as section 125(1)(o) by the *Mineral and Energy Resources (Financial Provisioning) Act 2018*; and
- section 310 was renumbered to 316L as a result of the *Mineral and Energy Resources (Financial Provisioning) Act 2018*.

Clause 7 inserts new section 144CA to clarify when annual returns for certain environmental authorities must be given. The administration of certain environmental authorities may be devolved to a prescribed local government. In addition, intensive animal industry activities (animal feed-lotting, pig keeping or poultry farming) are generally delegated to the Department of Agriculture and Fisheries. The new section 144CA provides that the holder of those environmental authorities must provide an annual return by the anniversary day for the holder’s environmental authority, maintaining status quo for these activities. If section 144CA does not apply, the prescribed date is 1 March each year under the *Environmental Protection Act 1994*.

Clauses 8 and 9 amend the references to ‘financial assurance’ (which no longer apply to resource activities) to ‘surety’ and ‘administering authority’ to ‘scheme manager’, except where a provision is of a transitional nature. Clause 8 also corrects the reference from section 298 to 316C in item 8A.

In addition, section 21A(2)(a) of the *Environmental Protection Act 1994*, as amended, states that the holder of a small scale mining tenure must provide a surety ‘of the amount prescribed by regulation’. Therefore, the term ‘calculated’ is amended to ‘prescribed’ by Clause 8.

Fees

The PRC plan (and PRCP schedule) is part of the environmental authority application, and will continue to be captured under item 5(b), Schedule 10 of the *Environmental Protection Regulation 2008*. This item is not amended and new environmental applications will continue to be charged the same application fee.

Clause 10 of the Amendment Regulation replaces item 7 of Schedule 10 (Fees) of the *Environmental Protection Regulation 2008* to clarify that fees relating to amendment applications will remain the same as the current fees. Item 7 clarifies the application fee will apply to combined environmental authority and PRCP schedule amendment applications, or a standalone application of either instrument.

New Item 7A clarifies the fee for a major amendment to a combined environmental authority and PRCP schedule amendment application, or a standalone application of either statutory instrument.

The proposed fees retain the fees as at 1 July 2018.

The amendment fee options result in no increase to current fees and reflect that rehabilitation requirements currently assessed and conditioned in environmental authorities are being shifted to the PRCP schedule for certain mine sites (as a result of the *Mineral and Energy Resources (Financial Provisioning) Act 2018*). This means that what typically would have been amended as part of an environmental authority amendment application will now be amended as part of a PRCP schedule amendment. Consequently, the administrative effort, and the amendment fee, remains the same.

State Penalties Enforcement Regulation 2014 amendments consequential of the Mineral and Energy Resources (Financial Provisioning) Act 2018

Clause 11 of the Amendment Regulation inserts new infringement notice offences into the *State Penalties Enforcement Regulation 2014* to reflect new offences that were inserted into the *Environmental Protection Act 1994* by the *Mineral and Energy Resources (Financial Provisioning) Act 2018*. The new infringement notice offences are consistent with existing procedural offences under the *Environmental Protection Act 1994* and give the administering authority an alternative enforcement tool to prosecution where it is warranted.

Section references in several infringement notice offences will be amended to reflect re-numbered sections in the *Environmental Protection Act 1994* as a consequence of the *Mineral and Energy Resources (Financial Provisioning) Act 2018*. These sections were re-numbered

because the *Mineral and Energy Resources (Financial Provisioning) Act 2018* inserted a new Chapter 5 Part 12 and re-inserted the pre-amended Chapter 5, Part 12 as Chapter 5, Part 15.

The Amendment Regulation deletes the infringement notice offence for section 293(2) of the pre-amended *Environmental Protection Act 1994* from the *State Penalties Enforcement Regulation 2014* because it has been deleted by the *Mineral and Energy Resources (Financial Provisioning) Act 2018*. Section 293(2) of the pre-amended *Environmental Protection Act 1994* had a corresponding offence for failing to give financial assurance before acting under an environmental authority or small scale mining tenure. This offence was deleted by the *Mineral and Energy Resources (Financial Provisioning) Act 2018* because it is now captured under sections 297, 430 and 431 of the *Environmental Protection Act 1994*.

Infringement notice offence amendments that are consequential of other pieces of legislation

Amendments to the *State Penalties Enforcement Regulation 2014* are required to correct inconsistencies between the *Environmental Protection Act 1994* and the *State Penalties Enforcement Regulation 2014*.

The *Environmental Protection and Other Legislation Amendment Act 2014* renumbered sections of the *Environmental Protection Act 1994*. As a consequence, the Amendment Regulation makes the following amendments to Schedule 1 of the *State Penalties Enforcement Regulation 2014*:

- replace '320B(2)' with '320B(3)';
- replace '371(1)' with '320DA(3)';
- replace '371(2)' with '320DA(1)';
- replace '405(6)' with '394(5)';
- replace '420(2)' with '407(2)' and '407(3)'; and
- replace '421(2)' with '408(2)'.

The *State Penalties Enforcement Regulation 2014* is also amended to remove infringement notice offences for offences which no longer exist in the *Environmental Protection Act 1994*:

- section 376(7);
- section 386;
- section 391(7);
- section 423(4);
- section 423(5); and
- section 427.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the objectives of the *Environmental Protection Act 1994* and the *Mineral and Energy Resources (Financial Provisioning) Act 2018*.

Section 580(2)(a) of the *Environmental Protection Act 1994* states that a regulation may be made about the amounts of fees payable under the *Environmental Protection Act 1994*. This is consistent with the Amendment Regulation, which reflects that fees will maintain status quo

with the new requirements under the *Environmental Protection Act 1994*, as a result of amendments by the *Mineral and Energy Resources (Financial Provisioning) Act 2018*.

The Amendment Regulation is consistent with the policy objectives of the *State Penalties and Enforcement Regulation 2014*. The new infringement notice offences proposed by the Amendment Regulation are consistent with existing offences, penalty amounts and enforcement approaches under the *Environmental Protection Act 1994*.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

There are no costs associated with the implementation of the Amendment Regulation. The amendments will not result in any additional burden to government or industry. An exclusion from further regulatory impact assessment has been considered for this Amendment Regulation. In assessing the Amendment Regulation for an exclusion from further regulatory impact assessment, the costs and benefits associated with the making of legislation and alternatives to regulation have been fully assessed by the Queensland Productivity Commission.

Consistency with fundamental legislative principles

The Amendment Regulation is considered to be consistent with fundamental legislative principles.

The Amendment Regulation does not insert any new fees, rather it clarifies that existing fees relating to environmental authorities will be retained and will also apply to amendments to PRCP schedules.

Consultation

In December 2018, the Department of Environment and Science undertook targeted external consultation with resource industry peak body representatives, Lock the Gate, and the Environmental Defenders Office.

A letter was distributed to all local governments on 4 December 2018 to inform local governments about the changes to the annual notice and annual return provisions made by the *Mineral and Energy Resources (Financial Provisioning) Act 2018* and the proposed Amendment Regulation. The letter also included frequently asked questions that relate to annual notices and annual returns, and clarified that there are no implications to local government.

In accordance with *The Queensland Government Guide to Better Regulation* (the Guidelines), the Queensland Productivity Commission (QPC) was consulted on the proposed amendments that are made as a consequence of the *Mineral and Energy Resources (Financial Provisioning) Act 2018*. An exclusion from further regulatory impact assessment was considered by QPC and

advised that the amendments would not benefit from any further assessment under the Guidelines as they are consequential in nature, do not appear to result in significant adverse impacts, and sufficient analysis and consultation has been undertaken in the development of the proposal to date.

In relation to the proposed amendments to the *State Penalties Enforcement Regulation 2014* that are not made as a consequence of the *Mineral and Energy Resources (Financial Provisioning) Act 2018*, QPC was not consulted as the Department of Environment and Science applied a self-assessable exclusion from undertaking further regulatory impact analysis (Category A – Regulatory proposals that make consequential amendments).

No issues were raised as a result of the consultation.

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