

Environmental Protection (Air) Policy 2019

Explanatory notes for SL 2019 No. 153

made under the

Environmental Protection Act 1994

General Outline

Short title

Environmental Protection (Air) Policy 2019

Authorising law

Sections 26 to 34 of the *Environmental Protection Act 1994*

Policy objectives and the reasons for them

The *Environmental Protection (Air) Policy 2019* will replace the *Environmental Protection (Air) Policy 2008* which is due to expire on 1 September 2019 in accordance with section 54 of the *Statutory Instruments Act 1992*.

A review of the *Environmental Protection (Air) Policy 2008* confirmed a need for continued regulatory action. The *Environmental Protection (Air) Policy 2019* is required to provide for the effective operation of the *Environmental Protection Act 1994*. The purpose of the policy is to achieve the object of the *Environmental Protection Act 1994* in relation to the air environment.

The *Environmental Protection (Air) Policy 2019* is to be made in substantially similar form to the existing legislation. Amendments are confined primarily to the drafting style to ensure the legislation reflects current drafting practice. Some provisions have been renumbered as a result. Other amendments have been made to clarify the intent of provisions, and update the air quality objectives to reflect contemporary standards.

Achievement of policy objectives

The purpose of the *Environmental Protection (Air) Policy 2019* is achieved by identifying environmental values to be enhanced or protected, stating indicators and air quality objectives for enhancing or protecting the environmental values, and providing a framework for making consistent, equitable, and informed decisions about the air environment.

The *Environmental Protection (Air) Policy 2019* will provide for the same matters as the expiring legislation. Some changes have been made to update provisions based on current drafting style, to clarify the intent of provisions, and reflect contemporary air quality standards.

Consistency with policy objectives of authorising law

The *Environmental Protection (Air) Policy 2019* is 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 *Environmental Protection (Air) Policy 2019* is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

The implementation of the *Environmental Protection (Air) Policy 2019* 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.

Consistency with fundamental legislative principles

The *Environmental Protection (Air) Policy 2019* is considered to be consistent with fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

Consultation

A draft of the *Environmental Protection (Air) Policy 2019* and summary of changes was emailed directly to key stakeholders, including industry representatives, environmental groups, technical consultants and local government, for comment. Broader public consultation was not undertaken because there are no significant policy changes from the

Environmental Protection (Air) Policy 2008. All of the submissions received during consultation were considered, and where appropriate, changes were made to the policy.

A new weekly air quality objective for toluene proposed in the draft policy was removed following a submission from a technical consultant. This revision was made due to technical reasons and to avoid potential confusion.

Industry representatives requested that further consultation occur prior to making specific changes to the air quality objectives. These changes have been made to ensure consistency with national standards. Consultation on the change has already occurred at the national level. Any deviation from the national standards could result in an inconsistency with the objective of the *National Environment Protection Council (Queensland) Act 1994*.

Environmental groups sought faster implementation of variations to national air quality standards. The comments have been noted and will be considered in the context of future amendments to environmental protection policies that would be required to reflect any future variations to the national standards.

In accordance with *The Queensland Government Guide to Better Regulation* (the Guidelines), the Office of Best Practice Regulation (OBPR) was consulted on the Department of Environment and Science's sunset review of the *Environmental Protection (Air) Policy 2008*. OBPR was also consulted on changes to the policy to clarify the intent of the management hierarchy for air emissions and to update air quality standards.

In regards to the department's sunset review, OBPR advised that it considered the department had satisfactorily met the objectives for sunset reviews as set out in the Guidelines. OBPR considered that no further regulatory impact analysis of the *Environmental Protection (Air) Policy 2008* was required prior to its remake.

OBPR advised that the proposal to update the air quality standards was excluded from further regulatory impact analysis under the Guidelines (Category (l) – Regulatory proposals that have already undergone an extensive impact assessment process). OBPR considered the proposal to clarify the intent of the management hierarchy for air emissions was excluded under the Guidelines (Category (k) – Regulatory proposals designed to reduce the burden of regulation, or that clearly do not add to the burden, and it is reasonably clear there are no significant adverse impacts).

Notes on Provisions

Section 1 Short title

This section states that the short title of this legislation is the *Environmental Protection (Air) Policy 2019*.

Section 2 Commencement

This section states that the policy commences on 1 September 2019.

Section 3 Definitions

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

Section 4 Application

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.

Section 5 Purpose

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 (ecologically sustainable development).

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.

Section 6 Environmental values

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. 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.

Section 6 of the *Environmental Protection (Air) Policy 2019* outlines the environmental values of the air environment to be enhanced or protected under the policy. The environmental values recognise the need for protection of the health and biodiversity of ecosystems; human health and wellbeing; aesthetics; and agricultural use. The values are the same as the values in the *Environmental Protection (Air) Policy 2008* and were developed following research of national and international approaches to managing the air environment.

The environmental values stated in this section apply across Queensland's air environment. The environmental values are used to inform a range of decision making including assessment of environmental authority applications, planning decisions, environmental impact assessment, and compliance purposes to maintain an appropriate air quality. The environmental values inform whether environmental harm under the *Environmental Protection Act 1994* has been caused, as environmental harm is an adverse impact on an environmental value. They are also considered as part of the regulatory requirements for particular decisions under the *Environmental Protection Act 1994*.

Section 7 Air quality objectives for indicators

The *Environmental Protection Act 1994* 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.

Schedule 1 states the air quality objectives for enhancing or protecting the environmental values of the air environment. Air quality objectives are stated for indicators. Indicators (as defined in the dictionary in schedule 2) are contaminants that may be present in the air environment.

Air quality objective, for an area or place, is defined in schedule 2 to mean:

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

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

The air quality objectives are not point source air emission discharge levels. The objectives are total levels of air emissions in the surrounding environment. They 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. 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 the policy over the long term.

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. These emissions are considered to be more appropriately managed under the relevant workplace health and safety legislation applying to a particular workplace.

Section 8 Management hierarchy for air emissions

This section sets out the management hierarchy for an activity involving air emissions that will or may affect environmental values. An activity that involves trivial air emissions that does not affect, or have the potential to affect, any relevant environmental values should not need to consider the management hierarchy.

The management hierarchy is referred to in the *Environmental Protection Regulation 2019* as a matter that must be considered by the administering authority when making an environmental management decision. The management hierarchy will also be considered in a range of other decision making.

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, an operator should attempt to re-use the contaminant in another industrial process or turn the contaminant into another product to be re-used
3. minimise—where avoidance and recycling is not possible, technology or processes that minimise air emissions should be implemented
4. manage—where avoidance, recycling and minimising is not possible, the air emissions must be managed, such as through selecting a suitable area for the activity producing air emissions, treating air emissions prior to release or dispersing the air emissions.

There are some minor changes to the examples for the management hierarchy to better illustrate and clarify the policy intent.

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.

Section 9 Repeal

This section repeals the *Environmental Protection (Air) Policy 2008*.

Schedule 1 Air quality objectives

The air quality objectives in schedule 1 are the same as those in the *Environmental Protection (Air) Policy 2008*, with the following exceptions:

- a number of changes have been made to ensure that the air quality objectives are normalised to 0 degree Celsius and 1 atmosphere of pressure
- for the air quality objective for PM₁₀ over a 24 hour period, the allowance for a five-day exceedance in a year has been removed, in order to ensure consistency with the National Environmental Protection (Ambient Air Quality) Measure
- an air quality objective for PM₁₀ for a one year period has been inserted in order to ensure consistency with the National Environmental Protection (Ambient Air Quality) Measure.

The 2008 objectives were 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. Queensland has committed to implement the National Environmental Protection Measures, and therefore these measures take precedence in setting the air quality objectives. This is intended to ensure that there is no variations between jurisdictions in relation to the adoption or implementation of major environmental protection measures.

New definitions have been inserted in Schedule 2 to explain that the values in the first column of Column 3 are referenced to a temperature of 0 degrees Celsius and 1 atmospheric pressure.

Schedule 2 Dictionary

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

A change has been made to the definition of ‘total suspended particles’ to align the definition with the Australian/ New Zealand Standard (Method for sampling and analysis of ambient air).

Definitions for ‘mg/m³’, ‘ng/m³’ and ‘µg/m³’ have been inserted to provide clarity regarding these measurement terms.