

Environmental Protection Regulation 2019

Explanatory notes for SL 2019 No. 155

made under the

Biosecurity Act 2014

Environmental Offsets Act 2014

Environmental Protection Act 1994

Planning Act 2016

State Penalties Enforcement Act 1999

Waste Reduction and Recycling Act 2011

Water Act 2000

General Outline

Short title

Environmental Protection Regulation 2019

Authorising law

Section 503 of the *Biosecurity Act 2014*

Section 93 of the *Environmental Offsets Act 2014*

Section 580 of the *Environmental Protection Act 1994*

Section 284 of the *Planning Act 2016*

Section 165 of the *State Penalties Enforcement Act 1999*

Section 271 of the *Waste Reduction and Recycling Act 2011*

Section 51 of the *Water Act 2000*

Policy objectives and the reasons for them

The *Environmental Protection Regulation 2019* will replace the *Environmental Protection Regulation 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 Regulation 2008* confirmed a need for continued regulatory action. The *Environmental Protection Regulation 2019* is required to provide for the effective operation of the *Environmental Protection Act 1994*.

The *Environmental Protection Regulation 2019* is in substantially similar form to the existing legislation. Amendments have been made to reflect current drafting practice and ensure the continued effective operation of the regulation.

Achievement of policy objectives

The *Environmental Protection Regulation 2019* supports the effective operation of the *Environmental Protection Act 1994* through:

- identifying the environmentally relevant activities (ERAs) that have the potential to cause environmental harm by releasing contaminants to the environment;
- providing decision making considerations for those activities to minimise environmental harm while allowing for sustainable development;
- providing standards and conditions for ERAs that have a lower risk of causing environmental harm;
- providing for the devolution of particular matters to local governments for administration and enforcement;
- prescribing fees for ERAs and other matters such as environmental impact statements, temporary emissions licences and contaminated land extracts;
- listing regulated wastes;
- listing prescribed water contaminants;
- describing a method for measuring noise standards;
- detailing administrative processes for environmental impact statements; and
- providing national consistency by giving effect to, and enforcing compliance with, the National Environment Protection (National Pollutant Inventory) Measure 1998.

The *Environmental Protection Regulation 2019* provides for substantially the same matters as the expiring legislation. A number of changes have been made to reflect current drafting practice, while other changes have been made to:

- remove redundant provisions and definitions
- update titles, standards, versions, terminology etc. to ensure references are current
- correct technical errors, such as incorrect and missing references to sections of the regulation and other legislation
- clarify the policy intent of existing provisions
- insert new transitional provisions to ensure the effective operation of the regulation.

Some of the more substantial changes are explained in more detail below.

These changes have resulted in the renumbering of many of the provisions. The remake of the *Environmental Protection Regulation 2008*, the *Environmental Protection (Noise) Policy 2008* and the *Environmental Protection (Water) Policy 2009* has also necessitated consequential amendments to other subordinate legislation which are included in this legislation. A further consequential amendment is made to the *Waste Reduction and Recycling Regulation 2011* to re-insert a section about waste collection by local governments which was incorrectly repealed on 1 July 2019 by the *Waste Reduction and Recycling (Waste*

Levy) Amendment Regulation 2019. It is important that this section is re-inserted as it provides certainty to local governments regarding their powers for general and green waste collection.

Release of water or waste to wetlands for treatment

Section 40 (Release of water or waste to wetlands for treatment) of the *Environmental Protection Regulation 2019* has been amended so that the administering authority must refuse to grant a relevant application if it considers that the wetland ‘may’ be destroyed. Previously, subsection (2)(a) stated that the application must be refused if the administering authority considers that the wetland ‘will’ be destroyed. The change from ‘will’ to ‘may’ better reflects the policy intent of this section. As this section applies to an activity that involves, or may involve, the release of water or waste to wetland, it is appropriate for subsection (2)(a) to state ‘may’.

Environmental values for wetlands

The environmental values for wetlands which appeared in the *Environmental Protection Regulation 2008* are to be relocated to the *Environmental Protection (Water and Wetland Biodiversity) Policy 2019*. This is so that the environmental values for both water and wetland biodiversity are co-located in a single piece of legislation for easy reference. It also provides consistency across the subordinate legislation, ensuring that all prescribed environmental values are located in the environmental protection policies.

Registers kept by administering authority

Minor changes have been made to sections 145-148 which state information and documents that must be included in particular registers required to be kept by the administering authority under section 540 of the *Environmental Protection Act 1994*. These changes are intended to increase clarity regarding what needs to be retained on the register. There is no change to the actual requirements.

Refunding difference between annual fee and reduced fee

Section 173 (Refunding difference between annual fee and reduced fee) has been amended to clarify that the requirement in subsection (2) is to be communicated by written notice. A time for compliance (within 20 business days) has also been inserted. This time is consistent with the time provided in similar provisions of the *Environmental Protection Regulation 2019* (e.g. the time for payment of a supplementary annual fee) and will provide more clarity for both the administering authority and holder.

When supplementary annual fee payable

Section 174 (When supplementary annual fee payable) has been amended to clarify that the supplementary annual fee payable under this section is to be calculated by reference to the annual fee paid for the environmental authority before the amendment application was approved. This section previously made reference to the annual fee stated in the last annual notice for the environmental authority. This created unintended consequences in certain situations such as where the environmental authority was amended in its first year or where it

was amended multiple times in an anniversary year. The amendment clarifies the original policy intent of the provision.

Limited amendment of wetland map

The ‘Map of referable wetlands’ is to be replaced with the ‘Map of Great Barrier Reef wetland protection areas’. This map will identify wetland protection areas, while a new map in the *Environmental Protection (Water and Wetland Biodiversity) Policy 2019* will identify wetlands. The boundaries of these areas remain unchanged in the new maps.

The requirement to notify affected owners of a limited amendment of the map, and provide a copy of the amended map to these owners, has also been removed. Section 186 only allows for limited amendments which are amendments to remove areas shown as wetland protection areas for limited scientific reasons. Any other amendments will be subject to broader consultation. The map, including any revisions, will be available on the website of the Department of Environment and Science (the department) for the public to view.

Other local governments

Schedule 13 (Other local governments) provides a list of local governments for the purposes of the definition of ‘prescribed local government’ in section 133 of the *Environmental Protection Regulation 2019*. This schedule has been amended to add Mareeba Shire Council, Murweh Shire Council and Southern Downs Regional Council. These councils have elected not to have devolution responsibilities under section 133. The administration and enforcement of any relevant prescribed environmentally relevant activities in these local government areas are to be returned to the state government.

Prescribed water contaminants

Regulated waste has been added as a prescribed water contaminant. Regulated waste in the *Environmental Protection Regulation 2019* contains certain hazardous properties and is likely to cause environmental harm if it enters waters. Therefore, it is appropriate for regulated waste to be prescribed as a water contaminant.

Consistency with policy objectives of authorising law

The *Environmental Protection Regulation 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 Regulation 2019* is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

The implementation of the *Environmental Protection Regulation 2019* is undertaken as part of the administration and enforcement of the *Environmental Protection Act 1994*. The costs of the regulation will be met from existing resources, and will be partially offset by the fees prescribed by the regulation.

Consistency with fundamental legislative principles

There are some provisions in the *Environmental Protection Regulation 2019* that incorporate reference to external documents. This includes:

- sections 22, 24, 152, 153;
- section 164(5), definition ‘emission scores profile’;
- section 187;
- schedule 8, definition ‘regulated structure’; and
- schedule 19, definitions ‘Australian water quality management guidelines’, ‘high consequence dam’ and ‘noise measurement manual’.

This may be seen to breach section 4(2)(b) of the *Legislative Standards Act 1992* which requires legislation to have sufficient regard to the institution of Parliament. Incorporating external documents that are not subject to Parliamentary scrutiny potentially raises an issue about whether there is an appropriate delegation of legislative power.

The external documents referenced contain highly technical information and guidance, and it is not considered practical to include all of these details in the regulation. All of the documents are readily available on the department’s website, or other external websites. Any significant amendments to these documents will generally only be done in consultation with relevant stakeholders. For these reasons, it is considered that the references to the external documents in the regulation are justified.

The *Environmental Protection Regulation 2019* is otherwise 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 Regulation 2019* was emailed directly to key stakeholders, including industry peak bodies, environmental groups, technical consultants and local governments, for comment. Broader public consultation was not undertaken because there are no significant policy changes from the *Environmental Protection Regulation 2008*.

No external consultation was undertaken in relation to the re-insertion of former section 7 of the *Waste Reduction and Recycling Regulation 2011*, as this consequential amendment corrects an error. Consultation will be undertaken on any new regulatory amendments proposed as part of the review of the local government waste management framework.

All of the submissions received during consultation on the draft of the *Environmental Protection Regulation 2019* were considered, and where appropriate, changes were made to the policy.

During consultation, environmental groups questioned why the requirement in the *Environmental Protection Regulation 2008* for affected owners to be notified of limited amendments to the 'Map of referable wetlands' has been removed. The *Environmental Protection Regulation 2019* only allows for limited amendments to the 'Map of Great Barrier Reef wetland protection areas'. These are amendments to remove areas shown as wetland protection areas for limited scientific reasons. Any other amendments will be subject to broader consultation. The map, including any revisions, will be available on the department's website for the public to view. For these reasons, the department considered that the amendment was appropriate.

Industry representatives requested a provision be included in the *Environmental Protection Regulation 2019* to prescribe a different annual return date than that currently provided for in section 316IA of the *Environmental Protection Act 1994*. This proposal requires further consultation, and therefore no provision for this has been included in the *Environmental Protection Regulation 2019*.

A number of comments received were more related to the implementation of the legislation. The department did consider these comments but as they did not relate to the drafting of the regulation, it was not necessary to change the legislation to respond to the comments.

In accordance with *The Queensland Government Guide to Better Regulation*, the Office of Best Practice Regulation (OBPR) was consulted on the department's sunset review of the *Environmental Protection Regulation 2008*. 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 Regulation 2008* was required prior to its remake.

In relation to the consequential amendment to re-insert former section 7 of the *Waste Reduction and Recycling Regulation 2011*, the department applied a self-assessable exclusion from undertaking further regulatory impact analysis (Category (f) – Regulatory proposals that correct technical errors or amend legislation to take account of current Queensland drafting practice).