

Fossicking Regulation 2019

Explanatory notes for SL 2019 No. 172

made under the

Fossicking Act 1994

Mineral Resources Act 1989

State Penalties and Enforcement Act 1999

General Outline

Short title

Fossicking Regulation 2019

Authorising law

Section 107 of the *Fossicking Act 1994*

Section 417 of the *Mineral Resources Act 1989*

Section 165 of the *State Penalties and Enforcement Act 1999*

Policy objectives and the reasons for them

The objective of the *Fossicking Regulation 2019* (the Regulation) is to replace the *Fossicking Regulation 2009*.

Section 54 of the *Statutory Instruments Act 1992* provides that subordinate legislation expires 10 years after its making, unless a regulation is made exempting it from expiry. The *Fossicking Regulation 2009* came into effect in 2009 and is due to expire on 1 September 2019.

The provisions contained in the Regulation remain necessary for the continued effective operation of the *Fossicking Act 1994*.

Consequential amendments to the *Mineral Resources Regulation 2013* and the *State Penalties Enforcement Regulation 2014* are also included in the Regulation. These amendments give effect to recent amendments to the *Mineral Resources Act 1989* and update the *State Penalties Enforcement Regulation 2014* to reflect the change in numbering to sections that are prescribed penalty infringement notice provisions.

Achievement of policy objectives

The Regulation sets out requirements and procedures for elements of the *Fossicking Act 1994*, including:

- the conduct of fossickers;
- the conduct of persons other than owners or fossickers on designated fossicking land and fossicking areas;
- controlling pollution on designated fossicking land and fossicking areas;
- naming, and defining the boundaries of, a miners common;
- the appointment of a controller of a miners common;
- the powers and functions of a controller of a miners common;
- the management of a miners common, including the appointment of staff; and
- fees to be paid under the Act.

The Regulation is made in substantially similar form to the *Fossicking Regulation 2009*, except where amendments have been made to correct errors, update reference standards, update wording based on current drafting style or incorporate changes as a result of the review and consultation processes.

To continue to achieve policy objectives, and to align with current practices, the below changes have been incorporated as a result of stakeholder consultation:

- the removal of self-administration camping permits;
- an amendment allowing the driving off of roads within designated fossicking areas and lands in order to make camp (s.17(4));
- a number of administrative amendments to the miners common functions (Part 4); and
- the creation of a new offence provision prohibiting fossickers from removing fossicking material to an alternate location (s.10(2)).

One of the changes to the administration of the miners common involves the re-characterisation of a fee. Previously the *Fossicking Regulation 2009* imposed a fee in the amount of \$17.15 for the issuing, and, if lost, the subsequent replacement, of an agistment tag. This fee was charged per head of stock agisted on the common. The Regulation will better articulate the distinction between the initial issuing of an agistment tag and the replacement of a lost tag. The fee for both will be the same, \$17.15.

The Regulation also removes a fee. The removed fee was levied for the issuing of a copy of a fossicking licence. The amount charged for this was \$8.50. The fee has been removed as it was not being imposed. The licences are paper print outs and the issuing of replacements require little administrative time or resources.

With the exception of the above, the Regulation remains substantially the same as the *Fossicking Regulation 2009*.

The Regulation also includes, as a matter of convenience, a number of administrative amendments to the Fees Schedule in the *Mineral Resources Regulation 2013*. These amendments give effect to legislative amendments previously made to the *Mineral Resources Act 1989* by the *Mineral, Water and Other Legislation Amendment Act 2018*.

A number of consequential amendments have also been made to the *State Penalties Enforcement Regulation 2014*. These changes are as a result of numbering changes to sections in the *Fossicking Regulation 2019* that are prescribed as penalty infringement notice provisions. No substantive changes have been made to the *State Penalties Enforcement Regulation 2014*.

Consistency with policy objectives of authorising law

The Regulation is consistent with the policy objectives of the *Fossicking Act 1994*.

Inconsistency with policy objectives of other legislation

There is no inconsistency with the policy objectives of other legislation.

Benefits and costs of implementation

The Regulation is required to ensure that the regulatory framework supporting the *Fossicking Act 1994* continues appropriately. A robust framework regulating fossicking benefits government and industry by clarifying stakeholder obligations, responsibilities and entitlements.

Implementing the Regulation will not result in any increase in costs for government or industry as the Regulation remains substantively the same as the preceding statute, the *Fossicking Regulation 2009*.

The removal of the fee attached to the copying of a fossicking licence will not affect State Government revenue as the fee was not being actively charged. It reflects the Department of Natural Resources, Mines and Energy's status quo of not charging the fee. Requests for this service are almost non-existent.

The re-characterisation of the replacement agistment tag fee is unlikely to benefit State Government revenue as the fee was previously being charged in a less particularised manner.

The minor amendments to the Regulation will benefit fossickers and reflect our response to their submission feedback to remove redundant provisions and make clarifying amendments such as where fossickers can access camp sites.

Consistency with fundamental legislative principles

The Regulation has been drafted with regard to fundamental legislative principles and is not considered to breach any fundamental legislative principles.

Consultation

The review of the Regulation involved consultation with key external stakeholders and the public-at-large via the Get Involved website. Their various comments and concerns were considered and a small number of amendments to the Regulation were made as a consequence. Cumulatively, these amendments included the addition of an offence provision, the removal of a number of redundant provisions, the addition of an entitlement, the removal of a fee and the re-characterisation of a fee.

The Queensland Productivity Commission (QPC) was consulted and advised that the department had satisfactorily met the objectives for sunset reviews as set out in the guidelines, as the information provided to QPC, demonstrated a need for continued regulatory action and evaluated that the Regulation continues to satisfy its objectives. Therefore, no further regulatory impact analysis is required under the guidelines.

In relation to the new fees being inserted into the *Mineral Resources Regulation 2013*, peak industry and landholder groups were consulted in February 2019 and did not raise any issues about the new fees. QPC was also consulted and advised the department that the new fees were unlikely to result in significant adverse impacts and that no further regulatory impact assessment was required.