

Liquid Fuel Supply (Sustainability Criteria) Amendment Regulation 2019

Explanatory notes for SL 2019 No. 220

made under the

Liquid Fuel Supply Act 1984

General Outline

Short title

Liquid Fuel Supply (Sustainability Criteria) Amendment Regulation 2019

Authorising law

Section 57, Part 5A and Schedule 1 of the *Liquid Fuel Supply Act 1984*

Policy objectives and the reasons for them

The objectives of the *Liquid Fuel Supply (Sustainability Criteria) Amendment Regulation 2019* are to:

- Improve flexibility by allowing biofuels producers to choose from a range of certification options currently contained in Schedule 1 of the *Liquid Fuel Supply Regulation 2016* (the Regulation), regardless of the feedstock they use to produce biofuel; and
- Resolve implementation issues associated with the sustainability criteria in order to support the Queensland biofuels mandates (the mandates).

The *Liquid Fuel Supply (Sustainability Criteria) Amendment Regulation 2019* achieves these objectives by amending Schedule 1 of the Regulation.

Part 5A of the *Liquid Fuel Supply Act 1984* establishes a requirement for liable fuel sellers to sell sustainable biobased diesel or sustainable biobased petrol (biofuels), and was inserted in 2015 to establish the Queensland biofuels mandates, which commenced on 1 January 2017. Under Part 5A of the *Liquid Fuel Supply Act 1984*, Queensland fuel sellers must sell minimum amounts of 'sustainable biobased petrol' (for fuel retailers) and 'sustainable biobased diesel' (for wholesalers).

The definitions of 'sustainable biobased diesel' and 'sustainable biobased petrol' in Schedule 1 of the *Liquid Fuel Supply Act 1984* provide for the sustainability criteria to

be prescribed by regulation. As such, the sustainability criteria are contained in Schedule 1 of the Regulation. The sustainability criteria set environmental performance standards that must be satisfied by the relevant entities within the biofuels supply chain in order for the biofuel to meet the criteria and supply sustainable biofuels to fuel sellers so that they may meet their obligations under the mandates. The purpose of the sustainability criteria is to mitigate unintended environmental impacts from potential intensification or expansion of agricultural activities arising from increased demand for feedstock from the biofuels mandate.

The Regulation contains prescriptive arrangements that specify the sustainability standards that entities may use for a particular feedstock to show that the sustainability criteria are being satisfied. Currently, accreditation options are closely linked to the type of feedstock the producer is using. For example, pursuant to section 6(4)(a) of Schedule 1 of the Regulation, sugar cane used to produce biobased petrol in Australia must be accredited under the Smartcane Best Management Practices (BMP) program or an equivalent standard approved by the chief executive of the department in which the *Environmental Act 1994* is administered. This feedstock prescriptive approach does not provide flexibility in the ways that are otherwise available to biofuels producers to achieve and demonstrate sustainability.

Schedule 1 of the Regulation currently includes transitional provisions requiring existing domestic producers of sugar cane derived biofuels to progressively (annually) increase the percentage of feedstock from sugar cane sourced from 'Smartcane BMP' program accredited farms. Smartcane BMP documents, benchmarks and continuously improves on-farm practices for productivity, profitability and sustainability.

Achievement of policy objectives

The *Liquid Fuel Supply (Sustainability Criteria) Amendment Regulation 2019* will give biofuels producers the capacity to choose from the range of certification options currently contained in Schedule 1 of the Regulation, regardless of the feedstock a biofuels producer chooses to use.

The exception to this will be for producers of palm oil derived biofuels, which will still require certification under the RSPO standard (i.e. the document titled 'Principles and Criteria for the Production of Sustainable Palm Oil 2018') or an equivalent standard for the RSPO standard. In addition, a biofuel producer that does not use sugar cane or a sugar cane by-product as its feedstock may not apply for accreditation using the Smartcane BMP program.

The *Liquid Fuel Supply (Sustainability Criteria) Amendment Regulation 2019*, through the amendment of Schedule 1 of the Regulation, will also remove the transitional provisions in section 6(4) and replace them with a fixed minimum percentage. This will mean that any biofuels producer using sugar cane derived feedstock, that chooses to use Smartcane BMP accreditation, will be required to source a minimum 30 per cent of their feedstock from Smartcane BMP accredited farms.

The *Liquid Fuel Supply (Sustainability Criteria) Amendment Regulation 2019* clarifies that if a facility or supply chain entity was appropriately certified under a particular version of a sustainability standard which is then superseded, the facility or supply chain entity will continue to meet the sustainability criteria under the Regulation until such time as renewal of any existing certification is required. A facility or supply chain entity seeking certification must use the current and not a superseded standard.

To meet the sustainability criteria, all biofuel will still need to comply with the greenhouse gas criterion regardless of the feedstock.

Consistency with policy objectives of authorising law

The *Liquid Fuel Supply (Sustainability Criteria) Amendment Regulation 2019* is consistent with the objectives of the authorising law.

Inconsistency with policy objectives of other legislation

No inconsistencies with the policy objectives of any other legislation have been identified.

Benefits and costs of implementation

Allowing biofuels producers to choose from a range of accreditation options regardless of the feedstock they use to produce the biofuel (with the exceptions outlined above) will provide greater industry flexibility to show their sustainability credentials and provide a more level playing field.

Removing transitional provisions for existing domestically produced biobased petrol sourced from Smartcane BMP accredited farms and enabling biofuel producers to choose how to demonstrate that the sustainability criteria are being met by selecting from a set of sustainability standards aligns with the intent of the proposed amendment.

Replacing the transitional provisions with a fixed percentage of Smartcane BMP accredited sugar cane, combined with the options, in most cases, to choose the accreditation system for certification regardless of the feedstock, will provide more certainty to biofuels producers while maintaining sustainability criteria integrity.

No costs to the government, the community or industry have been identified by the implementation of the amendments. There is no change to the costs for biofuels producers as regardless of the sustainability standard that they select, they need to be able to demonstrate that the biofuel satisfies the sustainability criteria.

Consistency with fundamental legislative principles

The *Liquid Fuel Supply (Sustainability Criteria) Amendment Regulation 2019* is consistent with fundamental legislative principles.

Consultation

Public consultation regarding the sustainability criteria for biobased petrol and biobased diesel occurred through the 'Review of the Queensland Biofuels Mandates' discussion paper, which was released in May 2019. The results of this consultation indicated that while there was broad support to retain sustainability criteria, there was also scope to deliver similar outcomes in a way that provided industry more choice and flexibility. Feedback as a result of this process has been incorporated in the amendments.

In accordance with the *Queensland Government Guide to Better Regulation* (the Guidelines), the Office of Best Practice Regulation (OBPR) was consulted in relation to the amendments. OBPR considered that the proposed amendments are unlikely to result in significant adverse impacts and therefore no further regulatory impact analysis was required under the Guidelines.