

Environmental Protection Amendment Regulation (No. 1) 2020

Explanatory notes for SL 2020 No. 224

made under the

Environmental Protection Act 1994

General Outline

Short title

Environmental Protection Amendment Regulation (No. 1) 2020

Authorising law

Section 580 of the *Environmental Protection Act 1994*

Policy objectives and the reasons for them

The objectives of the *Environmental Protection Amendment Regulation (No. 1) 2020* (the Amendment Regulation) are to amend the *Environmental Protection Regulation 2019* (EP Regulation) to:

- prescribe an annual return date of 1 April for particular environmental authority holders;
- correct a drafting error to ensure regulated wastes are included as prescribed water contaminants; and
- prescribe the fee for an application for a decision about whether an environmental impact statement (EIS) may be required for a project.

Achievement of policy objectives

Annual return date

The Amendment Regulation amends the EP Regulation to prescribe an annual return date of 1 April for all environmental authority holders, apart from those already listed in the amended section 185 of the EP Regulation.

Section 316IA of the *Environmental Protection Act 1994* (EP Act) provides that the holder of an environmental authority must, when requested by the administering authority, provide an

annual return on or before the day prescribed by regulation. If no day is prescribed, the annual return must be provided by 1 March immediately following the year to which the annual return relates. The EP Regulation does not currently prescribe a date for the annual return for environmental authorities other than those for a prescribed environmentally relevant activity (ERA) devolved to a prescribed local government or for an activity mentioned in schedule 2, part 1, section 2, 3 or 4. Consequently, the annual return date for these environmental authorities is 1 March by default.

Resource industry stakeholders have raised concerns about completing annual returns by 1 March and requested a change to the due date to enable more time to meet the legislative requirement. Industry consider that the 1 March date provides insufficient time to consider all data from the previous year. Industry are concerned that the large amount of reporting and checking required for an annual return may lead to a greater likelihood of mistakes, with the potential that operators could face prosecution for providing incorrect information. An annual return date of 1 April addresses the concerns of the resources industry and will facilitate more comprehensive rehabilitation and disturbance information being provided in annual returns.

Regulated wastes as prescribed water contaminants

The Amendment Regulation corrects a drafting error in Schedule 10 of the EP Regulation. The amendment ensures regulated wastes are included as prescribed water contaminants to achieve the original policy intent.

Schedule 10 of the EP Regulation prescribes water contaminants for the purposes of section 440ZF of the EP Act and section 65 of the EP Regulation. Item 17 of Schedule 10 intends to prescribe regulated waste mentioned in schedule 9, part 1 of the EP Regulation as a prescribed water contaminant. However, Schedule 10, Item 17 is currently drafted in such a way that regulated waste is not considered a ‘prescribed water contaminant’. This is contrary to the policy intent, which the explanatory notes for the *Environmental Protection Regulation 2019* stated as:

“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.”

Consequential amendment to prescribe a fee for an application for a decision about whether an EIS may be required

The Amendment Regulation makes a consequential amendment to the EP Regulation to prescribe the fee for an application for a decision about whether an EIS may be required for a project and, if applicable, for approval to prepare an EIS for the project if the chief executive decides an EIS would not be required for the project.

The *Environmental Protection and Other Legislation Amendment Act 2020* inserted a new Part 3 into Chapter 3 of the EP Act allowing for applications to be made for a decision about whether an EIS may be required for an environmental authority application and, if applicable, for approval to prepare an EIS. New section 73B of the EP Act states the application must be accompanied by the fee prescribed by regulation.

The fee prescribed is the same as for section 71(d)(ii) of the EP Act (application for approval to voluntarily prepare an EIS), as the applications for each of these sections are similar. The existing fee for section 71(d)(ii) of the EP Act is extended to apply also to section 73B(d) of the EP Act.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the object of the EP Act, 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 Amendment Regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

Prescribing an annual return date of 1 April is expected to benefit industry by providing holders of an environmental authority with sufficient time to prepare and submit an annual return. Some holders have many environmental authorities and it takes some time to collate all the information, particularly in relation to disturbance and rehabilitation.

This amendment will have only minimal costs to government related to changes to information technology systems of the Department of Environment and Science. These costs will be funded within the existing departmental budget.

Ensuring regulated wastes are included as prescribed water contaminants will assist the administering authority to enforce section 440ZF of the EP Act effectively and take appropriate enforcement actions where necessary. This amendment is considered minor in nature and will not have any significant impacts on government or other stakeholders.

Prescribing a fee for an application for a decision about whether an EIS may be required is consistent with government cost recovery principles. The fee covers the administrative costs to the department related to assessment of the application.

Consistency with fundamental legislative principles

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

Consultation

The amendment to prescribe an annual return date of 1 April has been the subject of recent ongoing consultation related to broader changes to the annual return framework. Resource industry stakeholders, including the Queensland Resources Council (QRC), Australian Petroleum Production & Exploration Association (APPEA) and Association of Mining and

Exploration Companies (AMEC), have been supportive of extending the due date from 1 March to 1 April.

Consultation on the two further amendments was generally undertaken as part of previous primary and subordinate legislation consultation processes.

Consultation on the inclusion of regulated wastes as prescribed water contaminants was undertaken as part of the remake of the EP Regulation in 2019. Targeted consultation was undertaken with stakeholders including QRC, Environmental Defenders Office (EDO), WWF, AMEC, port authorities and a number of local governments. No issues were raised in relation to this amendment.

A draft of the Environmental Protection and Other Legislation Amendment Bill 2020, including the amendments to the EP Act to provide for a new application for a decision about whether an EIS may be required, was the subject of targeted consultation with QRC, EDO and Lock the Gate Alliance in May 2020. The Bill was also subject to more comprehensive public consultation as part of the inquiry by the Natural Resources, Agricultural Industry Development and Environment Committee. No issues were raised about the provision for a fee to be prescribed by regulation for this new application type.

No further public consultation on these two amendments was undertaken as they are considered to be administrative in nature.

In accordance with *The Queensland Government Guide to Better Regulation* (the guidelines), the Office of Best Practice Regulation (OBPR) within the Queensland Productivity Commission was consulted in relation to each of the amendments. OBPR advised that the amendments are unlikely to result in significant adverse impacts and did not require any further assessment under the guidelines.