Queensland

Regulatory Impact Statement for SL 1998 No. 29

Environmental Protection Act 1994

ENVIRONMENTAL PROTECTION REGULATION 1998

PART 1—PREAMBLE

Introduction

The Queensland Government is committed to protecting the environment through the development of an integrated environmental management program that allows for ecologically sustainable development. Fulfilling this objective requires a regulatory framework within which activities that impact on the environment can be effectively managed to minimise or avoid adverse impacts to the environment while allowing for economic development and improvement in the quality of life for all Queenslanders.

When proposed subordinate legislation is being developed that is likely to impose appreciable costs on the Queensland community, the *Statutory Instruments Act 1992* requires the relevant department to prepare a Regulatory Impact Statement (RIS).

The objectives of this RIS are to—

(a) explain the background, objectives and grounds for the proposed subordinate legislation, to be called the *Environmental Protection Regulation 1998* (1998 regulation). It is proposed that this new legislation will replace the existing *Environmental Protection (Interim) Regulation 1995* (1995 regulation); and

(b) compare the proposed legislation with alternatives such as self-regulation and economic incentives for improved environmental performance; and

(c) detail likely costs and benefits of the legislation and, where practical and appropriate, quantify those benefits and costs.

While it is recognised that implementing a new Environmental Protection Regulation involves costs and consequences for both the public and private sectors, costs should never be considered in isolation from benefits, which, in this case, derive mostly from protecting environmental values and the health and amenity of communities throughout Queensland. This 1998 regulation will also endeavour to minimise costs to the public and private sectors by linking costs to activities that pose a high risk to the environment, and by offering incentives for self-regulation.

Background

The 1995 regulation expires on 1 March 1998. Given that the 1995 regulation was implemented to provide mechanisms for administering the then new *Environmental Protection Act 1994* (EP Act) and the associated system of environmental management, it was always anticipated that a replacement regulation would be required once the environmental licensing system had been in place for an initial period.

The current regulation provides the regulatory detail for the EP Act.

Most importantly, the regulation provides a schedule of Environmentally Relevant Activities (ERAs), which identifies whether a particular activity requires a licence or approval under the EP Act. Other functions of the regulation include providing a schedule of miscellaneous fees and detailing the extent of devolution of responsibilities to local governments.

Refinement of the licensing process has evolved from knowledge gained by administering authorities implementing the provisions of the EP Act over its first two-and-a-half years, from community forums on the legislation and from specific stakeholder consultation by the Department of Environment (DoE). Consultation has confirmed the view that licensable activities could be better managed under an incentive licensing system. In July 1997 the Government, in partnership with local government, introduced incentives through a graded licensing system.

In 1996, the Ministerial Advisory Committee (MAC) comprising representatives from major stakeholder groups was established to provide advice on how to make the 1995 regulation more effective, fair and practicable in achieving its objectives. The Committee reported to the Minister in mid-1996 with 103 recommendations. Some recommendations have already been addressed through legislative amendments. Most outstanding recommendations can be put in place by the proposed 1998 regulation. Proposed provisions of the 1998 regulation are summarised in the following section.

This RIS is part of the process of developing the 1998 regulation proposal. Comments submitted on the RIS will be considered in refining the proposal, which is to be put to the Government in December 1997.

The Department is also to consider a report from a specialist consultant on the environmental risk of each of the 85 categories of ERAs. The information from that report should provide a sound basis to determine the need for licensing in the future.

Provisions of the proposed 1998 regulation

The 1998 regulation will replace the 1995 regulation under the EP Act, but most provisions in the 1995 regulation will be retained. The following amendments are proposed—

- The definition of the word ‘chemical’ as it is used in the schedule of ERAs is to be clarified to more clearly explain the meaning of ERA 6 (chemical manufacturing) and also ERA 7 (chemical storage). This change will limit the impact of the ERA to industry that deals with chemicals.
- The definition of ERA 7 will be amended so that it does not apply to the temporary storage of chemicals or dangerous goods during transportation and also to remove the reference to the standards that apply in the Australian Code for the Transport of Dangerous Goods by Road or Rail. This ERA will also be amended to remove crude oil from the definition. Crude oil will be included in ERA 11 (petroleum product storage) to bring licensing requirements more closely in line with the Building (Flammable and Combustible Liquids) Regulation and AS1940.

- ERA 9 (gas production) will be amended to include minor refining and processing at the well-head.
- The definition of ERA 34 (meat processing) is to be amended to include a range of design production capacity thresholds to address inequitable licence charges.
- ERA 40(b) will change in fee structure only. The upper and lower thresholds have not changed, but the fees of the various thresholds will change to decrease the cost of a licence under this ERA.
- The definition of ERA 50 (plastic manufacture) is to be amended to exclude the manufacture of fibre glass boats; this activity is already caught under ERA 67.
- The definition of ERA 50 (plastic manufacture) is to be expanded to capture the manufacturers of plastic materials such as PVC and poly pipe.
- Clarification is to be provided in relation to the devolution of the Environmental Protection Policies (EPPs) to local government.
- Specific details will be provided on exactly what is an interstate environmental authority.
- The definition of mining is to be amended to include all activities associated with the principal activity, such as motor vehicle workshops, power generation, landfills and sewage treatment works. (ERA 20).
- ERA 23 (boiler-making), ERA 25 (metal forming) and ERA 51 (printing) will be re-classified as Level 2 activities that require an approval only. (This proposal arises from the Department's preliminary risk assessment information.)
- A process is to be provided to allow for alternative dispute resolution procedures when dealing with minor matters of environmental nuisance.
- Jurisdiction will be provided to local governments to deal with home-based operators who would other wise require a licence for operating an ERA.

- Transitional provisions in relation to ERA 20 (mineral exploration or mining) are to be extended, allowing the activity to be conducted under the initial mining authorisation.
- An amendment will be made to schedule 1 of the regulation to introduce information about the environmental hazard profile for each ERA category.
- ERA 73 (compost manufacture) will be amended to limit this activity to the 'commercially receiving and storing' and 'receiving and processing' of compost and organic matter. Currently this activity only applied to the 'storing' or 'processing' of organic material.
- It is proposed that ERA 74 (general waste disposal facility) will be amended to allow for limited storage and disposal of regulated waste at a general waste disposal facility. Currently, if any regulated waste is disposed of at a general waste disposal facility, a separate licence for a regulated waste disposal facility is required. It should be noted, however, that regulated waste may only be stored for up to 28 days and that there are limits on disposal for both type and amount of regulated waste.
- It is proposed to change ERA 75 (incineration facility) to clarify that itinerant pitburners require an environmental authority and that burning of waste to generate heat and energy will also require an environmental authority.
- ERA 76 is to be deleted and amalgamated with ERA 84.
- It is proposed to amend ERAs 77–80 (battery, chemical, drum and waste tyre recycling) to refer to facilities that 'receive and recycle', or 'receive and reprocess', rather than activities that only 'recycle' or 'reprocess'. It is also proposed to introduce the concept of 'facility' into these environmentally relevant activities. It is also proposed that the storage for a period of less than 90 days of any of the materials listed in these environmentally relevant activities will not require a separate licence for the storage of regulated waste.

- ERA 81 will be amended to refer to a facility where regulated waste is received and recycled etc. The storage of a regulated waste (other than listed in ERAs 77–80) for a period of less than seven days will not require a separate licence.
- It is proposed to amend ERA 83 to ensure that the fee structure is more equitable for smaller operators. Fees will decrease for most operators.
- ERA 82 will allow a waste transfer station to store a regulated waste for 28 days or less without requiring a separate licence for storage of a regulated waste.
- ERA 84 (regulated waste storage) and ERA 85 (regulated waste treatment) will be more clearly defined to refer to the concept of 'facility' and will specifically exclude ERAs 73–75 and 77–81.

In parallel with these 1998 regulation provisions, new provisions in the EP Act are being developed to allow administering authorities to decide whether a person carrying out a Level 1 ERA must hold a licence or an approval, depending on the following parameters—

(a) the person must have held a licence or provisional licence for two years; and

(b) the person must have demonstrated compliance with the conditions of the licence over the whole of that period; and

(c) the risk of environmental harm or environmental nuisance from carrying out the activity is insignificant.

The proposed 1998 regulation may include substantial information about the nature of risk associated with each ERA category (arising from the consultant's report), which will support decisions made pursuant to these EP Act provisions.

Why does Queensland need a new Environmental regulation?

Queensland's economy supports a modern industrial society, with significant primary industry, commercial, industrial and government activity. The aim of regulating these activities has been to protect

environmental values. Activities considered to have the potential to cause environmental harm have been identified and a regulatory framework established.

Much has been learned since this framework was established. Some further activities likely to cause significant environmental harm unless controlled have been identified.

On the other hand, some current ERAs have been shown to pose a low risk that might not require the strict regulatory control imposed by licensing.

The Ministerial Advisory Committee recommendations and stakeholder consultation have identified several inequities and ambiguities in the current legislation concerning the licensing of ERAs, which need to be remedied by the 1998 regulation.

The proposed 1998 regulation will also recognise the incentive licensing system introduced by the Government this year, which encourages good environmental practices and provides for reductions in licensing fees for low risk activities.

What is the current status of Queensland's regulatory framework for the Environment?

The current regulatory framework revolves around specifying activity types that must be authorised by either a licence or an approval, depending on whether the activity is classed in the regulation as 'Level 1' or 'Level 2'. 'Level 1' ERAs are considered to pose a greater environmental risk than 'Level 2' ERAs; however, ERA categories are quite broad and the actual environmental risk depends on many factors apart from those generic to the ERA. Proposed amendments to the EP Act will allow administering authorities to assess actual environmental risks.

Where environmental risks can be shown to be insignificant, the administering authority may only need to decide that a person who has held a licence or provisional licence for at least two years and has a history of compliance with licence conditions for that period needs only an approval to carry out the activity.

It is important that such decisions are placed on the public record to demonstrate consistency and accountability in the assessment process. The EP Act provides that information dealing with environmental authorities

(licences and approvals) is to be placed on a publicly accessible register, along with other information about enforcement of the EP Act. This information, including details of environmental protection orders (EPOs), environmental management programs (EMPs), monitoring program results and environmental reports, is specified in more detail in the 1995 regulation.

These provisions will continue in the 1998 regulation.

Some activities are excluded from licensing because of provisions in the regulation intended to exempt hobbyists from licensing. However, the general exclusion also exempts some activities with significant environmental risk. It is proposed to address this issue in the 1998 regulation, not by expanding the scope of licensing, but by extending the administrative responsibility of local governments over these activities o allow them to properly control these activities.

A number of inequities have also arisen from the strict definitions in schedule 1 of the 1995 regulation, which exclude some activities similar in nature to ERAs. There is a need to provide flexibility in the legislation to allow low-risk activities to be deregulated and to include activities that could pose significant environmental risk. For example, in the case of motor vehicle workshops for fleet vehicles, some operators are presently licensed, because they operate on a commercial basis, while others are not, due to business arrangements adopted by the company.

It is proposed to address this issue using the existing powers of the EP Act to require compliance with the general environmental duty and all relevant environmental protection policies, through use of EMPs. It is not proposed to expand the scope of licensing.

PART 2—REGULATORY IMPACT STATEMENT

Title

The *Environmental Protection Regulation 1998*

Authorising law

The *Environmental Protection Regulation 1998* is made under the *Environmental Protection Act 1994*, section 220.

Policy objectives

The overall objective of the *Environmental Protection Regulation 1998* (1998 regulation) is to administer the EP Act by providing the framework for management of ozone-depleting substances, establishing a system of administration (including setting fees), and providing a list of regulated environmentally relevant activities.

Further, this is to be achieved by introducing regulatory provisions, including—

1. the provisions generally included in the *Environmental Protection (Interim) Regulation 1995* (1995 regulation) that have been shown to operate successfully and are necessary for the administration of the EP Act;
2. amendments to schedule 1 of the 1995 regulation to reflect the outcomes arising from an assessment of the environmental risk of each of the 85 environmentally relevant activities listed in the schedule;
3. amendments identified by administering authorities as necessary to improve administration and enforcement of licensing;
4. provisions to address outstanding matters involving inequities and ambiguities of the 1995 regulation identified in recommendations by the MAC.

The Ministerial Advisory Committee made recommendations to address inequities and ambiguities in the regulation. Many have been enacted by regulation amendments to date. Some outstanding recommendations involve the concept of environmental risk, currently being considered by the government. The following strategies have been adopted—

- reviewing the schedule of ERAs with environmental risk analysis as a basis for requiring licensing;
- establishing an equitable fee structure based on environmental risk;
- providing for the introduction of pollution charges that reflect the environmental risk associated with the risk of contaminants;
- establishing a fee structure that allows for cost recovery for administration and enforcement;
- developing a graded licence system that provides recognition for good environmental management by operators; and
- providing for conditional approvals where the potential for environmental harm is not significant.

Apart from proposed amendments listed in the **'Background'** to this RIS, public or other submissions made on the RIS will be considered in framing the final proposal for the 1998 regulation.

What is the risk that needs to be controlled?

The risk that needs to be controlled is the reduction in the quality of Queensland's environment and public health resulting from inadequate or inappropriate management of ERAs conducted by industry and the potential impact on industry of inequitable or excessive regulatory costs. Industry, referred to throughout this document, is used in the broad sense to include farming and business.

Is there a compelling case for Government involvement on the grounds of public health, safety, prosperity, heritage or amenity?

The legislation addresses a number of issues relating to public health and safety, environmental protection, prosperity, amenity and heritage. Effective environmental management will address—

- **Public health and safety:** through reducing the exposure of the community to hazards that may be posed by unregulated activities;
- **Environmental protection:** through conditions on environmental authorities;
- **Prosperity:** through facilitating ecologically sustainable development and intergenerational equity by promoting cost-effective and equitable regulation of industry where required;
- **Amenity:** through regulating ERAs to establish control over the potential environmental risk from activities. This reduces the likelihood of the amenity of areas being adversely effected by activities.

What would happen if Government does nothing?

The consequences of Government doing nothing to address the concerns that have been raised in relation the current 1995 regulation include the following.

- The 1995 regulation is due to expire on 31 March 1998. If the new legislation is not in place by that time, no framework will exist to implement the EP Act. Existing regulation activities would also fail.
- Decision-making and actions would be inconsistent with national strategies, policies and guidelines, resulting in market distortion.
- Regulatory and enforcement mechanisms would be limited to those under the EP Act.
- There would be no way to determine an appropriate level of risk assessment for regulation of industry and activities that affect the environment.
- There would be no incentives to implement practices that reduce environmental impacts through self-regulation.
- Non-delivery of actions recommended by the MAC would result in continuing administration difficulties.

If no action is taken, the worst possible consequences would include—

- deregulation of activities, which could result in significant harm to Queensland's environment;
- lack of clear environmental management performance standards;
- potential adverse economic impacts on industry sectors that focus on the quality of the natural environment, such as tourism and recreation.

LEGISLATIVE INTENT

What does this legislation do—what rights, obligations or circumstances does it change or establish?

The proposed 1998 regulation seeks to improve the process of administering the EP Act. Reforms to the schedule of ERAs and licensing requirements will be consistent with initiatives already taken to establish an incentive licensing scheme.

This legislation will clarify many areas in the current 1995 regulation by improving accuracy of definitions. These refinements will change who is required to be licensed by either broadening or narrowing the definition of activities and improving administrative delegations. A consequence of this is that some activities that were previously not regulated may be now subject to licensing or approval procedures and the requisite fees. Others may no longer need to pay fees.

How will that work in practice—what is the overall effect expected to be?

The overall effect of this legislation is to improve current administration of the environment. It was only after an initial period of regulation under the 1995 regulation that significant improvements could be identified and modifications considered.

In practice, the 1998 regulation will provide information to help administering authorities assess the environmental risk of activities. It will ensure that local governments have the jurisdiction they require to administer activities devolved to them.

Also, amendment of schedule 1 to 'factor in' environmental risk will refine and potentially lead to greater uniformity in decision-making by administering authorities.

Why is the legislative approach reasonable and appropriate?

The proposed legislation will address the concerns of stakeholders, including the community, industry and local governments. The general community supports regulating polluting industries and requiring those industries to internalise environmental costs. The proposed legislation will allow better assessment of those costs by defining environmental risks more clearly.

In early 1996, steps were immediately taken to review the 1995 regulation through the MAC. The proposed legislation fulfils many of the outstanding recommendations of that Committee.

The need to introduce a 1998 regulation to replace the 1995 regulation provides an opportunity to improve decision-making by administrative authorities.

CONSISTENCY WITH THE AUTHORISING LAW

How would the proposed legislation contribute to the achievement of the overall objectives of the authorising legislation?

The overall objective of the EP Act 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). This objective is to be achieved by an integrated management program comprising the following phases.

Phase 1: Establish the state of the environment and defining environmental objectives.

Phase 2: Develop effective environmental strategies.

Phase 3: Implement environmental strategies and integrate them into efficient resource management.

Phase 4: Ensure accountability of environmental strategies.

Phase 2 of this process will be achieved by developing environmental protection policies that—

- state the objectives to be achieved and maintained under the Policy;
- establish a program by which the stated objectives are to be achieved and maintained;
- state indicators, parameters, factors or criteria to be used in measuring or deciding any quality or condition of the environment; and
- provide for a program performance assessment procedure.

The Environmental Protection (Water) Policy (Water EPP) commenced on 4 July 1997. Environmental Protection Policies for Noise and Air are expected to be introduced by the end of 1997. The draft Environmental Protection Policy for Waste has been developed for public consultation, and the draft Environmental Protection Policy for Mining and Petroleum Industries is being developed.

The Water EPP and those for Noise and Air will provide simple enforcement mechanisms through infringement notice arrangements. The 1998 regulation will ensure that these provisions are automatically available for local governments to apply in relation to devolved activities.

Phase 2 also involves regulation of environmentally harmful activities. This is currently achieved through licensing and other regulating instruments, including Environmental Management Programs and Environmental Protection Orders.

CONSISTENCY WITH OTHER LEGISLATION

If the proposed legislation is not consistent with the policy objectives of other legislation what is its relationship with the legislation?

The proposed legislation will not be inconsistent with any other legislation.

ALTERNATIVES

What are the alternative ways of achieving the policy objectives of the subordinate legislation and why were they rejected?

The 1998 regulation is required to establish mechanisms and specifications for regulating activities that adversely affect the environment, to achieve the object of the EP Act. However, the EP Act allows a range of strategies to achieve this outcome.

Deregulation, together with a strong commitment and application of enforcement provisions, for example, could achieve effective environmental protection. The degree to which deregulation should occur depends on clearly established standards and other criteria so that the community clearly understands what is permitted and what is not permitted.

Two alternative strategies that were considered as a means to achieve the policy goals of the proposed 1998 regulation are—

- economic instruments; and
- self-regulation.

Economic instruments

Numerous economic instruments could be considered as further options to the current regulatory system. These include financial incentives for improved environmental performance, differentiated tax treatment of environmentally friendly goods, tradeable emission rights and emissions charges. Tradeable emission rights and emission charges will be discussed further below.

Financial incentives have been provided for in the 1998 regulation through the risk-based licensing model. Differential taxation treatment of goods is primarily a matter for the Commonwealth, as the Queensland Government is constitutionally barred from collecting consumption tax.

Tradeable emission rights seek to prevent industry from using the environment to dispose of pollutants without being required to meet the costs to society of the degradation of a common asset. They do this by creating private property rights over the capacity of the environment to

accept pollutants. Tradeable emission rights reward firms that improve their environmental performance, encourage innovation and reduce bureaucracy by focusing on results rather than procedures.

Tradeable emission rights require that—

(a) emissions of all major polluters are known with reasonable certainty;

(b) different polluters face different costs to reduce pollution (as there would otherwise be no incentive to trade); and

(c) sufficient number of buyers and sellers exist to ensure market liquidity.

Tradeable emission rights may be suitable for some Queensland industries and DoE will continue to examine options for their use in future. However, they are not appropriate for the small and medium-sized businesses that constitute the majority of ERAs.

Emission charges increase the total cost to the discharger of generating and releasing wastes to the environment, providing an incentive to reduce the quantity discharged. Emission charges are based on the quantity of pollutant released into the environment.

The charge can either be—

(a) a flat rate for each unit of pollution released; or

(b) a flat rate for each unit above a pre-determined level; or

(c) a sliding scale based on the estimated absorptive capacity of the discharge medium.

Emission charges require a significant increase in monitoring and record keeping by business, and inspection and audit by Government. Additional administrative costs mean that they are not appropriate for most small and medium-sized businesses. Emission charges for larger industries will be considered further by the Department in light of experience in other states.

Self-regulation

Self-regulation in relation to the EP Act would require an operator to completely internalise the environmental costs (liabilities) otherwise carried by the administering authority. Some of these liabilities can be specifically

identified by provisions of the EP Act, which allow a licensed operator whose activities cause environmental harm to be exempted from enforcement provisions dealing with unlawful environmental harm, to the extent that the harm is permitted under the licence conditions.

To some extent, specifications for environmental management performance developed by operators may be accepted by the community as an alternative to licensing, however, broad acceptance of self-regulation by the community is a matter requiring extensive negotiation, as there is currently a strongly held view that activities that cause significant environmental harm must be regulated.

Also, without broad acceptance by business and industry of environmental management performance 'standards', there would be a little potential for consistency in environmental management from operators of similar activities at similar locations.

While industry associations represent substantial proportions of their respective industry sectors, acceptance by business and industry of the obligation to internalise all environmental costs would take extensive negotiation and agreement. It does not seem an appropriate objective within the time-frame for replacing the 1995 regulation. Instead, co-regulation has been considered as a viable option.

As its name suggests, co-regulation can be an agreement and common commitment between business and regulators on specific performance requirements. The EP Act provides two specific provisions for co-regulation—

- voluntary preparation of Environmental Management Programs to achieve particular outcomes; and
- activities carried out according to approved codes of practice.

It should be noted that neither of these provisions are specified as alternatives to licensing; however, both may provide a basis for performance requirements as licensing conditions.

The co-regulatory approach places the responsibility on industry, government and the community to manage their own environmentally relevant activities within a strategic framework of standards, offences and penalties. This would enable the Department to significantly reduce inspections and limit the number of licence conditions placed on industry and local government.

Co-regulation is also seen as an approach acceptable to the community. It will not expand the scope of ERAs, subject to real commitments by business and industry to accept responsibility for developing and implementing codes of practice.

Minimising the overall number of activities allows administrative resources to be redirected into investigation procedures and prosecution of operators causing unlawful environmental harm.

Increased resources for enforcement of the EP Act may increase the incentive for industry to internalise costs of environmental assessment and monitoring. Such an approach would ensure that those activities that presented the greatest potential harm to the environment would face the highest costs, while those activities that pose only minimal environmental risk would experience greatly reduced costs.

Possible advantages of the co-regulatory approach include—

(a) greater flexibility of action by industry;

(b) greater internalisation of costs;

(c) potential reductions in government costs, benefiting both licensees and taxpayers; and

(d) transferral of some current departmental tasks to the private sector, resulting in cost savings and increasing available resources for investigating and prosecuting major environmental offences.

Possible disadvantages of the co-regulatory approach include—

(a) lack of a consistent approach across the state or in industry sectors;

(b) greater uncertainty on the part of industry, due to the increased potential for litigation;

(c) increased opportunities for individuals to contravene the EP Act, if the policy and commitment to enforce compliance with the EP Act are not sufficiently strong;

(d) difficulties on the part of small business, which might be disadvantaged by the lack of simple, clear environmental performance requirements, and which might face additional expenses in finding alternative arrangements using environmental management systems, particularly if these are linked to quality

assurance requirements (larger corporations would be better placed because of their ability to integrate environmental management with business management systems);

(e) the need for the Department to combine 2 functions—

(i) random auditing\inspections; and

(ii) reactive control following problems;

(f) harm to the environment or human health, resulting from negligence or cost-cutting by industry leading to improper environmental management practices;

(g) increased enforcement costs for administering authorities, because of the need to prove that environmental harm has occurred (compared to a licensing system, where it is far simpler to establish compliance) and the need to institute private proceedings;

(h) the risk of Queensland becoming a haven for polluting industries unable to operate under other states' regulatory regimes, and the consequent increased risks to Queensland's environmental quality and amenity, leading to social disadvantages;

(i) the need to meet all administration and enforcement costs for protecting the environment from consolidated revenue, meaning that the community pays costs arising from industry's use and impact on the environment (apart from costs recovered through court actions); and

(j) lack of community confidence in industry's and government's ability to effectively control environmental harm.

The alternatives to the new regulation have not been rejected outright.

The approach taken in the 1998 regulation is to incorporate provisions that will facilitate co-regulation and provide economic incentives to operators whose environmental management performance is effective in protecting the environment.

Cost-benefit analysis

This analysis aims to indicate the possible costs and benefits of implementing, maintaining and enforcing the regulatory amendment options among stakeholder groups (State Government, local governments, business and the community).

Environmental management is now recognised as an integral component of the economic system. However, quantifying the benefits of environmental protection (the protection of designated environmental values) is particularly difficult, as few cash transactions occur. Instead, estimates must rely on indirect valuation techniques that depend very much on assumptions and estimations. Cost calculations may also differ from the costs actually incurred by the stakeholders once the legislation is enacted.

Uncertain long-term and cumulative impacts on the environment add to the difficulty of determining economic impacts.

Costs and benefits may occur in the short, medium and long term. For example, costs may be incurred by a company in the short term as a result of legislative requirements, but in the medium and long term, the company could reduce its impact on the environment and receive economic benefits. Many case studies show how cleaner production techniques can achieve significant cost reductions with a pay-back period for capital outlay of less than three years. Increased environmental protection resulting from regulation produces benefits that flow on to the community and future generations, fulfilling the inter-generational equity requirements of the National Strategy for Ecologically Sustainable Development.

The 1998 regulation will have tangible and intangible benefits. Where possible, benefits are quantified. Intangible benefits are described in detail to allow value judgements to be made.

Methodology

This RIS focuses on the impacts of the 1998 regulation on the main client groups of Government (broken up into State Government and local government), business and the community. The nature of the legislation requires the costs and benefits to the State Government and local governments to be identified separately. Qualitative assessments of costs and benefits have been compiled from the following sources—

(a) DoE budget figures;

(b) consultation with other departments;

(c) reference to industry associations;

(d) Local Government Association of Queensland; and

(e) local governments.

ANTICIPATED COSTS AND BENEFITS TO GOVERNMENT, BUSINESS AND THE COMMUNITY OF THE ENVIRONMENTAL PROTECTION REGULATION

COSTS AND BENEFITS TO THE QUEENSLAND GOVERNMENT

Development of the Environmental Protection Regulation

The estimated cost to the State of developing this regulation totals approximately $355,000. This includes key stakeholder and initial public consultation, preparing and releasing draft documents, consulting with DoE and local government officers, travel costs and a percentage of salaries and associated administrative costs of DoE staff developing the legislation.

Implementation costs or on-going costs to the State Government

In the 1996–97 financial year, DoE received $12.457 million to administer the EP Act.

Of that amount, $2.494 million was received from licence fee receipts. It is expected that, following introduction of the 1998 regulation, the amount received from fee receipts will be reduced, but this will be offset by a reduction in administration costs for licensing. Implementation costs to DoE for the regulation will be minimal. Because the regulation seeks to improve the current system, there should be little reason to incur additional costs. It is not expected that additional staff will be required to administer the changes.

Improved standard of environmental performance

It is expected that improvements to the current licensing system will bring significant improvements in the standard of environmental performance. Self-regulation is encouraged by incentives for industry to

reduce regulatory intervention by government through improved environmental performance. Self-regulation moves the cost of environmental maintenance from the Government to business. It also removes some of the associated costs of regulation, such as the on-going administration of licences.

Grants

Although the State Government no longer provides fee relief payments to local government as it did during 1995–6, it is not expected that there will be a need to be further ex gratia payments to local government.

Licensing fees

Increases and decreases to licensing fees are discussed below under 'Costs and benefits to local government'. The government policy behind this review of the regulation was to create an overall decrease in cost for business, while maintaining environmental standards. This policy is reflected in the further discussion of costs and benefits.

COSTS AND BENEFITS TO LOCAL GOVERNMENT

Compliance costs

All local governments are required to produce a business plan that outlines how they will comply with their legal responsibilities under various legislation including the *Workplace Health and Safety Act 1989* and the EP Act. It is expected that local governments will continue to pass on these costs to the community in the form of rates and user-pays provisions.

The costs to local governments for their own compliance with the EP Act are difficult to assess because of the diversity of Council activities, size and priorities.

Some Councils simply comply at the lowest threshold, while others choose to use compliance to implement integration strategies for all activities. These integrated management strategies can be a simple way to bring multiple activities under one licence, or they can involve a complete improvement of management procedures across Council.

Information provided by Logan City Council exemplifies the costs to a large and proactive Council. This Council estimates that the costs involved in achieving compliance will ultimately total $506,000. These include purchasing and implementing integrated management strategies, involving a significant outlay for consultancy fees, legal fees for advice and instruction and staff research.

Many of the costs involved in achieving compliance for the Logan City Council are short-term costs. Once in place, the integrated management system will improve management procedures and streamline Council activities. The purpose of implementing such a program is, ultimately, to improve performance by reducing costs. Many of the activities currently licensed under the EP Act will be integrated into this strategy and, under the new incentive licensing scheme, should no longer require such stringent regulatory controls.

Enforcement, administration and training

In 1996, the State Government and the Local Government Association of Queensland signed a Protocol that provides detailed agreements on resourcing administration and enforcement of the EP Act. Under the Protocol, the State Government has undertaken to assist local governments with training, guidelines and advice. These commitments are not strictly responses to the 1998 regulation, but information on expenditure under that agreement has been provided to demonstrate the scale of environmental administration costs involved.

Three amounts of $500 000 have been provided to local government to permit establishment of administration and enforcement arrangements for devolution responsibilities. This funding permitted recruitment of suitable staff, training and their appointment as authorised persons. Other funds were provided to subsidise the purchase of equipment, such as water quality and noise monitoring meters and data management systems. These costs are not on-going, although it is necessary to provide for replacement of equipment and for upgrades in technology as a normal part of administration.

In 1995–6, under a moratorium on licence fees, the State Government met the full costs of environmental licensing by local government of devolved ERAs under the terms of the Protocol. The total cost to DoE was $6 600 900 based on a payment of $500 for each licence and $200 for each

approval granted by local governments. Total costs incurred under the 1998 regulation are likely to be less for the following reasons.

- Greater efficiency is being achieved by local governments, as experience in environmental management increases. It is understood that the average annual cost of administering an environmental licence has reduced to around $350 in the larger local governments and less than $280 in most smaller local governments. Variability in the cost of licences is due in part to variations in remoteness, potential for environmental harm, sensitivity of the surrounding environment and exposure of industry to information on cleaner production and other practices that can help them reduce or avoid environmental harm.
- Local governments will require fewer licences as a result of the information in the 1998 regulation about environmental risks.

The 1998 regulation provides for further devolution of responsibilities to local government. The scope of these activities (home-based businesses) is such that local governments will be able to enforce environmental protection using infringement notice provisions derived from environmental protection policies. Most (but not all) of the costs associated with infringement notices can be covered by the fines imposed, depending on the number and frequency of complaints, travel times and the effectiveness of the authorised persons responding to the issue.

Licensing responsibilities for local government will not increase.

Existing licensing fee income will be reduced in some circumstances with the deregulation of certain ERAs that are devolved to Local Government. For example, ERA 51 (printing) will be deregulated with an estimate savings to business of $224 400. This savings to business will result in the equivalent decrease in income to Local Government and therefore incur cost. However, it is expected that Local Government will not incur future administrative costs for activities which, as a result of deregulation, are no longer devolved.

Costs and benefits to business

Complying with the legislation will continue to impose some costs on business as it has for three years, but, in the long term, should produce positive benefits through the adoption of cleaner production methods.

Improved environmental planning and management will result in fewer instances of environmental harm and fewer resultant costs to business, including costs of litigation and environmental remediation. Costs will vary in relation to the nature of the business and the associated fees for licences and approvals.

Fletcher Construction Australia is one example where substantial savings can be attributed to cleaner production. In 1995, the company trialed waste management production in Queensland on a hotel site at South Bank Parklands, Brisbane.

> This program involved waste reduction in the design phase and waste reuse and recycling in the construction phase.
>
> Results from this waste management program demonstrated substantial cost savings and a positive environmental effect. From the commencement of the project in March 1995 until the end of April 1996, 58% by weight of available construction waste was recycled.
>
> This represents a reduction of 48% in landfill space used. The program led to direct savings of $4 400 000 and 42% savings in waste transportation and disposal costs.

Cleaner production case studies, *Waste Management Research Unit, Griffith University, 1996*.

The ability of small business (particularly those that are not members of industry associations) to access relevant technologies to achieve cleaner production depends on external support from the State Government and local governments to help identify sources of information.

In many cases, the risk posed to the environment by small business carrying out ERAs may not be significant, to the point where the relative benefits of regulating the activity may be far less than the costs involved. Overall changes to the legislation to address this issue (establishing flexibility in administering licensable activities to allow activities that would otherwise require a licence to change to an approval only) are designed to ensure that business pays no more than necessary for protecting the environment from the impact of those activities. These provisions are additional to the steps already taken to relieve the licensing burden on low-risk activities under the recently introduced incentive licensing scheme.

Redefining ERAs 73 and 74 (compost manufacture and general waste disposal) will not involve any additional costs to industry. Amendments to definitions are intended to clarify for industry the intent of the regulation and

make it more practicable. For example, battery recyclers will no longer require a separate waste storage licence for short-term storage of batteries at their facility. Further, redefining ERA 81 (regulated waste recycling) will allow a regulated waste recycling facility to produce soil conditioners, concrete or asphalt without a further licence.

Licensing costs

Costs to business under the 1998 regulation will be less than under the 1995 regulation (which totalled approximately $9.5 million and comprised $2.5 million in receipts to the State Government and around $7 million to local governments). Quantifiable reductions in annual licensing fees will include—

(a) deregulation by re-assigning the following ERAs from Level 1 to Level 2—

(i) deregulation of boiler-making or engineering will result in $787 500 savings to this industry sector (ERA 23);

(ii) deregulation of metal forming industries will result in $329 200 savings to this industry sector (ERA 25);

(iii) deregulation of printing businesses will result in savings of $224 400 to this industry sector (ERA 51);

(b) an estimated saving of around $100 000 to the mining industry through introduction of 'bubble' licences (this licence is a site-based licence and comprises one licence that covers all associated activities. An associated activity is an activity that is an essential part of carrying out the ERA) (ERA 20); and

(c) a 35 percent reduction in licensing fees payable by operators carrying out non-ferrous castings, equating to a total saving of approximately $6 500 (ERA 40(b)); and

(d) deregulation is also to be achieved through integration of the development approval process under the planning legislation. The planning legislation is still in the process of development and it is intended that the relevant provisions of the 1988 regulation will be consistent with that legislation.

Changes to the definition of 'chemical' cannot be accurately costed, but the initiative behind the change was to decrease regulation. The overall effect should be a saving to business through a reduction in the number of businesses classified as ERAs 6 and 7.

Changes to the design production capacity thresholds for meat processing will lead to some reductions in future licence fees for smaller abattoirs.

Other changes to the 1998 regulation are of an administrative nature and should result in no extra cost to business.

Receipts from licensing do not reflect the complete costs met by business. For example, costs of preparing licence applications, maintaining records and compliance with licence conditions can be quite considerable. While the 1998 regulation will not affect these costs, other mechanisms in place (e.g. incentive licensing scheme) and proposed amendments to the EP Act will reduce the scope of regulation and, therefore, administrative costs to business.

Other business costs

Introducing mechanisms to address inequities associated with home based activities will reduce the competitive disadvantage currently experienced by businesses more appropriately located in industrial areas, which have to meet the full costs of compliance and licensing.

Compliance

One advantage of licensing is that the operator is generally able to determine simply what is required to legally comply. Often, there will be specific equipment and management requirements to achieve compliance (such as installing filtration and waste treatment infrastructure). However, compliance audits may be needed for unregulated operators who need to know whether their businesses are operating legally.

The average cost to a business for a consultant to undertake an initial environmental audit of its activities and make appropriate recommendations is approximately $13 000 (most companies have done this already). Businesses will face the additional on-going costs of conducting periodic internal environmental audits and implementing environmental

management programs under the EP Act. These programs are made up of short-term costs. Under the new risk-based assessment system, they will eventually decrease regulation for business.

Costs of complying with the regulation must be offset against costs that would be incurred if there was no regulation and business was unprotected under the EP Act.

Many members of industry compare the cost of regulation with the cost of civil action for causing harm. Although regulation can be expensive to industry, compliance is more than simple avoidance of environmental harm, it is improvement in environmental performance. Increased uncertainty regarding environmental liabilities could also restrict business' access to equity and loan funds.

Fee waiver

In 1996–97, the State Government granted 330 fee waivers. A general policy to encourage fee waiver applications will continue, through the introduction of risk-based assessment of licence and approval applications. This should provide significant savings to business and encourage good environmental performance. The fee waiver will remain part of the 1998 regulation, and will continue to contribute to costs through reduced Government receipts, and to benefits through reduced industry costs.

Waivers are typically granted to small and low-risk activities with limited potential to cause environmental harm. The cost to local government and State revenue of the waivers is offset by the reduction in administrative costs.

Productivity and performance

Many businesses will continue to increase productivity and performance using mechanisms adopted to comply with the EP Act. Cleaner production has the potential to significantly reduce raw materials and waste disposal costs.

Costs and benefits to the community

Compliance

Of benefit to the community will be the introduction of alternative dispute resolution mechanisms for minor nuisance complaints. Based on the current number of complaints received by DoE, and the proportion of those classified as nuisance complaints, it is estimated that it will cost approximately $255 000 to introduce alternative dispute resolution mechanisms. This is substantially less than taking the same number of complaints to court. The Alternative Dispute Resolution Branch suggests that potential costs to agencies and parties for litigation of neighbourhood disputes is approximately $1 000 a week. This figure is based on an average of 6.5 disputes per week, which is less than half the number per week expected by the Department.

Alternative dispute resolution will provide a better opportunity for issues to be dealt with and will increase the number of complaints resolved. In addition to reductions in direct legal costs, ADR produces faster resolution, meaning less time lost from work or other activities for all parties and reduced uncertainty for business operations. Faster and more effective resolution of on-going disputes will result in savings for regulators through a reduction in the number of complaints.

Product and service price

Local governments may choose not to seek full cost-recovery from licensed activities for services rendered. The long-term benefit for the community is that facilities being currently upgraded to comply with the EP Act will be cheaper over the longer term, support a broader community base and also prove a more efficient system of regulatory administration and operation.

Costs to business are not expected to be passed on in full to consumers due to the current low-inflation environment and competition from interstate and overseas.

Environmental protection and amenity

Studies show that the Queensland community increasingly supports environmental protection. The 1996 publication *Australians and the*

Environment (Australian Bureau of Statistics) included a 1992 survey that showed 71 percent of respondents felt protecting the environment was as important as national economic growth.

A further 19 percent believed that the environment was more important than economic growth. This statistical trend marginally increased in the latest survey results.

The community has also demonstrated that it is prepared to contribute to the costs of environmental protection. This is demonstrated by the increase in the demand for environmentally friendly products and recycling programs from local governments.

In some cases, these goods and services are more expensive, but the community has shown a willingness to pay high prices for products that are benign to the environment and for programs that conserve natural resources.

The regulation in conjunction with the EP Act benefits the community by offering a system of regulation that encourages industry to move towards management systems that improve environmental performance and regulates levels of discharges, pollutants and wastes to ensure continued amenity of the Queensland environment.

NATIONAL COMPETITION POLICY

WHAT IS THE IMPACT OF THE PROPOSED LEGISLATION ON COMPETITION —TO WHAT EXTENT DOES IT IMPOSE OR ENCOURAGE ANY RESTRICTION?

Do the associated benefits outweigh the costs from an economy-wide perspective?

In part, the regulation seeks to control the use of ozone-depleting substances. Alternatives that are less damaging to the ozone layer have been phased in during the period of the 1995 regulation. Costs associated with the phase-in period have been met by the community and the benefit of protecting the ozone layer outweighs the costs of the use of alternative substances.

The regulation also prescribes as ERAs activities that may release contaminants that may cause environmental harm. When assessing an application for a licence, consideration of the risk to the environment is balanced against the cost of complying with licence conditions. The

regulation will be more competitive than the regulation it replaces, as businesses that have reduced the risk of environmental harm may be able to operate legally without a licence. It is generally considered that the 1998 regulation will be consistent with regulations in other States. Also, the regulation applies equally to all operators in each particular sector identified by the ERA categories. The National Competition Policy Unit has advised that the regulation meets all requirements until such time as there is a full EP Act review, scheduled for 1998–99.

By introducing a risk assessment of ERAs, the regulation seeks to be pro-competitive in that there may be fewer licences issued.

FUNDAMENTAL LEGISLATIVE PRINCIPLES

To what extent is the proposed legislation consistent with the fundamental legislative principles?

The *Legislative Standards Act 1992* outlines a number of fundamental legislative principles.

These principles require that legislation has sufficient regard to—

- the rights and liberties of individuals; and
- the institution of Parliament.

The Environmental Protection Regulation 1998 is consistent with these fundamental legislative principles.

Conclusion

This Regulatory Impact Statement establishes that the 1998 regulation will have negative impacts on business and industry through licensing requirements.

However, the impact is likely to be less than under the current 1995 regulation, because there will be some reductions in the range of ERAs requiring licensing.

The 1998 regulation will address some presently unresolved inequities identified by the MAC in 1996, by ensuring local governments are properly empowered to enforce the EPPs and have clear administrative responsibilities over home-based industries.

The 1998 regulation will continue processes that encourage business and industry to accept responsibility for their environmental impacts. This will be achieved by maintaining regulation of activities which pose significant environmental risks.

ENDNOTES

1. Laid before the Legislative Assembly on . . .
2. The administering agency is the Department of Environment.