



Queensland

Environmental Protection (Rehabilitation Reform) Amendment Regulation 2019

Subordinate Legislation 2019 No. 198

made under the

Environmental Protection Act 1994

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1 Short title

This regulation may be cited as the *Environmental Protection (Rehabilitation Reform) Amendment Regulation 2019*.

2 Commencement

This regulation commences on 1 November 2019.

3 Regulation amended

This regulation amends the *Environmental Protection Regulation 2019*.

4 Amendment of s 30 (Purpose of chapter)

Section 30, after ‘decisions’—

insert—

or PRCP schedule decisions

5 Amendment of s 31 (Definitions for chapter)

Section 31—

insert—

PRCP schedule decision see section 32A.

6 Amendment of s 32 (Meaning of *environmental management decision*)

Section 32(1), after ‘requirements’—

insert—

, other than a PRCP schedule decision

7 Insertion of new s 32A

After section 32—

insert—

32A Meaning of *PRCP schedule decision*

- (1) A *PRCP schedule decision* is a decision under the Act about a PRCP schedule for which the administering authority making the decision is required to comply with regulatory requirements.
- (2) However, a *PRCP schedule decision* does not include a decision about an amendment application for a minor amendment (*PRCP threshold*).

8 Insertion of new ch 4, pt 4

Chapter 4—

insert—

Part 4 Regulatory requirements for PRCP schedule decisions

41A Application of part

This part applies to the administering authority for making a PRCP schedule decision.

41B Requirements for PRCP schedule decisions

- (1) The administering authority must, for making the PRCP schedule decision—
 - (a) carry out a PRCP objective assessment against each PRCP objective, and PRCP performance outcome for each PRCP objective, mentioned in schedule 8A, part 3; and
 - (b) consider any environmental values declared under this regulation; and
 - (c) consider each of the following under any relevant environmental protection policies—

-
- (i) the management hierarchy;
 - (ii) environmental values;
 - (iii) quality objectives;
 - (iv) the management intent.
- (2) The administering authority may approve or amend a PRCP schedule only if each PRCP objective for the PRCP schedule is achieved under schedule 8A.

41C Additional requirement for PRCP schedule decisions—void situated wholly or partly in flood plain

- (1) Subsections (2) and (3) apply for making the PRCP schedule decision if land the subject of the PRCP schedule may contain a void situated wholly or partly in a flood plain.
- (2) The administering authority must consider the results of flood plain modelling carried out in relation to the land the subject of the PRCP schedule.
- (3) The administering authority must treat the land as a flood plain to the extent the results of the flood plain modelling show that, when all relevant activities carried out on the land have ended, the land is the same height as, or lower than, the level modelled as the peak water level 0.1% AEP for a relevant watercourse under the ARR.
- (4) If the administering authority is satisfied land the subject of a PRCP schedule contains a void situated wholly or partly in a flood plain, the administering authority may approve or amend the schedule only if it provides for rehabilitation of the land comprising the void, to the extent it is situated in the flood plain, to a stable condition.
- (5) In this section—
AEP has the meaning given under the ARR.

[s 8]

ARR means the guideline called the Australian Rainfall and Runoff published by the Commonwealth.

Note—

The ARR is available on the Australian Rainfall and Runoff website at www.arr.ga.gov.au.

artificial feature, for land the subject of a PRCP schedule, means—

- (a) a structure or feature that is temporary and, under the PRCP schedule or otherwise, is to be removed from the land; or
- (b) a structure or feature that, under the PRCP schedule, will require a level of maintenance after the land is surrendered that is greater than the level of maintenance that would be required for the land if the relevant activities the subject of the PRCP schedule had not been carried out; or
- (c) a feature forming part of the landform of the land, other than the natural landform, if the feature interferes with or affects—
 - (i) a relevant watercourse; or
 - (ii) the natural flow of water on the land.

flood plain modelling, for land the subject of a PRCP schedule, means modelling of the landform of the land—

- (a) carried out under the ARR; and
- (b) excluding any artificial features for the land.

relevant watercourse means—

- (a) a watercourse classified as stream order 4 or higher under the Strahler stream order classification system; or
- (b) if a watercourse mentioned in paragraph (a) is permanently diverted under—

- (i) a condition, or proposed condition, of an environmental authority mentioned in the *Water Act 2000*, section 98; or
 - (ii) a water licence or proposed water licence under the *Water Act 2000*;
- the watercourse as permanently diverted.

9 Insertion of new ch 10, pt 1 and pt 2 hdg

Before section 185—

insert—

Part 1 Public interest evaluations

184A Qualifications and experience for carrying out public interest evaluations

- (1) This section prescribes the experience and qualifications an entity must have that are necessary to carry out a public interest evaluation for the following provisions of the Act—
 - (a) section 49(8), definition *qualified entity*;
 - (b) section 136A(3), definition *qualified entity*;
 - (c) section 316PC(4)(a).
- (2) The entity must have a qualification relating to each of the following areas (each a ***relevant field***) that gives the entity the necessary competence for carrying out the evaluation—
 - (a) environmental risk assessment;
 - (b) financial impact assessment;
 - (c) regional and State macro-economic assessment;
 - (d) rehabilitation planning and management;
 - (e) resource project planning and management;

[s 10]

- (f) social impact assessment.
- (3) Also, the entity must have at least 10 years of demonstrated experience in each relevant field.
- (4) A substantial part of the experience mentioned in subsection (3) must be relevant to—
 - (a) mining; and
 - (b) for a relevant field mentioned in subsection (2)(d) or (e)—
 - (i) the nature of the mineral to be mined; and
 - (ii) the mining method and associated impacts.

Part 2 General

10 Insertion of new ss 187A and 187B

After section 187—

insert—

187A PRCP start date—Act, s 750

For section 750 of the Act, definition *PRCP start date*, the day prescribed is 1 November 2019.

187B Exceptional circumstances in which land taken not to be available for rehabilitation—Act, s 754

- (1) For section 754(9) of the Act, exceptional circumstances in which land is taken not to be available for rehabilitation for section 126D(4) of the Act exist to the extent—
 - (a) the land is identified in a proposed PRCP schedule as containing a probable or proved ore reserve; and

- (b) the mining of the reserve is required to rehabilitate a relevant rehabilitation area under the proposed PRCP schedule; and
 - (c) the reserve can not reasonably be mined within 10 years after the land would otherwise have become available for rehabilitation under section 126D(5) of the Act; and
 - (d) the proposed PRCP schedule provides for the mining of the reserve and the area becoming available for rehabilitation as soon as practicable after the 10-year period mentioned paragraph (c) ends.
- (2) In this section—
- relevant rehabilitation area***, for a proposed PRCP schedule, means land under the proposed PRCP schedule if—
- (a) it is land described in section 754(3) of the Act; and
 - (b) despite paragraph (a), the proposed PRCP schedule provides for a post-mining land use for the land.

11 Amendment of ch 11, pt 2, hdg (Transitional and savings provisions)

Chapter 11, part 2, heading, after ‘provisions’—

insert—

for SL No. 155 of 2019

12 Insertion of new ch 11, pt 3

Chapter 11—

insert—

Part 3

Transitional provision for Environmental Protection (Rehabilitation Reform) Amendment Regulation 2019

213 Carrying out PRCP objective assessment for particular PRCP schedule decision

- (1) This section applies if, under section 754 of the Act, the administering authority has given a mining EA holder a notice requiring the holder to give the administering authority a proposed PRC plan.
- (2) Schedule 8A, part 3, table 1 does not apply for conducting a PRCP objective assessment of the proposed PRCP schedule for the plan to the extent that—
 - (a) a land outcome document provides for an outcome for the land the subject of the proposed PRCP schedule; and
 - (b) the outcome for the land is the same as or substantially similar to the outcome for the land as if it were a post-mining land use or non-use management area under the plan.
- (3) Also, the PRCP objective and PRCP performance outcomes stated in schedule 8A, part 3, table 2, entry for ‘Rehabilitation Milestones’ do not apply for conducting a PRCP objective assessment of the proposed PRCP schedule for the plan to the extent that—
 - (a) a land outcome document states criteria for achieving an outcome provided for in the document for land; and

- (b) the same or substantially similar criteria are proposed in the plan for the outcome.
- (4) In addition, the PRCP objective and PRCP performance outcomes stated in schedule 8A, part 3, table 3, entry for ‘Management Milestones’ do not apply for conducting a PRCP objective assessment of the proposed PRCP schedule for the plan to the extent that—
 - (a) a land outcome document states criteria for achieving an outcome provided for in the document for land; and
 - (b) the same or substantially similar criteria are proposed in the plan for the outcome.
- (5) For applying subsection (2), (3) or (4), if there is an inconsistency in land outcome documents for land, the document appearing first in the list mentioned in section 750 of the Act, definition *land outcome document*, prevails to the extent of the inconsistency.
- (6) In this section—
land outcome document see section 750 of the Act.

13 Amendment of sch 8 (Environmental objective assessment)

Schedule 8, part 2, section 2—

insert—

- (1A) However, if the application is accompanied by a proposed PRCP schedule or draft PRCP schedule, part 3, division 1, entry for ‘Land’, performance outcome 2(b) does not apply for the assessment.

14 Insertion of new sch 8A

After schedule 8—

insert—

Schedule 8A PRCP objective assessment

section 41B

Part 1 Preliminary

1 Definitions for schedule

In this schedule—

available for improvement, in relation to land in an improvement area for a non-use management area, means land in the improvement area that is not being mined, other than land to which any of the following applies—

- (a) the land is being used for operating infrastructure or machinery for mining, including, for example, a dam or water storage facility;
- (b) the land is identified in the PRCP schedule or the application for an environmental authority relating to the schedule as containing a probable or proved ore reserve that is to be mined within 10 years after the land would otherwise have become available for improvement;
- (c) the land is required for the mining of a probable or proved ore reserve mentioned in paragraph (b).

improvement area, for a non-use management area, means an area of land in the non-use management area to which a management milestone relates.

milestone criteria, for a management milestone

or a rehabilitation milestone, means requirements that must be met to achieve the milestone.

mined see section 126D(6) of the Act.

rehabilitation area, for land the subject of a post-mining land use, means an area of the land to which a rehabilitation milestone for the post-mining use relates.

sufficient improvement, of a non-use management area, means the last management milestone for the area has been achieved.

Part 2 Matters for carrying out PRCP objective assessments

2 Requirements for carrying out PRCP objective assessment

- (1) The administering authority must consider whether the PRCP schedule achieves each PRCP objective stated in part 3 for the PRCP schedule.
- (2) A PRCP schedule achieves the PRCP objective stated in part 3, table 1 only if the PRCP schedule achieves—
 - (a) for a post-mining land use—item 1 of the PRCP performance outcomes for the objective; or
 - (b) for a non-use management area—items 2 and 3 of the PRCP performance outcomes for the objective.
- (3) However, if the PRCP schedule shows a proposed non-use management area for which a public interest evaluation was required, part 3, table 1, items 2 and 3 of the PRCP performance outcomes for the PRCP objective stated in part 3, table 1 do not apply for the assessment.

[s 14]

- (4) A PRCP schedule achieves a PRCP objective stated in part 3, table 2 or 3 only if the PRCP schedule achieves each PRCP performance outcome for the objective.

Part 3 **PRCP objectives and
PRCP performance
outcomes**

Table 1 **Final site design
assessment**

Post-mining land uses and non-use management areas

PRCP Objective

The PRCP schedule properly states a post-mining land use or non-use management area for each area of land to which the PRCP schedule relates.

PRCP Performance Outcomes

- 1 Each post-mining land use—
- (a) is viable, having regard to the use of land in the surrounding region; and

-
- (b) satisfies at least 1 of the following—
- (i) the use is consistent with how the land was used before a mining activity was carried out on the land;
 - (ii) the use is consistent with a development approval relating to the land;
 - (iii) the use is consistent with a use of the land, other than a use that is mining, permitted under a State or Commonwealth Act, including, for example, a planning instrument under the Planning Act;
 - (iv) the use will deliver, or is aimed at delivering, a beneficial environmental outcome.
- 2 The total area of land proposed as a non-use management area is minimised to the extent possible by, for example, demonstrating that the land, or any part of the land, can not be used for any post-mining land use.
- 3 Each non-use management area is located to prevent or minimise environmental harm having regard to—
- (a) all reasonably practical alternatives for the location; and
 - (b) the nature of the environmental harm that may be caused because of the proposed location; and
 - (c) the sensitivity of the environment surrounding the proposed location.

Table 2 Post-mining land use assessment

Rehabilitation Milestones

PRCP Objective

Rehabilitation milestones are supported by milestone criteria and are suitable for rehabilitating land to a stable condition.

PRCP Performance Outcomes

[s 14]

- 1 Each rehabilitation milestone is appropriate for achieving the post-mining land use for the rehabilitation area.
- 2 Each rehabilitation milestone is supported by milestone criteria that—
 - (a) are appropriate for achieving the milestone; and

Examples—

- 1 A post-mining land use for land is a water-storage facility for livestock. The last rehabilitation milestone for the land is the completion of a water-storage facility for livestock use. The milestone criteria that may be appropriate for achieving the milestone are criteria that demonstrate the facility will be safe and stable, and the pH and salinity of the water in the facility will be potable, for livestock.
 - 2 A post-mining land use for land is a native ecosystem habitat. The last rehabilitation milestone for the land is a safe, self-sustaining and stable ecosystem. The milestone criteria that may be appropriate for achieving the milestone are criteria that demonstrate the ecosystem will include species of the type and diversity needed to sustain the ecosystem.
 - (b) facilitate achieving subsequent rehabilitation milestones.
- 3 The last rehabilitation milestone and milestone criteria for the milestone demonstrate the post-mining land use will be sustainable in the long term.

Progressive Rehabilitation

PRCP Objective

Rehabilitation of land to a stable condition will be achieved progressively during the life of the mine.

PRCP Performance Outcomes

- 1 Rehabilitation areas are planned in a way that maximises achieving progressive rehabilitation for the post-mining land use.
- 2 The first rehabilitation milestone for a rehabilitation area will start as soon as practicable after the land in the area becomes available for rehabilitation for section 126D(4) of the Act by, for example, starting within 6 months after the area becomes available for rehabilitation.

- 3 The time frame mentioned in section 126D(4) of the Act for achieving each rehabilitation milestone has regard to the risks identified in the PRC plan for the land under section 126C(1)(f) of the Act.
- 4 The time frame mentioned in section 126D(4) of the Act within which the land will be rehabilitated to a stable condition has regard to any time frames agreed to during consultation with the community about the PRC plan.

Table 3 Non-use management area assessment

Management Milestones

PRCP Objective

Management milestones are supported by milestone criteria and are suitable for the non-use management area.

PRCP Performance Outcomes

- 1 Each management milestone is appropriate for achieving sufficient improvement of the improvement area.
- 2 Each management milestone is supported by milestone criteria that—
 - (a) are the most appropriate for achieving the milestone; and
 - (b) facilitate achieving subsequent management milestones; and
 - (c) have regard to the technical knowledge available when the PRCP objective assessment is carried out about managing risks of the non-use management area to the environment; and

[s 14]

- (d) prevent contaminants from being produced or, if prevention is not possible, minimise the impact of the release of contaminants.

Examples of minimising the impact of the release of a contaminant—

- 1 appropriately containing the contaminant
 - 2 appropriately treating the contaminant before it is released
- 3 On achieving sufficient improvement of a non-use management area, each of the following is prevented or minimised to the greatest extent possible, having regard to the technical knowledge available when the PRCP objective assessment is carried out—
- (a) the risk of the area collapsing, eroding or subsiding;
 - (b) the need to actively manage the area;
 - (c) access to the area by an animal or person by, for example, fencing the boundary of the area.

Progressive Improvement

PRCP Objective

Each management milestone for a non-use management area will maximise progressively achieving sufficient improvement of the area.

PRCP Performance Outcomes

- 1 Improvement areas are planned in a way that maximises progressively achieving sufficient improvement of the non-use management area.
- 2 The first management milestone for an improvement area will start within a reasonable period after the area becomes available for improvement by, for example, starting within 1 year after the area becomes available for improvement.
- 3 Each management milestone for an improvement area will be achieved as soon as practicable after the land becomes available for improvement.

- 4 The time frame within which each management milestone is to be achieved has regard to the risk of not achieving sufficient improvement of the non-use management area.
- 5 The time frame within which the last management milestone for each improvement area is to be achieved has regard to any time frame agreed to during consultation with the community about the PRC plan.

15 Amendment of sch 19 (Dictionary)

Schedule 19, part 2—

insert—

available for improvement, in relation to land in an improvement area for a non-use management area, for schedule 8A, see schedule 8A, part 1, section 1.

improvement area, for a non-use management area, for schedule 8A, see schedule 8A, part 1, section 1.

milestone criteria, for a management milestone or rehabilitation milestone, for schedule 8A, see schedule 8A, part 1, section 1.

mined, for schedule 8A, see schedule 8A, part 1, section 1.

PRC plan includes a proposed PRC plan.

PRCP objective assessment means an assessment carried out in accordance with schedule 8A.

PRCP schedule includes a proposed PRCP schedule or draft PRCP schedule.

PRCP schedule decision see section 32A.

probable or proved ore reserve see section 126D(6) of the Act.

rehabilitation area, for land the subject of a post-mining land use, for schedule 8A, see

[s 15]

schedule 8A, part 1, section 1.

sufficient improvement, of a non-use management area, for schedule 8A, see schedule 8A, part 1, section 1.

ENDNOTES

- 1 Made by the Governor in Council on 1 October 2019.
- 2 Notified on the Queensland legislation website on 4 October 2019.
- 3 The administering agency is the Department of Environment and Science.

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