



Queensland

Environmental Protection Regulation 2008

Explanatory Notes for SL 2008 No. 370

made under the

Environmental Protection Act 1994

General outline

Short title

Environmental Protection Regulation 2008.

Authorising law

Section 580 of the *Environmental Protection Act 1994*.

Policy objectives of the legislation

The object of the *Environmental Protection Act 1994* 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.

The objective of the *Environmental Protection Regulation 2008* is to provide the basis for effective and efficient administration and enforcement of the object and provisions of the *Environmental Protection Act 1994*.

How policy objectives are to be achieved

The policy objectives of this regulation are to be met by—

- 1 identifying the environmentally relevant activities (ERAs) that have the potential to cause environmental harm by releasing contaminants to air, land, and water
- 2 providing decision making considerations for those activities to minimise environmental harm while allowing for ecologically sustainable development
- 3 providing a transparent basis for determining fees so that ERAs with relatively higher potential for environmental harm will pay relatively higher fees
- 4 providing codes of environmental compliance for ERAs with minimal potential for environmental harm
- 5 listing regulated wastes
- 6 listing prescribed water contaminants
- 7 providing a method for measuring noise standards
- 8 detailing processes for Environmental Impact Statements (EIS)
- 9 providing national consistency, for example, by giving effect to National Environmental Protection Measures such as the National Pollutant Inventory.

Consistency with other legislation

This regulation is consistent with the policy objectives of other legislation.

The requirement under the *Statutory Instruments Act 1992* to prepare a regulatory impact statement has been complied with.

Under State/Commonwealth agreements on the National Reform Agenda, the Competition Principles Agreement requires proposals for new legislation that might restrict competition to be subject to a Public Benefit Test. The Public Benefit Test was prepared to address any potential competition restrictions in the new legislation.

Consistency with authorising Act

This regulation is consistent with the *Environmental Protection Act 1994*.

Possible alternative approach

A statement of alternatives is contained in the regulatory impact statement and Public Benefit Test on the *Environmental Protection Regulation 2008*.

Consistency with fundamental legislative principles

The *Legislative Standards Act 1992* outlines a number of fundamental legislative principles. These principles require that the legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament. This regulation is consistent with these and the other fundamental legislative principles, including natural justice, appropriate review and delegation of administrative power, clarity and precision of legislation, adequacy of the head of power to make subordinate legislation and consistency with its primary Act.

Benefits and costs of implementation

A detailed statement of costs and benefits is contained in the final Public Benefit Test on the review of the *Environmental Protection Regulation 1998*.

Consultation

Public consultation was conducted through the regulatory impact statement for the review of the *Environmental Protection Regulation 1998*, which was released in accordance with the *Statutory Instruments Act 1992*. All comments made during public consultation were considered and, where appropriate, this regulation reflects these comments.

Notes on provisions

Chapter 1 Preliminary

Section 1 Short title

This section states the short title of this legislation is the *Environmental Protection Regulation 2008*.

Section 2 Commencement

This section states that the commencement date of this regulation is 1 January 2009.

Section 3 Definitions

This section states that terms in this regulation are defined in the dictionary in schedule 12.

Chapter 2 Environmental impact statements

Part 1 Preliminary

Part 1 of this regulation supports the Environmental Impact Statement (EIS) process outlined in section 37(1)(e) of the *Environmental Protection Act 1994*. It has not been changed significantly from the *Environmental Protection Regulation 1998*.

Section 4 Types of project requiring Commonwealth or State authority approval

This section defines a project which requires the preparation of an EIS. Such a project is one for which an accredited assessment process is declared to be needed by the federal Minister under the *Environmental Protection and Biodiversity Conservation Act 1992*, or where impacts of the project are to be assessed under a bilateral agreement.

Part 2 EIS process

This part, along with schedule 1 of this regulation, prescribes the content of the EIS. The EIS process includes the draft terms of reference, the notices for the terms of reference and EIS, and the matters for the EIS assessment report. The matters required to be in the draft terms of reference are further elaborated in schedule 1.

The EIS process is designed to enable the Commonwealth, or a State authority, to make informed decisions on a project based on its relative impacts. An informed decision can only be based on accurate information and the EIS process is designed to ensure that accurate information is provided.

Section 5 Application of pt 2

This section makes part 2 (and the associated schedule 1) applicable to a project mentioned in section 4.

Section 6 Prescribed matters for draft terms of reference—Act, s 41(2)(d)

This section sets out what the draft terms of reference must contain.

Section 7 Prescribed matters for TOR notice and EIS notice—Act, ss 42(2)(f) and 52(1)(g)

This section sets out what information the terms of reference and EIS notices must contain.

Section 8 Prescribed way for publishing TOR notice and EIS notice

This section identifies where the terms of reference and EIS notices are required to be published.

Section 9 Prescribed matters for EIS assessment report—Act, s 59(e)

This section sets out what the EIS assessment report must contain.

Section 10 Other requirements for EIS process

This section places an obligation on the chief executive to give a copy of the EIS assessment report to the Commonwealth as soon as practicable.

Part 3 Prescribed periods for chapter 3 of the Act

This part sets out a number of time limits that apply to EIS related decisions of the chief executive. It relocates the time limits from schedule 8C, part 1 of the *Environmental Protection Regulation 1998* for administrative ease.

Section 11 Period to advise chief executive about draft terms of reference—Act, s 45

This section sets out the time allowed for the proponent to give information outlined in section 45 of the *Environmental Protection Act 1994* to the chief executive.

Section 12 Period for finalising terms of reference—Act, s 46

This section sets out the time allowed for the chief executive to undertake activities outlined in section 46(1) of the *Environmental Protection Act 1994*.

Section 13 Period for deciding whether EIS may proceed—Act, s 49

This section sets out the time allowed for the chief executive under section 49(1) of the *Environmental Protection Act 1994* to make a decision on whether to allow the EIS to proceed.

Chapter 3 Environmentally relevant activities

Part 1 Chapter 4 activities

Division 1 Preliminary

Chapter 3 of this regulation identifies those activities prescribed under the *Environmental Protection Act 1994* that can be included in a regulation.

The prescribed activities are called environmentally relevant activities (ERAs) and can be—

- chapter 4 activities
- level 1 and level 2 petroleum activities
- level 1 and level 2 mining activities.

The *Environmental Protection Act 1994* defines ‘chapter 4 activities’ as any environmentally relevant activity that is not a mining and petroleum activity.

Level 2 mining activities and level 2 petroleum activities are lower risk activities which have comparatively less potential to cause environmental harm. Level 1 mining and petroleum activities have potentially greater risk of environmental harm.

Approvals to operate a petroleum activity or a mining activity occur under the *Environmental Protection Act 1994*.

Approval to operate a chapter 4 activity (except for the chapter 4 activities which require a registration certificate under the *Environmental Protection Act 1994* only and which do not need a development approval) occurs via the *Integrated Planning Act 1997* integrated development assessment process.

This chapter of the regulation consolidates sections previously contained in schedules 1 and 1A of the *Environmental Protection Regulation 1998* for administrative ease and to keep related matters close together.

Section 14 What is the aggregate environmental score for a chapter 4 activity

This section sets out the aggregate environmental score for chapter 4 activities.

Each ERA in this regulation has been allocated an aggregate environmental score developed from a methodology called environmental emissions profiles.

Environmental emissions profiles have 2 components. The first component is an emission score determined from the average annual emissions to air, land and water and the second component is a site attribute score. The emissions score and site attribute score are combined to give an aggregate environmental score. The aggregate environmental score is used to calculate the fee required to operate the activity (see chapter 8).

Schedule 2 includes the aggregate environmental score for chapter 4 activities. Many of the activities are divided into thresholds with an aggregate environmental score for each threshold. The thresholds identify the different levels of production for the activity.

Note: Schedules 5 and 6 include the aggregate environmental scores for petroleum and mining activities respectively.

A full list of aggregate environmental scores (and the component scores) for each ERA is available on the department's website <<http://www.epa.qld.gov.au>>.

Section 15 Meaning of *scheduled area*

This section defines 'scheduled area' as a local government area mentioned in schedule 4.

Section 16 Meaning of year for carrying out chapter 4 activity

This section sets out 3 meanings of ‘year’.

The default meaning is subsection 2(b). For an existing chapter 4 activity under a registration certificate, ‘year’ means from anniversary day to anniversary day.

If there is a new application for a chapter 4 activity then ‘year’ starts from the time the registration certificate takes effect and finishes before the first anniversary day of the registration certificate. This meaning of year is set out in subsection 2(a).

The third meaning of year is in subsection (1) and is financial year. This meaning of year is only used in relation to *potential* chapter 4 activities. In determining whether an activity ought to be regulated as an environmentally relevant activity it may be necessary to assess the level of activity within a year. In the absence of a registration certificate with an anniversary date, the meaning of year is the financial year.

Division 2 Prescribed activities

Section 17 Activities prescribed as environmentally relevant activities—general

This section states that any activity listed in schedule 2 is an environmentally relevant activity and includes the activity carried out as a mobile and temporary activity unless stated otherwise in schedule 2.

Division 3 Prescribed activities for development applications

Subdivision 1 Development applications for wild river areas

The purpose of this subdivision is to support the preservation of the natural values of wild rivers in wild river areas as defined under the *Wild Rivers Act 2005*. Under the *Environmental Protection Act 1994* assessment managers

are obliged to refuse development applications, or, if an application can be assessed, the assessment manager must ensure the application complies with the Wild Rivers Code. The Wild Rivers Code is published by the Department of Natural Resources and Water and is available on the department's website <<http://www.nrw.qld.gov.au>>.

This is to ensure that particular environmentally relevant activities which risk causing environmental harm and result in negative impacts on wild river natural values are regulated. This subdivision identifies the environmentally relevant activities that are exempt from wild river regulations.

Section 18 Exempt environmentally relevant activity—Act, s 73AA

Subsection (1) lists low impact activities that may or may not have an aggregate environmental score, which can occur within a 'designated urban area' in a wild river area without regulation under the wild rivers code.

Despite this, within designated urban areas, some low level activities which can impact on wild river natural values will still be regulated. These activities are listed in subsection (2) and include low level intensive animal feedlotting, pig keeping, poultry farming, asphalt manufacturing and extractive activities.

Section 19 Other prescribed activities—Act, s 73AA

Section 73AA of the *Environmental Protection Act 1994* describes those environmentally relevant activities that are regulated within a wild river area.

This section prescribes activities or aspects of activities for the definitions applied under section 73AA(9) of the *Environmental Protection Act 1994*.

Subdivision 2 Development applications that may require financial assurances

Section 20 Prescribed activity for requirement for financial assurances—Act, s 364

This section states that for all chapter 4 activities with an aggregate environmental score, the administering authority can require the operator of the activity to provide a financial assurance.

This assurance operates as—

- (a) security for compliance with the development approval and any conditions; or
- (b) as security for the costs or expenses the administering authority incurs or might incur in taking action against the operator to prevent environmental harm, rehabilitate the land etc.

The administering authority imposes this requirement of financial assurance by way of a condition.

Division 4 Other matters

Section 21 Untreated clinical waste disposal

This section creates an offence for a person who delivers untreated clinical waste to a dedicated waste disposal facility. There is an exception to the offence for delivering clinical waste if it is generated in a schedule area listed in schedule 4. In this case, untreated clinical waste can be delivered to a waste disposal facility but must be subject to supervised burial arrangements. This arrangement recognises that these scheduled areas are remote and the removal of untreated clinical waste is prohibitive due to cost, time and other logistics. Accordingly, in some cases it may be appropriate to dispose of untreated clinical waste within the schedule area where it was generated. These requirements are in place to ensure minimal harm to humans, minimal contamination of soil and surface waters, and to assist in ensuring correct disposal.

Section 22 Codes of environmental compliance for chapter 4 activities

This section identifies the code of environmental compliance for the chapter 4 activities.

The full text of the codes is available at http://www.epa.qld.gov.au/ecoaccess/codes_of_environmental_compliance/chapter_4_activities/.

Each code sets out standard environmental conditions.

The chapter 4 activities which do not require a development approval will instead have to comply with the relevant code. A registration certificate for these chapter 4 activities is still required.

Part 2 Petroleum activities

This part sets out what constitutes a level 1 or a level 2 petroleum activity and sets out where to find the associated aggregate environmental score. This is a new part because—

- (a) the petroleum activities now occupy a schedule of their own and require the correct reference; and
- (b) the level 1 petroleum activities have been given an aggregate environmental score.

This part, along with schedule 5, makes the petroleum activities much easier to locate.

Section 23 Petroleum activities prescribed as level 1 and 2 petroleum activities

Subsection (1) of this section states that a petroleum activity mentioned in schedule 5 is a level 1 petroleum activity.

Subsection (2) states that all other petroleum activities are level 2 activities.

Section 24 What is the aggregate environmental score for a level 1 petroleum activity

This section states that the aggregate environmental score for a level 1 petroleum activity is also included in schedule 5. Level 2 petroleum activities do not have an aggregate environmental score.

Part 3 Mining activities

Division 1 Preliminary

Section 25 What is a category A environmentally sensitive area

This section sets out the meaning of ‘category A environmentally sensitive area’.

Examples of category A environmentally sensitive areas include—

- most types of national parks
- the wet tropics
- the Great Barrier Reef Region
- marine parks.

It reproduces section 1 of schedule 1A of the *Environmental Protection Regulation 1998*.

Section 26 What is a category B environmentally sensitive area

This section sets out the meaning of ‘category B environmentally sensitive area’.

It reproduces section 2 of schedule 1A of the *Environmental Protection Regulation 1998*.

Section 27 Meaning of riverine area

This section clarifies that a ‘riverine area’ does not include land outside the flood flow channel of a watercourse.

It largely reproduces section 3 of schedule 1A of the *Environmental Protection Regulation 1998*.

Section 28 What is significantly disturbed land

This section sets out the meaning of ‘significantly disturbed’ in the phrase ‘significantly disturbed land’. Subsection (1)(b)(ii) provides examples of a disturbance to land. In the case of removing vegetation, if the removal has not disturbed the root material or made the land susceptible to erosion, then it would not be regarded as a significant disturbance to land.

This section largely reproduces section 4 of schedule 1A of the *Environmental Protection Regulation 1998*.

Division 2 Prescribed criteria

Section 29 Criteria for mining activities—Act, s 151

This section states the effect of division 2.

Division 2 prescribes criteria for mining activities which operate under an environmental authority, for the purpose of section 151(1)(a) and 151(2)(b)(i) of the *Environmental Protection Act 1994*, which sets out what constitutes a level 1 mining project and a level 2 mining project based on compliance with the relevant prescribed criteria.

This section is based on section 6 of the *Environmental Protection Regulation 1998*.

Section 30 Criteria under any environmental authority (mining activities)

This section sets out the prescribed criteria for activities allowed under any type of environmental authority. If the activity meets all the criteria set out in this section, then it is a level 2 mining activity. However, if the activity does not satisfy any 1 of the criteria then it is a level 1 mining activity.

This section reproduces part of section 6 of schedule 1A of the *Environmental Protection Regulation 1998*.

Section 31 Criteria under environmental authority (mining lease)

This section prescribes criteria for a particular type of environmental authority, which is about mining activities conducted as part of a mining lease. If the activity meets all the criteria set out, then it is a level 2 mining activity.

This section reproduces part of section 6 of schedule 1A of the *Environmental Protection Regulation 1998*.

Section 3 Criteria under other environmental authorities (mining activities)

This section prescribes additional criteria for mining activities allowed under an environmental authority other than an environmental authority of a mining lease type.

Division 3 Aggregate environmental score

Section 33 What is the aggregate environmental score for a level 1 mining project

This section identifies the aggregate environmental score for each of the level 1 mining projects. Schedule 6 lists the level 1 mining projects and the accompanying aggregate environmental score. This is a new section to acknowledge the relocation of the mining projects to schedule 6 and to take account of the aggregate environmental score which is given for each level 1 mining project.

Division 4 Codes of environmental compliance

Section 34 Codes of environmental compliance for mining activities

This section identifies and approves each of the 4 documents mentioned in schedule 3, part 2 of this regulation as a code of environmental compliance for the mining activities specified. The codes were originally located in

section 63A of the *Environmental Protection Regulation 1998*, but now share a schedule with the codes applicable to chapter 4 activities.

The full text of the codes is available at <http://www.epa.qld.gov.au/environmental_management/land/mining/codes_of_compliance>.

Division 5 Prescribed periods for chapter 5 of the Act

This division sets out time limits for assessing applications for an environmental authority to conduct a mining activity—including for exploration, mineral development and mining lease.

Subdivision 1 Applications for environmental authority (mining claim)

Section 35 Refusal period for application—Act, s 173

This section sets out the time allowed for the administering authority to refuse a non-code compliant application for a level 1 mining project under section 173(1) of the *Environmental Protection Act 1994*. The time allowed is 5 business days after the administering authority receives the application.

Section 36 Period for giving draft environmental authority—Act, s 175

This section operates in conjunction with section 175(2) of the *Environmental Protection Act 1994* and sets out the time allowed for the administering authority to issue the applicant and mining registrar a draft environmental authority. Under the *Environmental Protection Act 1994* the administering authority has to issue such a draft authority if it does not refuse the application. The time allowed is the latest of the periods mentioned in paragraphs (a) to (c).

Subdivision 2 Applications for environmental authority (exploration) and environmental authority (mineral development)

Section 37 Assessment period for EM plan assessment report—Act, s 191

This section operates in conjunction with section 191(2) of the *Environmental Protection Act 1994* and sets out the assessment period for an Environmental Management plan assessment report for a non-code compliant environmental authority (of an exploration or mineral development type) submitted as part of the application process.

Section 38 Period for decision—Act, s 193

This section operates in conjunction with section 193(1) of the *Environmental Protection Act 1994* and sets out the time allowed for the administering authority to decide an application for an environmental authority (of an exploration or mineral development type).

Subdivision 3 Applications for environmental authority (mining lease)

Section 39 Assessment period for EM plan assessment report—Act, s 205

This section operates in conjunction with section 205(3) of the *Environmental Protection Act 1994* and sets out the time allowed for the administering authority to give to the applicant for a non-code compliant environmental authority (of a mining lease type) for a level 1 mining project an assessment report about the environmental management plan submitted as part of the application process.

If the environmental management assessment report is to be included in an EIS assessment report then the period for providing it is the same as for providing the EIS assessment report.

Section 40 Refusal period for application—Act, s 207

This section operates in conjunction with section 207(1) of the *Environmental Protection Act 1994* and sets out the time allowed for the administering authority to refuse an application for an environmental authority (of a mining lease type) for a level 1 mining project.

Subdivision 4 Amendment applications

Section 41 Period for assessment level and EIS decisions—Act, s 246

This section operates in conjunction with section 246(1) of the *Environmental Protection Act 1994* and deals with a holder's application to amend an environmental authority.

Under section 246(1) of the *Environmental Protection Act 1994* the administering authority needs to decide whether the approval of an amendment application would result in an increased risk of environmental harm. If the risk has increased, the administering authority needs to decide whether an EIS is required for the proposed amendment.

The administering authority has 10 business days after the receipt of the application to make this decision.

Section 42 Period for deciding amendment application—Act, s 257

This section operates in conjunction with section 257(1) of the *Environmental Protection Act 1994* and sets out the time allowed for the administering authority to decide the amendment application discussed above.

The administering authority has 10 business days following receipt of the application.

Subdivision 5 Surrender applications

Section 43 Period for surrender application—Act, s 270

This section operates in conjunction with section 270(3) of the *Environmental Protection Act 1994* and sets out the time allowed for an environmental authority holder (for any mining activity types) to make a surrender application.

A surrender application must be made when a mining tenement, over which the environmental authority holder is conducting its mining activities, is coming to an end.

Section 44 Period for giving FRR assessment report—Act, s 276

This section operates in conjunction with section 276(2) of the *Environmental Protection Act 1994* to set out the time allowed for the administering authority to give an assessment report (called a final rehabilitation report assessment report) about the final rehabilitation report. The final rehabilitation report is submitted with the surrender application.

Section 45 Period for deciding surrender application—Act, s 277

This section operates in conjunction with section 277 of the *Environmental Protection Act 1994* and sets out the time allowed for the administering authority to decide the surrender application.

Chapter 4 Regulatory requirements

The review of the *Environmental Protection Regulation 1998* concluded that the regulatory role of the *Environmental Protection (Water) Policy 1997*, *Environmental Protection (Air) Policy 1997* and the *Environmental Protection (Noise) Policy 1997* ought to be clarified.

Accordingly, the provisions in the environmental protection policies relating to environmental management decisions were revised and transferred to this chapter. The policy intent was to clarify matters to be considered by the administering authority when making ‘environmental management decisions’.

Environmental management decisions are decisions that reference a regulatory requirement in the *Environmental Protection Act 1994*. These are decisions about—

- an environmental authority
- a development approval
- a transitional environmental program about an activity,

to the extent that the decision authorises, places a condition on, or varies a condition applying to an activity.

This chapter does not apply to surrender provisions or environmental protection orders under the *Environmental Protection Act 1994*.

Part 1 Preliminary

Division 1 Purpose

Section 46 Purpose of ch 4

This section states the purpose is to set out the regulatory requirements that the administering authority must comply with when making environmental management decisions.

Under the *Environmental Protection Act 1994* the regulatory requirements must be complied with.

Division 2 Interpretation

Section 47 Definitions for ch 4

This section contains definitions of certain words or phrases used in this chapter.

‘contaminant’ is defined in section 11 of the *Environmental Protection Act 1994*.

Section 48 Meaning of *environmental management decision*

The section clarifies the meaning of environmental management decisions which are decisions under the *Environmental Protection Act 1994* which must comply with regulatory requirements. Environmental management decisions are decisions about an environmental authority, a development authority, a transitional environmental program about an activity to the extent that the decision authorises, places a condition on, or varies a condition applying to an activity.

It does not apply to surrender provisions.

Section 49 Meaning of *monitoring*

This section sets out what is meant by ‘monitoring’ in monitoring the impact of an activity on the environment.

This section provides a broad and inclusive definition of the word ‘monitoring.’ It also provides examples of monitoring. The list of examples is not exhaustive. The term monitoring is used in other sections of the chapter including monitoring requirements that could be imposed as a condition by the administering authority. The meaning of ‘monitoring’ is deliberately broad to ensure a variety of monitoring requirements can be imposed to get an adequate assessment of the effects of an activity.

The results of any monitoring undertaken might warrant further conditions to be imposed on a development or a change in the existing conditions. The monitoring results could be used to change or add conditions, consistent with section 73C of the *Environmental Protection Act 1994*.

Part 2 **Regulatory requirements for all environmental management decisions**

Section 50 Application of pt 2

This section states that part 2 applies to the administering authority for making any environmental management decision.

Section 51 Matters to be considered for environmental management decisions

This section sets out the matters that must be considered by the administering authority when making an environmental management decision. This section links to the environmental protection policies under the *Environmental Protection Act 1994*. This section requires that the environmental values and quality objectives which are under the relevant environmental protection policies be considered by the administering authority when making an environmental management decision. This section requires that the impacts of contaminant releases on the environment and the characteristics of the receiving environment are considered.

Section 52 Conditions to be considered for environmental management decisions

This section states that the administering authority must consider whether to impose conditions for the matters stated. The administering authority continues to retain discretion on whether to impose conditions. However, the administering authority is obligated to consider the matters stated in chapter 4, even if conditions are not subsequently imposed.

Section 53 Matters to be considered for decisions imposing monitoring conditions

This section applies to the administering authority when imposing a condition that requires monitoring the impact of a contaminant release on the receiving environment. It sets out the matters that must be considered by the administering authority in this circumstance.

Part 3

Additional regulatory requirements for particular environmental management decisions

This is a new part of this regulation and has been transferred and modified from the *Environmental Protection (Water) Policy 1997*.

Most sections set out matters that must be considered by the administering authority when making environmental management decisions and oblige the administering authority to consider imposing conditions for other stated matters. The exception to this are sections 58 and 63 which place a requirement on the administering authority to refuse a development application in certain circumstances.

Section 54 Application of pt 4

This section states the application of part 4.

Section 55 Release of water or waste to land

This section applies when the administering authority is making an environmental management decision about an activity that includes a release of water or waste to land.

This section also provides that where waste or water is being transferred by the operator to another person for application to land by that other person, it is necessary to consider the ongoing protection of environmental values. In this situation the administering authority can impose a condition which permits the transfer of waste or water by the operator to another person in specific circumstances. It is intended that any conditions imposed for this matter will have effect on the operator of the activity when the operator is making a decision whether to transfer or continue to transfer the water or waste to another person. It is not intended that the conditions would apply directly to a person other than the operator of the activity.

Section 56 Release of water, other than stormwater, to surface water

This section applies when the administering authority is making an environmental management decision about an activity that includes a release of water to surface waters.

The administrative authority must consider this matter because the release of water which contains contaminants to surface waters has the potential to impact on the environmental values of the surface water.

Section 57 Release of stormwater

This section applies when the administering authority is making an environmental management decision about an activity that includes a release of stormwater.

The administering authority must consider this matter because contaminants mobilised by stormwater have the potential to be transferred to surface waters through runoff or to indirectly impact on groundwater.

The transfer of the contaminants can adversely impact on the environmental values of the waters.

Section 58 Release of water or waste to particular wetlands for treatment

This section applies when the administering authority is making an environmental management decision for an activity involving the use of a referable wetland or a significant coastal wetland for the treatment of water or waste released from the activity. This section requires that the administering authority must refuse to grant an application in certain circumstances.

Section 59 Activity involving berthing, docking or mooring a boat

This section applies when the administering authority is making an environmental management decision about an activity that involves the mooring, docking, or berthing of boats.

The administering authority must consider the availability of collection and disposal facilities for wastes generated from the boat and whether to include conditions requiring the provision of facilities for the reception, collection, and disposal of wastes including garbage, bilge, and sewage wastes.

This section complements the operation of the *Transport Operations (Marine Pollution) Act 1995*, which deals with releases from vessels in coastal waters. The *Environmental Protection Act 1994* deals with releases in non-coastal waters and associated land-based facilities.

The administering authority must consider this matter because boats that are moored or berthed have the potential to cause environmental harm through the release of wastes.

Section 60 Activity involving storing or moving bulk material

This section applies when the administering authority is making an environmental management decision about an activity that involves the storing or moving of material in bulk.

The storing or moving of material in bulk includes storing and transferring coal, metalliferous ores, alumina, quarry material, cement, grain or woodchips.

The storing or moving of material in bulk has the potential to release a part of the material to the environment, particularly where it contains fine particulates.

The administering authority must consider this matter because releases of these materials can compromise the environmental values of the air or water which could impact on ecosystem health and communities.

Section 61 Activity involving acid sulfate soil

This section applies when the administering authority is making an environmental management decision about an activity that potentially disturbs acid sulfate soils.

The State Planning Policy 2/02 Planning and Managing Development Involving Acid Sulfate Soils and its associated guidelines are to be considered when making an environmental management decision.

Acid sulfate soils are a potential environmental issue once disturbed and exposed to air. When potential acid sulfate soils are oxidised, sulphuric acid forms and the soil becomes strongly acidic. Strongly acidic soil can mobilise the naturally occurring metals in the soil which can threaten the natural and built environment and human health due to the presence of abundant acid, iron, aluminium, manganese, and possibly other heavy metals.

The disturbance can be through excavation, soil or sediment removal, exposure to air, or changing the level of groundwater.

The definition of acid sulfate soils includes both actual and potential acid sulfate soils.

Section 62 Activity involving acid-producing rock

This section applies when the administering authority is making an environmental management decision for an activity that potentially disturbs acid producing rock.

The administering authority must consider this matter because the production of waste rock and tailings in mining operations, for example, can expose large amounts of pyrite and sulphides to the effects of water and oxygen. This can result in the release of acid and dissolved contaminants to surface and ground waters.

Section 63 Activity involving direct release of waste to groundwater

This section applies when the administering authority is making an environmental management decision for an activity that involves or may involve the release of waste directly to groundwater.

An example of a direct release of waste to groundwater is an activity involving the release of contaminated water to groundwater through a well, deep-well injection or a bore.

The administering authority must consider this matter because the direct disposal of waste to groundwater has the potential to have long term impacts on the groundwater resource.

This section does not affect any decision regarding the placement of water into an aquifer where the water is not a waste. For example, if the water is

the subject of a beneficial use approval granted under section 66F of the *Environmental Protection (Waste Management) Regulation 2000*, the water is then not a waste as defined in section 13 of the *Environmental Protection Act 1994* so long as the approval is in effect and its conditions adhered to. This section provides circumstances where the administering authority must refuse to grant an application.

Section 64 Activities involving indirect release of contaminants to groundwater

This section applies when the administering authority is making an environmental management decision for an activity that is likely to result in a release of waste to groundwater other than a direct release of waste to groundwater.

Activities that can release contaminants to groundwater include fuel and chemical storage, landfills, waste treatment, waste storage, storage ponds and aquaculture ponds.

The administering authority must consider this matter because the release of contaminants to the groundwater can adversely affect the environmental values of groundwater and surface waters connected to the groundwater.

Chapter 5 Matters relating to environmental management and environmental offences

Part 1 Regulated waste

Section 65 What is regulated waste

This section defines ‘regulated waste’. Regulated waste is commercial or industrial waste, whether treated or not and whether immobilised or not, and which is mentioned in schedule 7.

Part 2 Contaminated land

Section 66 Prescribed organisations for contaminated land matters—Act, ss 381, 395 and 410

This section sets out what are prescribed organisations for contaminated land matters. A list of organisations is located in schedule 8. Each of the organisations mentioned in schedule 8 is a prescribed organisation for the following activities—

- a site investigation under section 381 of the *Environmental Protection Act 1994*
- the preparation of a validation report under section 395 of the *Environmental Protection Act 1994*
- the preparation of a site management plan for section 410 of the *Environmental Protection Act 1994*.

Schedule 8 replaces the former schedule 8A of the *Environmental Protection Regulation 1998*.

No changes have been made to the contents of the schedule. However, Schedule 8 is now used for an additional purpose relating to reduced annual fees in certain circumstances (see section 122).

Section 67 Prescribed waste for notifiable activity—Act, sch 3

This section states that regulated waste is prescribed waste for the particular purpose of identifying a notifiable activity for item 37 of schedule 3 of the *Environmental Protection Act 1994*.

This means that the administering authority must be notified when regulated waste is stored, treated or disposed of as per item 37 of schedule 3 of the *Environmental Protection Act 1994*. Activities involving regulated waste may warrant the inclusion of the relevant land or premises on the environmental management register.

Part 3 Noise

This part provides guidance on how noise relating to unlawful environmental nuisance and specific noise standards under the *Environmental Protection Act 1994* should be measured.

The noise standards contained within sections 6W to 6ZD of the *Environmental Protection Regulation 1998* have been moved to the *Environmental Protection Act 1994*. The noise standards are now set out in sections 440R (building work), 440S (regulated devices), 440T (pumps), 440U (air conditioning equipment), 440V (refrigeration equipment), 440W (indoor venues), 440X (open-air events) and 440Y (amplifier devices) of the *Environmental Protection Act 1994*.

The non-domestic animal, traffic signal, and cooking odour exclusions from environmental nuisance have similarly been moved to schedule 1 of the *Environmental Protection Act 1994*.

Former section 6ZE of the *Environmental Protection Regulation 1998*, which set out a noise offence relating to power boat use for sports in a waterway, has been moved to section 440Z of the *Environmental Protection Act 1994*.

Previous section 6ZF of the *Environmental Protection Regulation 1998*, which set out a noise offence relating to the operation of a power boat engine on premises, has been moved to section 440ZA of the *Environmental Protection Act 1994*.

The special evidentiary provisions for audible noise from sections 6ZM and 6ZT have been moved to section 440L of the *Environmental Protection Act 1994*.

Further, the previous section 6O of the *Environmental Protection Regulation 1998* which provided detail on the duty of the administering authority to investigate following a complaint has been removed and not replaced.

Division 1 Prescribed standards

Section 68 Prescribed standards for particular noise standards

This section prescribes the standards for ‘background level’ and ‘Z Peak’ and ‘Z Peak Hold’ under section 440K of the *Environmental Protection Act 1994*.

These terms are defined in section 440K of the *Environmental Protection Act 1994* and have been reproduced from the definitions in the *Environmental Protection Regulation 1998* or the relevant Australian Standards. Section 579C of the *Environmental Protection Act 1994* provides that a prescribed standards is a reference to an Australian Standard, or joint Standards Australia and Standards New Zealand standard, prescribed under a regulation for the provision of the *Environmental Protection Act 1994*.

The standard for ‘background level’ is contained in Australian Standard AS 1055.

The standard for ‘Z Peak’ and ‘Z Peak Hold’ is contained in Australian Standard AS IEC 61672.

Determining whether an offence has been committed against a noise standard (under section 440Q of the *Environmental Protection Act 1994*) includes assessing against the prescribed noise standard.

Division 2 Measuring noise

Section 69 Purpose of div 2

This section outlines how noise can be measured for use in ascertaining whether an offence relating to a noise standard or an offence of causing environmental nuisance has been committed.

Those offences are to be found in the *Environmental Protection Act 1994* in section 440Q and section 440 respectively.

The measurements taken using the guidelines set in the following sections can also be used in deciding whether to issue a direction notice under section 363B of the *Environmental Protection Act 1994*. The basis for

issuing a direction notice is a reasonable belief that section 440Q or 440 of the *Environmental Protection Act 1994* have been contravened.

Note: the measurements are only one of a number of factors used in deciding whether an emission of noise contravenes a noise standard or causes an environmental nuisance

Section 70 Definition for div 2

This section defines ‘source noise’ for the purposes of section 72.

Section 71 Measuring background level

This section states how background noise levels are measured for the purposes of determining whether an environmental nuisance offence has been committed.

Background level can be measured using the relevant procedure under Australian Standard 1055 or the noise measurement manual. The Australian Standard 1055–1997 Acoustics—Description and measurement of environmental noise (parts 1–3) is published by SAI Global (the global non-government standards body) and is available at <<http://www.saiglobal.com>>.

The Noise Measurement Manual: for use in testing for compliance with the *Environmental Protection Act 1994* is published by the Environmental Protection Agency and is available on the department’s website <<http://www.epa.qld.gov.au/publications>>.

Section 72 Measuring source noise

This section deals with the measurement of source noise other than for noise standards.

In such circumstances it may be measured by using the relevant procedure under the Australian Standard 1055 or the Noise Measurement Manual. The Australian Standard 1055—1997 Acoustics—Description and measurement of environmental noise (parts 1–3) is published by SAI Global (the global non-government standards body) and is available at <<http://www.saiglobal.com>>.

Section 73 Measuring source noise for particular noise standards

This section sets out the method of measuring source noise associated with noise standards.

The source noise may be measured as LA90,T (which is defined in section 440K of the *Environmental Protection Act 1994*) or LAeq,T, depending on the noise standard being assessed.

Section 74 Measurement of noises of same type from same premises

This section reproduces section 6ZS from the *Environmental Protection Regulation 1998* and provides for the situation where the same type of noise from 2 sources is coming from the same premises.

The authorised person can measure the noises as if they were 1 noise coming from the same source. Two examples of that type of situation are provided to assist with the interpretation of this section.

Section 75 Prescribed instruments—Act, s 490(8)

This section is constructed from section 29 of the *Environmental Protection (Noise) Policy 1997* but with 1 modification to take account of a new Australian Standard which partly replaces the standard referred to in the previous section 29.

The previous section 29 provided details of instruments, equipment, and installations prescribed for section 490(8) of the *Environmental Protection Act 1994*.

Section 76 Evidentiary provision

This section makes clear that a copy of the Australian Standard 1055 and the noise measurement manual are admissible in evidence in a proceeding under the *Environmental Protection Act 1994*.

Part 4 Water contamination

Section 77 Prescribed water contaminants for Act, ch 8, pt 3C

This section states that each of the contaminants mentioned in schedule 9 is a prescribed contaminant for chapter 8, part 3C of the *Environmental Protection Act 1994*.

The penalties for offences relating to water contamination have been increased under section 440ZG of the *Environmental Protection Act 1994*. The water contamination offences have been moved from the *Environmental Protection (Water) Policy 1997* to the *Environmental Protection Act 1994* so that penalties of greater than 20 penalty units can be imposed for their contravention.

Part 5 Air contamination

Section 78 Prescribed standard for particular offences relating to air contamination

This section prescribes the standard to be used in ascertaining whether an offence has been committed under section 440ZL of the *Environmental Protection Act 1994*. The standard to be used is AS/NZS 4013:1999 Domestic solid fuel burning appliances—Method for determination of flue gas emission.

Part 6 Record-keeping requirements for particular fuel suppliers

Section 79 Application of pt 6

This section explains the application of part 6. It applies to a person under section 440ZY(2) of the *Environmental Protection Act 1994* and sets out the records that must be kept by that person.

The ‘person’ referred to in that section of the *Environmental Protection Act 1994* is one who manufactures or imports fuel that is subject to Commonwealth Fuel Quality Standards but not subject to Commonwealth reporting requirements. The method by which the information required to be in the records is obtained is a matter for the person but it could include reliance on test certificates supplied by the original manufacturer or quality assurance statements regarding the non-addition of specified materials.

Sections 80 and 81 are based on section 38ZU of the *Environmental Protection Regulation 1998*. The record-keeping requirements have been extended for both importers and exporters to make them consistent with the requirements that apply to incorporated entities under part 6 of the *Fuel Quality Standards Regulation 2001* (Cwth).

Section 80 Records by manufacturer

This section sets out the records that must be kept by manufacturers of fuels.

Section 81 Records by importer

This section sets out the records that must be kept by importers of fuels.

Chapter 6 National Pollutant Inventory

Part 1 Preliminary

This part gives effect to the ‘National Environmental Protection (National Pollutant Inventory) Measure 1998’ (NPI NEPM) which is part of the framework of national environmental protection measures.

Under the *Environmental Protection Act 1994* section 580(5), regulations can be made to enforce compliance with national environmental protection measures.

The full text of the NPI NEPM is available at <<http://www.ephc.gov.au>>.

The NPI NEPM is aimed at—

- improving ambient air quality
- improving ambient marine, estuarine and fresh water quality
- minimising environmental impacts associated with hazardous sites
- improving the sustainable use of resources.

This is done by outlining the mechanisms by which occupiers of certain facilities must account for and report emissions and transfers of listed substances to the Environmental Protection Agency. The information collected by the Environmental Protection Agency is provided to the Commonwealth annually. The Commonwealth then annually disseminates this information to all sectors of the community in a useful, accessible and understandable form.

Section 82 Purpose of ch 6

This section states the purpose of chapter 6.

Section 83 Definitions for ch 6

This section contains a shorter list of definitions than its predecessor. The rest of the definitions not reproduced in this regulation are to be found in the NPI NEPM.

Section 84 Expressions in this part have same meaning as under NPI NEPM

This section states that all expressions not defined in part 8 carry the meanings provided in the NPI NEPM. This section overcomes the difficulties under the *Environmental Protection Regulation 1998* which involved the reader going back and forth between the definitions in this regulation and those in the NPI NEPM.

Section 38I of the *Environmental Protection Regulation 1998* which had set out reporting thresholds, amongst other things, has been removed. Those thresholds are found in the NPI NEPM. Incorporating the NPI NEPM by reference in this manner will allow for amendments to the NPI

NEPM to be automatically applicable without amendments to this regulation needing to be made as well.

Part 2 Reporting requirements

Section 85 Occupiers of reporting facilities to give information

This section creates the main obligation under this chapter which is to report certain information to the Environmental Protection Agency.

Along with the NPI NEPM, it sets out the circumstances in which a report must be made, when that report must be made, and what that report must contain.

The reporting period is generally the financial year, but this is not always the case.

The obligation to report applies to occupiers of reporting facilities that exceed the 'reporting threshold' for a substance in the facility's reporting period. A reporting threshold is the amount of the use, burning, emission, consumption or involvement of a particular substance in specific activities that trigger the reporting obligation. Different substances have different thresholds. Occupiers must also report the transfer of substances in waste for which the threshold has been exceeded.

The occupier must furnish the report to the Environmental Protection Agency within 3 months after the end of the reporting period.

Subsection (3) clarifies that this obligation will only occur if the industry type is on the list agreed to by jurisdictions and is published by the Commonwealth. The Commonwealth must also publish industry reporting materials for that type of industry.

This section also outlines the maximum penalty that can be imposed for a failure to comply with reporting requirements or further requests for information.

If the reporting requirements are not complied with, and no reasonable excuse exists, a maximum penalty of 20 penalty units can be imposed. The Environmental Protection Agency can also request additional information as stated under the NPI NEPM. If the additional information is not supplied

and no reasonable excuse exists, a maximum penalty of 20 penalty units can be imposed.

It is also an offence to give false, misleading or incomplete documents, or give false or misleading information under sections 480 or 481 of the *Environmental Protection Act 1994*.

Both the enforcement provisions in the *Environmental Protection Act 1994* and section 85 of this regulation are in accordance with the principles of enforcement outlined in section 25(2) of the NPI NEPM.

Section 86 Reporting period for reporting facility

This section sets out the reporting period for a reporting facility.

Section 87 Occupier must keep particular information for 3 years

This section clarifies that, all information used in determining if reporting thresholds have been exceeded in the reporting year and any data used in calculating the emission data and mandatory transfer data, must be kept for 3 years.

Section 88 Minister may name occupier in report to council

This section gives the Minister the power to name an occupier in its report to the National Environment Protection Council. The Minister can name an occupier when the occupier has contravened either the obligations in sections 85(2) or (7) of this regulation or section 480 or 481 of the *Environmental Protection Act 1994*, or both.

Section 96 Deciding claim for exemption on ground of commercial confidentiality

This section provides for the grant or refusal by the chief executive of the occupier's claim application under section 95 for a commercial confidentiality exemption. It sets out the circumstances in which the application can be granted and in which it can be refused, and the procedures that must be followed when either granting or refusing.

Part 5 Other matters

Section 97 Information not to be used as evidence

This section makes clear that information given by the occupier under part 5 can only be used in evidence against them for an offence against section 480 (false, misleading or incomplete documents) or 481 (false or misleading information) of the *Environmental Protection Act 1994*.

Chapter 7 Administration

Part 1 Devolution of powers

Division 1 Matters devolved to local government

Local governments will be responsible for the administration and enforcement of the *Environmental Protection Act 1994* in relation to environmental nuisance and specific noise standards, the water contamination offences, and a number of environmentally relevant activities.

Previously, the responsibility for environmental nuisance (noise, light, dust, ash, fumes, smoke) was shared between local governments and the

Environmental Protection Agency. This led to confusion in the community about who to go to in the event of a complaint.

This regulation devolves all responsibility for nuisance, both commercial and residential, to local governments, including the handling of complaints and enforcement. Local governments are best placed to deal with these local issues and the State's resources can now be used for activities that may cause serious or material environmental harm.

To meet these new responsibilities, more of the enforcement powers under the *Environmental Protection Act 1994* have been made available to local governments. Local governments will also be given flexibility to vary or override environmental nuisance laws by way of local laws.

Section 98 Environmental nuisance

This section devolves sections 440 and 443 of the *Environmental Protection Act 1994* (to the extent it relates to environmental nuisance) to each local government for its local government area, except for the matters detailed in division 2.

This means that responsibility for the administration and enforcement of the offences contained within those sections is borne by local governments within the boundaries of the areas they govern. The environmental nuisance jurisdiction of local governments is no longer limited to emissions from residential land but will now include commercial nuisance.

Note that some aspects of nuisance will still be managed under other laws such as licensed premises under the *Liquor Act 1992*, public health risks under the *Public Health Act 2005* and environmentally relevant activities will continue to be conditioned for environmental nuisance through their development approvals.

Section 99 Noise standards

This section devolves section 440Q and chapter 8, part 3B, division 3 of the *Environmental Protection Act 1994* to each local government for its local government area, except for the matters detailed in division 2.

The offence of a breach of a specific noise standard will be dealt with by local governments.

Section 100 Water contamination

This section devolves the administration and enforcement of the water contamination offences in chapter 8, part 3C of the *Environmental Protection Act 1994* to local governments for their local government areas, except for the matters detailed in division 2.

Section 101 Particular chapter 4 activities

This section identifies the ERAs that are devolved to local governments. There have been no new devolutions for ERAs and this section is based on section 39 of the *Environmental Protection Regulation 1998*.

A number of activities that were devolved under the *Environmental Protection Regulation 1998* to local governments are no longer regulated as environmentally relevant activities and have been removed entirely from schedule 2 of this regulation.

There are also parts of the environmental relevant activities that have been removed or included in ERAs now administered by the State. For example the pet food manufacturing activity originally devolved to local governments has been incorporated in the meat or seafood processing activities and is no longer the responsibility of local governments.

The following chapter 4 activities (as found in schedule 2) continue to be devolved to local governments—

- section 4—poultry farming
- section 6—asphalt manufacturing
- section 12—plastic product manufacturing
- section 17—abrasive blasting
- section 19—metal forming
- section 20—metal recovery
- section 21—motor vehicle workshop operation
- section 37—printing
- section 43—concrete batching.

The following activities all have a limited devolution to local governments as specified in paragraph (b) and (c) of subsection (1)—

- section 8—chemical storage
- section 18—boilermaking or engineering
- section 38—surface coating
- section 48—wooden and laminated product manufacturing
- section 61—waste incineration and thermal treatment
- section 49—boat maintenance or repair.

Section 102 Devolution includes statutory instruments under Act

This section clarifies that the administration and enforcement of statutory instruments made under the *Environmental Protection Act 1994* in relation to an activity are also devolved under section 101. Examples of statutory instruments made under the *Environmental Protection Act 1994* are this regulation. Local governments will therefore also be able to use the enforcement provisions under this regulation for the activities devolved to them.

Division 2 Matters not devolved to local governments

Section 103 Clean-up and cost recovery notices

This section clarifies that the clean up and cost recovery notices under chapter 7, part 5B and 5C of the *Environmental Protection Act 1994* are not devolved to local government. All other administration and enforcement tools under the *Environmental Protection Act 1994* are devolved to local government.

Section 104 Record-keeping for particular fuel suppliers

This section clarifies that local government will not be responsible for the administration and enforcement of the provisions relating to recording keeping for particular fuel suppliers under in this regulation.

Section 105 Enforcing compliance with NPI NEPM

This section clarifies the administration and enforcement of the NPI NEPM provisions under this regulation will remain with the State government.

Section 106 Particular acts, omissions or activities by or for State or local government entity

This section clarifies the limitations to the devolutions laid out in division 1. Local governments are not responsible for environmental nuisance or minor water pollution offences incurred by actions of a local government, State government, government owned corporation or an instrumentality of the State (i.e. a statutory authority).

In addition if an environmentally relevant activity is undertaken by a local government or State government, government owned corporation or an instrumentality (i.e. a statutory authority) then the local government is not the administering authority.

Section 107 Mobile and temporary activity across local government areas

This section excludes mobile and temporary environmentally activities carried out by the same person over more than 1 local government area. The provisions preclude the need for a person carrying out a mobile and temporary activity from having to obtain a development approval in each local government area. The State government assumes responsibility for environmentally relevant activities carried out in more than 1 local government area. This is the same as the *Environmental Protection Regulation 1998*.

Section 108 Activity carried out at a facility with a non-devolved activity

This section clarifies that when 2 different activities are being conducted at the same place by the same person and 1 activity is devolved to the local government under section 101 but the other is not, subsections (3) and (4) operate to exclude the devolved activity from being devolved. It is more efficient that different activities which are conducted on the same place by the same person are regulated by the 1 authority. This is the same as the *Environmental Protection Regulation 1998*.

review decision. This means that an occupier of a reporting facility can appeal straight to the Planning and Environment Court if dissatisfied with the Minister's decision.

Subsection (3) clarifies that the 'dissatisfied person' for the purposes of this regulation is the occupier of a reporting facility affected by the chief executive's decision.

This section is based on section 62 of the *Environmental Protection Regulation 1998*.

Part 4 Registers

This part sets out the information required to be kept in an administering authority's registers. An administering authority is required to keep a register of environmental reports, a register of monitoring program results, a register of transitional environmental programs, a register of environmental protection orders, and a register of authorised persons.

Section 111 Register of environmental reports

This section sets out the information required to be kept in the register of environmental reports. It is based on section 55 of the *Environmental Protection Regulation 1998*.

Section 112 Register of monitoring program results

This section sets out the information required to be kept in the register of monitoring program results. It is based on section 56 of the *Environmental Protection Regulation 1998*.

Section 113 Register of transitional environmental programs

This section sets out the information required to be kept in the register of transitional environmental programs. It is based on section 57 of the *Environmental Protection Regulation 1998*.

Section 114 Register of environmental protection orders

This section sets out the information required to be kept in the register of environmental protection orders. It is based on section 58 of the *Environmental Protection Regulation 1998*.

Section 115 Register of authorised persons

This section states that an administering authority must record any limitations stated in the instrument of appointment of an authorised person in the register of authorised persons. It is based on section 59 of the *Environmental Protection Regulation 1998*.

Chapter 8 Fees

Part 1 Fees generally

Section 116 Fees payable under Act

This section sets out a number of preliminary matters pertaining to fees. It states that both chapter 8 and schedule 10 provide for fees payable under the *Environmental Protection Act 1994*. The total fee payable at the time of application is calculated by adding the schedule 10 application fee and the annual fee for the relevant authority worked out in chapter 8. The annual fee is either worked out under section 118 or under section 120. If the ERA or ERAs (if more than 1) have no aggregate environmental score, then the annual fee is worked out under section 118. If the environmentally relevant activity or ERAs (if more than 1) have an aggregated environmental score then the annual fee is worked out under section 120.

It further clarifies that section 120 of this regulation is subject to part 3, division 2, part 5 and part 6 of this chapter. In other word, working out the annual fee under section 120 will be subject to discounts, supplementary fees, timing for applying for a registration certificate and various fee exemptions.

Part 2 Fees for devolved matters

This part explains the arrangements for fees for matters devolved to local governments.

Section 117 Fees and discounts made by resolution or local law

This section states that the fees set in this regulation are the default fees but that a local government has the ability to set a different fee, whether higher or lower. The *Local Government Act 1993* requires that the local fee must not be more than the cost to the local government of providing the service or taking the action for which the fee is charged. So the local government can set its own fees but it can not change the aggregate environmental score, these are fixed for each ERA.

If the local government has made a local law about local fees then the provisions in this regulation relating to ‘reduced annual fee’ discounts do not apply.

However, if the local government is using the default fees then the reduced annual fee provisions (see part 2, division 3 of this chapter) can apply if local government makes a local law or resolution opting into the reduced annual fee scheme.

Part 3 Annual fees

Division 1 General matters

Section 118 Meaning of annual fee

This section works out the fee for ERAs that have no aggregate environmental score. The policy intent has been that a flat annual fee will be charged. The flat annual fee is listed in schedule 10.

The aggregate environmental scores for chapter 4 activities are located in schedule 2. ERAs with no aggregate environmental scores are identified with a blank in schedule 2.

The aggregate environmental scores for level 1 petroleum activities are listed in schedule 5. The aggregate environmental scores for level 1 mining activities are listed in schedule 6. If petroleum and mining activities are not listed in schedules 5 and 6 respectively then they are either a level 2 petroleum or level 2 mining activity. Level 2 petroleum and mining activities have no aggregate environmental score and the annual fees for these activities are listed in schedule 10.

If there are more than 1 ERAs with no aggregate environmental score then it the highest annual fee listed in the schedule 10. There is still only 1 fee for more than 1 ERA.

Section 119 Annual fee to accompany particular applications

This section states that annual fees are paid in advance of an operating year. When first applying to conduct an environmentally relevant activity (for a chapter 4 activity or a mining or petroleum activity), the application fee and the annual fee are payable. This is the same as the *Environmental Protection Regulation 1998*.

Section 120 Annual fee for particular development applications, registration certificates and environmental authorities

This section outlines the fees payable for an environmentally relevant activity or environmentally relevant activities (if there is more than 1) where there is an aggregate environmental score.

The process for calculating fees is—

$$F = S \times M.$$

In other words, the annual fee (F) for an ERA in this section equals the higher or highest aggregate environmental score (S) multiplied by the designated monetary unit (M).

The aggregate environmental scores for chapter 4 activities are located in schedule 2, schedule 5 for level 1 petroleum activities or schedule 6 for mining activities.

There are 2 monetary units. There is a \$100 fee unit for relevant activities and a \$200 fee unit for all others ERAs in this regulation.

The term 'relevant activities' is limited to this section and means aquaculture, intensive animal feedlotting, pig keeping and poultry farming only. It is used for the purpose of determining the fee unit of these particular activities.

Note: The term of 'relevant activities' is not to be confused with environmentally relevant activities.

Working out the fee for keeping more than 400 to 3500 standard pig units would start with identifying the aggregate environmental score (S), which is 27, and multiplying by the fee unit (M), which is 100, to get an annual fee (F) of \$2700.

Another example could be a tanning operation with an aggregate environmental score (S) of 56. The fee unit (M) is 200. Therefore the fee (F) = \$11200.

If these 2 chapter 4 activities occurred together then the annual fee is the fee for the higher aggregate environmental score, that is, \$11200.

Subsection 3 clarifies that if 2 chapter 4 activities occurred together and 1 is a relevant activity with a higher score (S) but a lower fee (F) than the other chapter 4 activity, the highest fee applies. For example, a cattle feedlot with more than 10000 head has an aggregate environmental score (S) of 49 and a fee unit (M) of 100 so the annual fee is \$4900. If the feedlot is operating with an on-site meat processing plant (producing between 5000 tonnes to 10000 tonnes of meat per year) which has an aggregate environmental score (S) of 26 with a fee unit (M) of 200 so the fee (F) is \$5200, the fee of \$5200 applies.

If 2 or more mining activities occur together, and 1 of the mining activities is a chapter 4 activity, then the fee is worked out using the highest aggregate environmental score from either schedule 2 or schedule 6.

For example, if is a mining site is extracting black coal (AES is 128 from schedule 6) and also undertaking mineral producing between 1000 tonnes to 100000 tonnes (AES is 179 from schedule 2) then the fee is worked out using the highest AES, i.e. $179 \times 200 = \$35800$.

Division 2 Reduced annual fees in particular circumstances

Subdivision 1 Preliminary

Section 121 Purpose of div 2

This section sets out the purpose of division 2 which is to provide eligible authority holders with a reduced annual fee.

The public consultation process strongly supported an incentive element to this regulation. Reduced annual fees recognise operators who have voluntarily implemented systems that improve their environmental performance, lower the site risk and the subsequent need for active oversight and administrative effort by the regulator.

Section 122 Definitions for div 2

This section relates to the reduced annual fee provisions and the requirement for anyone claiming the fee discount for an approved Environmental Management System (EMS). This section identifies the Environmental Management System (EMS) that constitutes an approved EMS for the purpose of a reduced annual fee. This is the international standard ISO14001.

An independent third party must verify the EMS to—

- (a) check that it is accredited against the international standard; and
- (b) that the person is complying with the environmental conditions of the development approval or environmental authority.

The third party have qualifications that equip them to check against environmental conditions and they must also be a member of a prescribed organisation listed in schedule 8. Both of these requirements ensure the credibility and independence of the third party and their assessment.

Section 123 What is an approved EMS

This section sets out in what circumstances the holder of an environmental authority, development approval or registration certificate has an approved environmental management system (EMS).

Section 124 Who is an approved partner

This section states that the business partnership program is the ecoBiz program established by the Environmental Protection Agency. The ecoBiz program certifies participants as ‘partners’ after they have completed a series of actions as part of the program. The status of partner is awarded after the business has been able to demonstrate that they have implemented the action plan and there has been an environmental improvement. A full list of partners is available on the EPA website and partners must also have written confirmation about their status. This is the only available business partnerships program for the incentives scheme.

Section 125 What is a lower emissions score

This section details how the lower emissions score discount operates.

The Aggregate Environmental Score is made up of 2 elements. The first component of the aggregate environmental score is the emissions score, which is based on the average annual emissions to air, land and water. The second component of the aggregate environmental score is the site attribute score, which is the sum of various site attribute factors.

The reduced fee unit applies only to the emissions score component of the aggregate environmental score because it links directly to measurable emissions and thus provides for a more accurate comparison.

The emissions score and site attribute score are combined to provide an aggregate environmental score for each activity. This regulation does not list the component scores, but the component scores for each ERA are available on the department’s website <<http://www.epa.qld.gov.au>>.

Subdivision 2 Reduced annual fee

Section 126 Eligibility for payment of a reduced annual fee

This section sets out the eligibility criteria for when an operator can claim a reduced annual fee. The operator must be operating at a higher level than mere compliance and not been subject to compliance action. The scheme is self-assessable so statutory declarations are necessary to provide a safeguard to ensure that the discounts are being appropriately claimed.

This section provides that to claim the lower emissions score discount, the holder (or a contracted party) is responsible for preparing the data which must then be verified by a statutory declaration from a qualified person. The statutory declaration will state that the operator has prepared sound and accurate data in line with the required measurement methods. The qualified person must be a third party with qualifications and experience in the measurement of contaminant emissions. A list of acceptable measurement methods will be available on the department's website. The EPA will publish information about contaminants, measurement methods and the volumes used to calculate the emissions score so that comparison can be made.

This section also defines 'disqualifying events' and clarifies that the operator is ineligible for the discount if there has been a disqualifying event.

Section 127 What is the reduced annual fee

This section sets out the discount claimable for each type of discount and combination of discounts. For example, a holder who successfully claims the approved partner discount pays 90% of the standard annual fee which amounts to a 10% discount or reduction. The maximum discount is 50% of the annual fee when a holder is eligible for all 3 discounts.

Subdivision 3 Offences and record keeping

Section 128 Application of sdiv 3

This section states that this subdivision applies to authority holders who have paid a reduced annual fee under division 2.

Section 129 Offence to pay reduced annual fee if not eligible

This section sets out the offence of paying a reduced annual fee where the authority holder knows or ought reasonably to have known that the holder was not eligible for the reduction. The administration of the scheme incurs a minimal assessment role by the department and has been designed to put the onus on the holder to be honest and forthcoming about their eligibility. This offence will act as a deterrent to inappropriately claim the discount.

Section 130 Requirement to keep records for reduced annual fee

This section places an obligation on the holder to keep records in relation to the payment of the reduced annual fee. These records must comply with subsection (2) and be kept for 5 years after the reduced annual fee is paid. The administration of the scheme incurs a minimal assessment role by the department and it is important for a business to maintain records of their eligibility over time because some activities are not subject to annual site visits where compliance checks can be done. The time of 5 years also sends a clear message that the administering authority can ask for records at any point in time. This length of time will be an adequate deterrent to inappropriately claim the discount.

Section 131 Authorised person may require holder to give information or documents

This section gives authorised person the power to require a holder to give certain information or documents relating to the payment of a reduced annual fee. The holder must comply in the absence of a reasonable excuse. This offence is complementary to the offence in section 130 and gives the power for compliance staff to run routine checks on the eligibility for the scheme.

Section 132 Requirement to notify change of eligibility

This section places an obligation on a holder to notify the administering authority if they stop being eligible for a fee reduction in the year in which the reduction is applicable. The administering authority can then require the holder to pay the difference between the annual fee and the reduced annual fee for the activity. The administration of the scheme incurs a

minimal assessment role by the department and has been designed based on the expectation that a business is honest and responsible about their eligibility. This offence will act as a deterrent to inappropriately claim the discount.

Section 133 Refunding difference between annual fee and reduced fee

This section clarifies that if a reduced annual fee has been paid but the holder was not eligible, or become ineligible over the course of the discounted year, then the administering authority can request that the annual fee be paid in full. For example, if an operator claims the discount at the time of paying their annual fees in October, and then faces some compliance action 6 months later in April, they will be required to repay the full amount of the discount (i.e. a full year) as they are no longer eligible to receive it.

Division 3 Amendment applications for environmental authorities

Section 134 When supplementary annual fee payable

This section requires the person who makes an amendment application for either a petroleum or mining environmental authority to pay a supplementary fee with that application. The supplementary fee is the difference between the annual fee for the amended activity and the annual fee for the current unamended activity as stated in the last annual notice. This fee ensures any difference in the annual fee accounted for and ensures parity between operators regardless of when their fees fall due.

Division 4 Credits and refunds

Section 135 Credit for annual fee for environmental authority after amendment

This section requires the administering authority to credit an operator who submitted an amendment application with the supplementary fee and whose application was accepted. The amount of the credit depends upon

the length of time the amendment has been in effect with respect to the normal anniversary date. For example, if a supplementary fee of \$500 was paid and the amendment was in effect for only half a year then the operator is entitled to a credit of \$250.

Section 136 Refund of annual fee if application refused

This section requires the administering authority to refund the annual fee paid as part of an application for an environmental authority or a registration certificate which was refused.

Section 137 Refund of annual fee if replacement environmental authority issued

This section states that an administering authority may issue a replacement environmental authority in some circumstances. For example, an environmental authority may have had a number of amendments previously. For streamlining purposes, a replacement authority may be more appropriate than another amendment. Alternatively, a replacement authority may be issued to allow some aspects of the environmental authority to proceed whilst others may require longer time frames for assessment.

Part 4 Other particular fees

Section 138 Fee for anniversary changeover application

This section sets out the fee payable for an anniversary changeover application for an environmental authority or a registration certificate. The department incurs an administrative cost when processing and amending the anniversary date for an environmental authority and a registration certificate and recovers the administrative costs through this fee. This fee was in section 44A of the *Environmental Protection Regulation 1998* and the formula for calculating the fee is the same in this regulation.

If the person does not apply for their registration certificate within 30 days of the development permit taking effect they will have to pay the development approval application again. To clarify, an applicant will pay twice if they do not meet the time frames above.

Part 6 Exemptions

Section 142 Administering authority exempt from fees for self-administered activities

Fees are not payable when the holder of the registration certificate or environmental authority is the administering authority. An example of this is a sewage treatment plant for a small block of toilets on a national park. This is consistent with the *Environmental Protection Regulation 1998* and applies because it does not make sense from an accounting point of view for the department to charge itself fees.

Section 143 Prescribed local government exempt from fees

These exemptions were previously issued under the *Environmental Protection Regulation 1998* and proposed in the regulatory impact statement. These activities will not pay fees for chapter 4 activities that are carried out by the local government in its own area.

Section 144 Prescribed charitable institution exempt from fees

Charitable institutions have been given specific fee exemptions and an example of a charitable institution that would be exempt from paying fees is a church with a sewage treatment plant.

Chapter 9 Repeal, transitional and savings provisions

Part 1 Repeal

Section 145 Repeal of regulation

This section states that this regulation repeals the *Environmental Protection Regulation 1998*.

Part 2 Transitional and savings provisions

Division 1 Preliminary

Section 146 Definitions for pt 2

This section defines certain terms for the purposes of the transitional provisions.

Division 2 Transitional provisions for environmentally relevant activities

Subdivision 1 General

This subdivision relates to transitional arrangements for environmentally relevant activities that have a different numbering system and nomenclature in this regulation (compared to the *Environmental Protection Regulation 1998*).

Section 147 General matters for environmentally relevant activities

This section contains a table which compares the ERA numbers for chapter 4 activities from schedule 1 of the *Environmental Protection Regulation 1998* to the ERA numbers from schedule 2 of this regulation.

By virtue of this section, any document which contains the ERA number from the *Environmental Protection Regulation 1998* is taken to refer to the ERA number from this regulation.

Section 148 Existing development approvals and registration certificates

This section is consequential to the transitional arrangements in section 147. This section ensures that a development approval for an ERA under the *Environmental Protection Regulation 1998* is deemed to be a development approval for an ERA under this regulation.

Section 149 Existing applications

This section is consequential to the transitional arrangements in section 147. This section ensures that a development application for an ERA under the *Environmental Protection Regulation 1998* which has not been decided before commencement of this regulation is deemed to be a development application for an ERA under this regulation.

However, if the application was about a deleted ERA, then the administering authority must inform the applicant that the ERA has been deleted and refund any application fee paid under the *Environmental Protection Regulation 1998*.

Subdivision 2 Effect of changes to environmentally relevant activities

This subdivision relates to transitional arrangements for deleted environmentally relevant activities.

Section 150 Activities that are no longer environmentally relevant activities

Subsection (1) of this section lists the activities that were ERAs in the *Environmental Protection Regulation 1998* but are no longer ERAs in this regulation (i.e. the deleted ERAs). Some of these ERAs have been deleted because the entire ERA has been deleted (e.g. crematoriums), but most are deleted as a result of an increase in the lowest threshold for the activity.

Subsection (2) of this section states that despite the fact that the ERA has been deleted, the development approval or registration certificate continues in force until the anniversary day for the approval of the certificate.

Subsection (3) of this section states that the administering authority must give the operator a notice advising them that the ERA has been deleted and that after the anniversary day, the holder no longer needs a development approval or registration certificate to carry out the activity.

Section 151 Changes to environmentally relevant activities

This section is consequential to the transitional arrangements in section 147 and relates to continuing activities that are still listed as ERAs. The majority of ERAs from the *Environmental Protection Regulation 1998* have been carried over into this regulation. The administering authority must notify a holder of a continuing ERA that their new ERA number and nomenclature has changed and will commence on the first anniversary day for the authority.

Subdivision 3 Environmental authorities

This subdivision relates to transitional arrangements for environmental authorities for mining and petroleum activities.

Section 152 Existing environmental authorities

This section ensures that the holder of an environmental authority for a mining or petroleum activity issued before this regulation commenced, is taken to be the holder of that authority in this regulation.

A holder of an environmental authority will not require new or different environmental conditions by virtue of this regulation commencing. This section deems the conditions of the environmental authority to be the conditions of the environmental authority related to this regulation.

Section 153 Changes to environmentally relevant activities

This section relates to continuing ERAs for mining and petroleum that were in place before this regulation commenced. All mining and petroleum ERAs from the *Environmental Protection Regulation 1998* have been carried over into this regulation (i.e. none have been deleted).

The administering authority must notify the holder of a continuing ERA that the new mining and petroleum classifications are in schedules 5 and 6 and that their authority will be deemed into 1 of these categories on the first anniversary day for the authority.

Section 154 Existing applications

This section ensures that a development application for an ERA under the *Environmental Protection Regulation 1998* which has not been decided before commencement of this regulation is deemed to be a development application for an ERA under this regulation.

Subdivision 4 Particular approvals for environmentally relevant activities

Section 155 Particular approvals continue in force for 2 years

This section states that deemed approvals continue to have effect for 2 years after the commencement of this regulation.

Deemed approvals are historical approvals issued under the *Environmental Protection (Interim) Regulation 1995* which deemed operators to be lawful despite them not having environmental conditions.

Under the *Environmental Protection Act 1994* (through amendments introduced in the *Environmental Protection and Other Legislation Amendment Act 2003*) some deemed approvals were already being phased out due to the requirement to apply for a development approval and

conditions if there was a change of owner or a material change of use under the *Integrated Planning Act 1997*. Despite this, no sunset clause of deemed approvals previously existed.

During the review of the *Environmental Protection Regulation 1998*, the Environmental Protection Agency publicly consulted on removing deemed approvals in their entirety because they are anti-competitive and do not meet contemporary standards of environmental management.

Accordingly, this section of the regulation requires an operator with a deemed approval to obtain a development approval with conditions within 2 years after commencement.

The new arrangements under this regulation are made on the understanding that—

- the existing use rights of businesses with deemed approvals will not be affected
- any increased compliance costs incurred as a result of new conditions will not result in businesses being closed down.

To support the new arrangement under this regulation, changes were made to the *Integrated Planning Act 1997* by the *Environmental Protection and Other Legislation Amendment Act (No. 2) 2008* so that operators with deemed approvals could apply for and obtain a development approval for their environmentally relevant activities from 1 January 2010.

When operators apply for a development approval only reasonable and relevant conditions can be applied to the environmentally relevant activity. Further, any application for an environmentally relevant activity will be assessed against section 73A of the *Environmental Protection Act 1994*, and this will include an assessment of the financial implications.

If an operator is still unable to meet new environmental conditions then they can apply for a transitional environmental program (TEP). Alternatively, the administering authority may require a TEP as a development condition of a development approval. The TEP will allow an operator to come into compliance with the development conditions over a period of 3 years, but this can be extended subject to a period of public notification.

Finally, the provisions under the *Integrated Planning Act 1997* relating to review and appeal processes will remain unchanged.

Subdivision 5 Miscellaneous matters for environmentally relevant activities

Section 156 Administration and enforcement of particular former environmentally relevant activities devolved to local government

Subsection (1) of this section lists out the activities that were ERAs which were administered by local government in the *Environmental Protection Regulation 1998* but are no longer ERAs in this regulation (i.e. the deleted local government ERAs). Some of these ERAs have been deleted because the entire ERA has been deleted (e.g. crematoriums), but most are deleted as a result of an increase in the lowest threshold for the activity.

Subsection (2) of this section states that administration and enforcement of these ERAs continues to be devolved to local governments. In other words, local government can continue to enforce the conditions, for as long as the conditions continue, on the development approval under the *Environmental Protection Act 1994*.

Section 157 Codes of environmental compliance for former environmentally relevant activities

This section enables the continued use of code of environmental compliance for environmentally relevant activities that will be deregulated on their first anniversary date. Until that first anniversary date these codes will be relevant.

Division 3 Transitional provisions for miscellaneous matters

Section 158 Delayed application of fees payable under ch 8

This section states that the fees do not apply to an existing authority until the first anniversary date after commencement of this regulation. For example, if the anniversary date for a registration certificate is 1 September 2009, the fee that the operator paid in August/September 2008 will continue to apply and the operator will not need to pay a further fee for the

2008/2009 year. When the operator receives its annual notice in 2009, the new fee will be for the 2009/2010 year.

Section 159 References to repealed regulation

This section states that a reference in a document to the *Environmental Protection Regulation 1998* is deemed to be a reference to this regulation if that makes sense in context.

Chapter 10 Consequential amendments

Section 160 Laws amended in sch 11

This section states that schedule 11 amends the subordinate legislation it mentions.

Schedule 1 Matters to be addressed by assessment under EIS

This schedule replaces the previous schedule 1AA and sets out the matters to be addressed by assessment under EIS in the draft terms of reference. It contains the same matters as were contained in the previous schedule 1AA.

Schedule 2 Chapter 4 activities and aggregate environmental scores

Schedule 2 lists ERAs that are chapter 4 activities (i.e. ERAs that require a development approval under the *Integrated Planning Act 1997* or operate under a code of environmental compliance).

The description of each ERA also includes any thresholds and the aggregate environmental score for each threshold, if any.

Note: ‘ERA’ is defined in the dictionary in schedule 11 to this regulation.

Part 1 Aquaculture and intensive animal industry

1 Aquaculture

This ERA covers all types of aquaculture in any enclosures on land or in waters. If the activity does not release waste into waters, then it is not an ERA. For example farms that completely recycle their water, or use it for settling ponds, are not regulated.

The definition of ‘augmented food supply’ is intended to pick up processed and non-processed foods. The latest definitions do not intend to broaden the aquaculture definition to include crocodiles or oysters (particularly the latter as they do not receive an augmented food supply).

Fish stocking activities and holding fish in aquariums for display purposes and ornamental fish are excluded.

The main emissions of interest are—

- total phosphorous
- total nitrogen
- total suspended solids.

Also of interest is any chemical which causes biochemical or chemical oxygen demand.

2 Intensive animal feedlotting

This ERA covers keeping sheep or cattle, including dairy cattle (if applicable) in an intensive manner. It does not cover activities which involve bringing animals together in an intensive manner for a limited short term purpose, such as feeding dairy cattle on a feed pad, animal husbandry, gathering animals for sale or slaughter or managing or treating animals as required under the law for public health and safety. This is intended to exempt cattle and sheep that are being kept intensively for biosecurity and emergency management reasons.

This category now includes sheep and incorporates thresholds for the number of sheep kept in a confined yard or enclosure.

This ERA is administered by the Department of Primary Industries and Fisheries via delegation.

The main emissions of interest are—

- ammonia
- particulates (PM10)
- total nitrogen
- carcinogens.

3 Pig keeping

The bottom threshold has been increased from the *Environmental Protection Regulation 1998* and is now 21 standard pig units. The threshold used to be 1 or more standard pig units. The threshold was increased to clarify that small hobby farmers and/or pig keeping operations will not be regulated.

This ERA does not cover activities which involve bringing animals together in an intensive manner for sale or slaughter.

This ERA is administered by the Department of Primary Industries and Fisheries via delegation.

The main emissions of interest are—

- ammonia
- volatile organic compounds

- carcinogens
- total nitrogen.

4 Poultry farming

This ERA involves farming poultry for any purpose. The definition of poultry does not include emus, ostriches or squab (meat) pigeons.

The bottom threshold for poultry farming is 1000 birds which is equivalent to the *Environmental Protection Regulation 1998*.

This ERA is administered by the local government for the area.

The main emissions of interest are—

- ammonia
- particulates (PM10).

Part 2 Chemical, coal and petroleum products activities

5 Alcohol production

This ERA includes producing alcohol for both potable (i.e. spirit grade alcohol) and non-potable uses (e.g. industrial grade alcohol such as ethyl, methyl alcohol or ethanol). Works having a design production capacity of less than 200m³ per year are exempt.

The main emissions of interest are—

- volatile organic compounds.

6 Asphalt manufacturing

This ERA covers making asphalt, bitumen, and tar. This ERA continues to regulate asphalt manufacturing at any quantity and this is the same as the *Environmental Protection Regulation 1998*.

This ERA is administered by local government.

The main emissions of interest are—

- volatile organic compounds
- carcinogens.

7 Chemical manufacturing

This ERA covers the manufacturing, processing and mixing of chemicals or chemical products. It includes the activity of paint manufacturing, which was a separate ERA under the *Environmental Protection Regulation 1998*. The thresholds of inorganic and organic chemical manufacturing include all types of chemical manufacturing not explicitly covered in another threshold, for example, manufacturing biodiesel (which could fall into either organic or inorganic manufacturing depending on the chemical derivatives) or making synthetic diesel using gas to liquid technology.

An operator is not required to be licensed under this category if they undertake chemical manufacturing as an integral part of another ERA (e.g. asphalt manufacturing or alcohol distilling).

Given the low risks associated with ethanol blending, ethanol blending is not included in the definition of chemical processing but will be regulated under the chemical storage ERA. The production of ethanol will be in the ERA for alcohol production.

The main emissions of interest are—

- sulphur dioxide
- oxides of nitrogen
- particulates (PM10)
- carbon monoxide
- cyanuric acid (CYA)
- volatile organic compounds
- halogens
- greenhouse causing gases
- metals
- organohalogens
- carcinogens

- total phosphorous
- total nitrogen.

8 Chemical storage

This ERA involves bulk storage of all chemicals including crude oil and petroleum storage that was a separate ERA under the *Environmental Protection Regulation 1998*. It covers dangerous goods, Class 3, Class 2 (division 2.3) and Class 6 (division 6.1) under the Australian Dangerous Goods Code, seventh edition, and class C1 and class C2 combustibles and flammables under the Australian Standard 1940: The storage and handling of flammable and combustible liquids).

The use of a vehicle to transport chemicals does not constitute storage while the vehicle is located on the road or a public place.

This ERA includes on-site handling so that tank filling and chemical dispensing can be appropriately conditioned at the site of chemical storage. This has been included at the request of local government who sought clarification that fuel dispensing activities can be managed on the site of petrol stations. Pipes are not included in this ERA because of tenure issues associated with development approvals and regulating across different parcels of land.

This activity does not include transporting petroleum under the *Petroleum Act 1923* or pipes under the *Gas Act 1965* as this would significantly broaden the scope of the ERA which is not the intent.

Threshold 3(a) storing 10m³–500m³ of chemicals of class C1 or C2 combustible liquids and class 3 dangerous goods is administered by local government and is the only threshold where combined storage capacity is measured. All others refer to a threshold for single container sizes.

The definitions are intentionally not aligned with the *Dangerous Goods Safety Management Act 2001* because thresholds under the that Act were set for a different purpose (safety) and are not appropriate for the environmental regulation required under this ERA.

The main emissions of interest are—

- volatile organic compounds
- greenhouse causing gases
- carcinogens.

9 Hydrocarbon gas refining

This ERA involves refining natural gas or coal seam methane gas. This ERA does not include gas collection from sewage treatment plants as the collection of gas from those activities may be conditioned as part of that ERA.

Mixtures of gases such as LPG are included.

The main emissions of interest are—

- oxides of nitrogen
- volatile organic compounds
- carcinogens.

10 Gas producing

This ERA consists of manufacturing, processing or reforming hydrocarbon gas.

The focus is on the process that produces fuel from coal gas.

It does not include collection of gas from sewage treatment plants or decomposition of organic waste from waste management activities as the collection of gas from those activities may be conditioned as part of that ERA.

The main emissions of interest are—

- sulfur dioxide
- oxides of nitrogen
- carbon monoxide
- volatile organic compounds.

11 Oil refining or processing

This ERA involves refining crude or shale oil. Oil refining or processing also includes petroleum refining.

The threshold categories remain the same as the *Environmental Protection Regulation 1998*.

The main emissions of interest are—

- sulfur dioxide
- oxides of nitrogen
- particulates (PM10)
- volatile organic compounds
- halogens
- carcinogens
- total nitrogen.

12 Plastic product manufacturing

This ERA involves manufacturing plastics, foams, composite plastics or rigid fibre-reinforced plastics such as fibreglass. Examples of plastic products include plastic matting, furniture and inputs into the construction and automotive industry. This activity also includes bioplastics (i.e. plastics formed from polymers of living renewable organisms) due to the potential environmental harm from polymerisation and chemical processing activities and the process of rotomoulding.

Composite plastics may include materials such as epoxy coatings, carbon fibres and resins.

Foam may include foam sandwich products.

This ERA is administered by the local government for the area.

The main emissions of interest are—

- volatile organic compounds
- carcinogens
- organohalogenes.

13 Tyre manufacturing or retreading

This ERA includes both manufacturing tyres and the retreading of tyres. Tyre manufacturing or retreading includes processes such as vulcanising and moulding rubber tyres and tyre treads as well as production of casings.

Retreading is intended to pick up the action of ‘retreading’ (i.e. affixing the retread onto a wheel) rather than the manufacture of ‘retread’.

The main emissions of interest are—

- volatile organic compounds
- carcinogens.

Part 3 Energy related services

14 Electricity generation

This ERA involves generating electricity by using fuel.

Examples of activities that fall into this category are a coal-fired boiler to generate electricity and a biomass facility. Biomass fuels are captured under the threshold ‘other fuel’.

Generating electricity through co-generation processes while undertaking another ERA is not captured because co-generation will be conditioned as part of the other ERA. An example of this is co-generating electricity in sugar refineries.

Renewable technologies such as solar and wind are not captured in this ERA as they do not use a fuel. Further, the EPA does not regulate such renewable technologies as they do not release emissions.

The main emissions of interest are—

- sulfur dioxide
- oxides of nitrogen
- particulates (PM10)
- carbon monoxide
- cyanuric acid (CYA)
- volatile organic compounds
- halogens
- metals
- carcinogens

- persistent organic pollutants
- total nitrogen.

15 Fuel burning

This ERA includes operating equipment capable of burning more than 500kg of fuel per hour. It captures activities producing steam for such purposes as sterilisation or hot water production.

The threshold of 500kg or more per hour refers to the cumulative capacities of fuel burning equipment for an activity.

There are some exemptions for standby generators operating less than 200 hours a year. For example, standby generators in hospitals operating under this limit are exempted. The operation of emergency mobile equipment is also exempted and an example of this is a standby generator used in times of cyclone (or as part of training activities for emergency response personnel who are practicing and preparing for an emergency).

Also an operator is not required to be licensed under this category if they undertake fuel burning as an integral part of another ERA (e.g. asphalt manufacturing or mineral processing). In those circumstances, the fuel burning aspect of the activity will be conditioned as part of the other ERA.

The main emissions of interest are—

- volatile organic compounds
- halogens.

Part 4 Extractive activities

16 Extractive and screening activities

This ERA covers all types of extraction including dredging, extraction from dry areas and screening and crushing extracted materials.

Under the *Environmental Protection Regulation 1998*, the ERAs of extraction, dredging and screening were separate ERAs. These activities are now combined in a single category, recognising that in practice, industry usually undertakes a combination of these activities at any 1 time.

However, the activities have different aggregate environmental scores, reflecting the different impact of these activities.

Dredging includes extraction of mud, sand, coral, ballast, shingle, gravel, clay, earth and other material from the bed of Queensland tidal and non-tidal waters. Dredging does not include the banks of a waterway. Dredging less than 1000 tonnes of materials has been deleted and this will have the effect of deleting small scale maintenance dredging activities. Dredging in a canal area to the listed thresholds would be regarded as an ERA because the canal is connected to naturally occurring surface waters.

Screening materials includes processing of dredge material or other extractive material, processed to achieve specific sizes and removal of undesirable impurities. All of these are natural materials. Screening may include pug mills that reach these thresholds of pugging (a milling activity used to transform clay or similar materials (with lumps or rocks) into a smooth consistency for use in pottery and ceramics industry). Mobile and temporary screening operations will be included if they meet the thresholds.

Extraction from the banks of waterways will be licensed as ‘extraction’ only if the activity meets the threshold of 5000 tonnes. Low level extractive activities (i.e. less than 5000 tonnes of rock or other material) have been deregulated with the exception of extraction within these thresholds from wild river areas. This is to ensure that low level extractive activities in these areas continue to be regulated and the government can meet its obligations under the *Wild Rivers Act 2005*.

Note that if an extraction activity is directly associated with or facilitates or supports prospecting, exploration or mining, then the activity will be licensed under the environmental authority for the mining project. If extraction is surplus to the mining activity and sold or used off-site, it is no longer regarded as directly associated, facilitating or supporting the mining activity and cannot be captured by the environmental authority. It then becomes a chapter 4 activity (by definition) because it is not a mining activity. Therefore a development approval for the chapter 4 activity—extraction would be required in addition to the Environmental Authority these circumstances.

The main emissions of interest are—

- oxides of nitrogen
- particulates (PM10)

- volatile organic compounds
- metals
- halogens
- carcinogens
- total suspended solids.

Part 5 Fabricated metal product activities

17 Abrasive blasting

This ERA involves cleaning equipment or structures on a commercial basis using a stream of abrasives. The ERA also encompasses spraying a protective coating on blasted equipment or structures so that a separate approval for surface coating is not needed. The environmental impact from spray coating the objects will be addressed through the approval for abrasive blasting.

Abrasive blasting includes the use of slag, sand, or shot in wet or dry pressure streams but focuses on the contaminants being contained on the surface and released, not the method of blasting.

This ERA applies to any site, whether fixed or mobile.

This ERA is administered by local government for the area.

The main emissions of interest are—

- volatile organic compounds.

18 Boilermaking or engineering

This ERA involves boilermaking or assembling, building or manufacturing metal products. It includes aircraft and boilermakers.

Boilermaking includes welding, riveting and cutting metal plate to form structures including trusses, beams, pressure vessels, boats, caissons and similar products. A bottom threshold has been introduced to clarify that non-commercial activities will not be regulated.

This ERA is administered by the local government for the area.

The main emissions of interest are—

- carcinogens.

19 Metal forming

This ERA involves forming metal into a shape by any method. Examples include protection of roof guttering and roofing material. A bottom threshold has been introduced to exclude low scale operations and artisan activities.

This ERA is administered by the local government for the area.

20 Metal recovery

This ERA involves recovering metal through operating a scrap metal yard or dismantling automotive or mechanical equipment.

There is a low threshold for small operations with a fragmentiser, and a threshold for operations that do not operate a fragmentiser. A fragmentiser is a machine used to crush, break apart and divide vehicles into fragments.

This ERA is administered by the local government for the area.

The main emissions of interest are—

- volatile organic compounds.

21 Motor vehicle workshop operation

This ERA involves operating a workshop for maintaining or repairing motor vehicles or rolling stock. Covers all ‘motor vehicles on wheels’ (e.g. ride-on mower workshops if they meet the thresholds).

This ERA includes rolling stock in rail yards and repairs to the motor, transmissions, suspension, wheels, loading and unloading equipment and body repairs, window glass, upholstery and flooring. It does not include railways in theme parks.

An exemption applies for facilities provided solely for the purpose of washing vehicles to prevent the spread of weed species, operators such as breakdown recovery service (e.g. RACQ) and a service for replacing hoses.

Rolling stock is included in this ERA as the ERA for Railway Facility under the *Environmental Protection Regulation 1998* has not carried over to this regulation. Accordingly, maintaining and repairing rolling stock will now be covered by this ERA but this component will be administered by the Environment Protection Agency.

The remainder of this ERA is administered by the local government for the area.

The main emissions of interest are—

- volatile organic compounds.

Part 6 Food processing

22 Beverage production

This ERA involves producing alcoholic (e.g. wine and beer) and non-alcoholic (e.g. soft drink and cordial) beverages.

This ERA has increased the threshold as alcoholic beverage operations with a production capacity of less than 1 million litres per year are exempt.

Under the *Environmental Protection Regulation 1998* the thresholds were greater than 400000 litres per year for alcoholic beverages and 200000 litres per year for non-alcoholic beverages.

The main emissions of interest are—

- sulfur dioxide
- oxides of nitrogen
- volatile organic compounds
- halogens
- carcinogens.

23 Bottling and canning

This ERA involves the process of bottling or canning food. The threshold of more than 200 tonnes per year remains the same. This ERA does not

include bottling or canning included under another ERA (for example, beverage production) or bottling water.

The aggregate environmental score includes emissions from fuel burning involved in this activity.

The main emissions of interest are—

- volatile organic compounds
- halogens.

24 Edible oil manufacturing or processing

This ERA involves processing of edible oil (e.g. vegetable oils such as from corn, soybeans, peanuts, cottonseeds, safflower seeds and sunflower seeds) or oilseed. The threshold of 1000 tonnes per year is still the same but has been clarify to focus on the throughput amount.

The main emissions of interest are—

- halogens.

25 Meat processing

This ERA involves processing or rendering meat or meat products. This includes meat processing for human and for animal consumption. Under the *Environmental Protection Regulation 1998*, there was an ERA for pet, stock or aquaculture food manufacturing which has removed from this regulation. Those aspects of pet, stock or aquaculture food manufacturing that involve meat processing will now be included in this ERA if they meet the threshold amounts.

This ERA includes abattoirs and rendering operations (i.e. cooking and drying of fatty wastes from abattoirs, cooking oils, animal wastes). This ERA does not include processing meat or meat products involving only chilling, curing, drying, freezing, packaging or smoking the meat or meat products or processing meat or meat products in retail premises including butcher shops and supermarkets.

The main emissions of interest are—

- oxides of nitrogen
- halogens

- total nitrogen
- volatile organic compounds.

26 Milk processing

This ERA involves the manufacturing or processing, including separating and evaporating, of milk, evaporated or condensed milk, butter, cheese and ice cream. Some farm operations include preliminary processing in bulk prior to the milk being sent to a factory or plant for secondary processing (processing, bottling and/or packaging ready for sale). In these instances, a farm operation will not require regulation under this ERA. If secondary processing happens on a farm above 200 tonnes per year, it will be regulated under this ERA.

The threshold remains the same as in the *Environmental Protection Regulation 1998*.

The main emissions of interest are—

- halogens
- total phosphorous
- total nitrogen.

27 Seafood processing

This ERA involves processing seafood for any purpose (e.g. human and animal consumption or non-consumption purposes). This ERA does not include processing seafood involving only chilling, curing, drying, freezing, packaging or smoking the seafood.

Under the *Environmental Protection Regulation 1998*, there was an ERA for pet, stock or aquaculture food manufacturing. It has been removed from this regulation, however, those aspects of pet, stock or aquaculture food manufacturing that entails seafood processing (for example, cat food or aquaculture food) will now be included in this ERA if they meet the threshold amounts.

The main emissions of interest are—

- total phosphorous
- total nitrogen.

Also of interest are all emissions which consume oxygen as part of their biological or chemical processes.

28 Sugar milling or refining

This ERA involves sugar milling or refining consisting of either crushing or grinding sugarcane or manufacturing sugar or other sugarcane products. Sugar milling may include the cogeneration of power through recovering of excess energy generated through burning of organic mill waste.

This ERA has a threshold of greater than 200 tonnes per year, under which operations are exempt.

The main emissions of interest are—

- sulfur dioxide
- oxides of nitrogen
- particulates (PM10)
- carbon monoxide
- volatile organic compounds.

Part 7 Metal production and mineral processing activities

29 Metal foundry operation

This ERA involves producing ferrous or non-ferrous metal castings. Metal foundry means a place where molten metal is poured into mould to shape castings.

The main emissions of interest are—

- particulates (PM10)
- volatile organic compounds
- carcinogens.

30 Metal smelting and refining

This ERA involves processing ores or impure metals or ore concentrates to produce metal or metalloids. Metal works means smelting of metal ores to produce metal. Metalloids mean an element that is both metallic and non-metallic such as arsenic or silicon.

The main emissions of interest are—

- sulfur dioxide
- oxides of nitrogen
- particulates (PM10)
- carbon monoxide
- cyanuric acid (CYA)
- volatile organic compounds
- halogens
- greenhouse causing gases
- metals
- carcinogens
- total phosphorous
- total nitrogen.

31 Mineral processing

This ERA involves processing, mixing or concentrating mineral ores to produce mineral concentrates and increase the metal content in the product. The thresholds remain the same as in the *Environmental Protection Regulation 1998*.

This ERA includes coke producing which has a threshold of 100 tonnes per year. Coke producing was previously a different ERA in the *Environmental Protection Regulation 1998*.

Magnetic separation of magnetite is given as an example of processing mineral products. Another example could include washing coal.

For this ERA, ‘minerals’ has the same meaning as defined under the *Mineral Resources Act 1989*.

The main emissions of interest are—

- sulfur dioxide
- oxides of nitrogen
- particulates (PM10)
- volatile organic compounds
- halogens
- greenhouse causing gases
- metals
- carcinogens
- total nitrogen
- persistent organic pollutants.

Part 8 Miscellaneous activities

32 Battery manufacturing

This ERA involves manufacturing batteries. Battery manufacturing includes manufacture of all types of batteries, except the manufacturing less than 200 tonnes per year of batteries.

The main emissions of interest are—

- carcinogens.

33 Crushing, milling, grinding or screening

This ERA involves crushing general waste to extract resources for reuse or recycling, milling or grinding material. Crushing, milling, grinding, or screening means the processes involved in breaking down material into smaller sized pieces.

General waste may include recovered concrete, steel and other recovered metals, plastics and timber.

Mobile and temporary operations are included.

This ERA does not include crushing, milling, grinding or screening agricultural products or an extractive activity within section 16 of this Schedule. The threshold of 5000 tonnes per year remains the same.

34 Mushroom growing substrate manufacture

This ERA involves manufacturing substrate for mushroom growing. Mushroom growing substrate manufacture means mixing organic materials to prepare substrate for growing mushrooms.

This ERA threshold has increased to exempt manufacturing less than 200 tonnes per year of substrate for mushroom growing.

The main emissions of interest are—

- particulates (PM10)
- volatile organic compounds
- total nitrogen.

35 Plaster manufacturing

This ERA involves manufacturing or processing plaster. Plaster manufacturing includes manufacture of plaster wall and ceiling panels and ornamental plaster castings in works having a design production capacity in excess of the threshold amount.

This ERA threshold has increased to 5000 tonnes per year or more to exclude ornamental plasterers and artisan activities.

The main emissions of interest are—

- carcinogens.

36 Pulp or paper manufacturing

This ERA involves manufacturing pulp or paper products which means pulp, paper, cardboard, moulded paper pulp or similar products manufactured from any organic, recycled or synthetic fibre. This includes virgin organic fibre, recycled fibre or synthetic fibre materials.

The main emissions of interest are—

- sulfur dioxide

- oxides of nitrogen
- volatile organic compounds
- halogens
- carcinogens
- total nitrogen
- metals
- persistent organic pollutants.

37 Printing

This ERA involves printing printed materials. Printed materials include advertising material, magazines, newspapers, packaging and stationery. Printing includes the use of dyes and inks to produce written or pictorial material.

This ERA has a new threshold of 200 tonnes per year which clarifies that non-commercial operations are not regulated under this ERA.

This ERA is administered by the local government for the area.

The main emissions of interest are—

- volatile organic compounds.

38 Surface coating

This ERA involves anodising, electroplating, enamelling, galvanizing surfaces or powder coating or painting surfaces at a place. This ERA has a number of exemptions on the basis that the surface coating aspects of those ERAs will be regulated under that ERA (for example, drum and container reconditioning).

This ERA has been broadened to cover wood, plastics and metals and was done at the request of local government during public consultation.

Under the *Environmental Protection Regulation 1998*, the focus was on the throughput of metal products but this regulation focuses on the amount of materials being used in the process, since they are the source of contaminant emissions.

The main emissions of interest are—

- volatile organic compounds
- halogens
- metals
- carcinogens.

39 Tanning

This ERA involves operating a tannery or works for tanning, curing or finishing leather products. Tanning involves processing green hides into leather and includes fish, reptiles and hides of animals. Leather products include cured animal skins or hides or finished leather. This ERA threshold has increased to 100 tonnes per year to clarify that commercial operations will not be included.

The main emissions of interest are—

- volatile organic compounds
- metals.

40 Textile manufacturing

This ERA involves manufacturing carpet, scouring or carbonising wool, milling cotton or bleaching, dyeing or finishing natural fibre or synthetic textiles. Textile manufacturing includes preparatory processes such as washing and cleaning plant fibre, dyeing and spinning in mills. This ERA threshold has increased to 100 tonnes per year to clarify that commercial operations will not be included.

The main emissions of interest are—

- halogens.

43 Concrete batching

This ERA involves producing concrete or concrete products by mixing cement, sand, rock, aggregate or other similar materials. It includes the manufacture of pipes, pavers, concrete building panels and products, ferro-cement boats and concrete tilt slabs. It includes mobile and temporary works.

This ERA threshold has increased to a production of 200 tonnes per year or more.

This ERA is administered by the local government for the area.

The main emissions of interest are—

- volatile organic compounds.

44 Glass or glass fibre manufacturing

This ERA involves manufacturing glass or glass fibre.

Glass or glass fibre manufacturing refers to manufacture of glass in billets, panels and glass fibre in mats or batts.

This item does not include application of glass fibre as a reinforcing substance in manufacture of 'fibre glass' products. This is in ERA 12—plastic product manufacturing.

The main emissions of interest are—

- sulfur dioxide
- oxides of nitrogen
- volatile organic compounds
- halogens
- metals
- carcinogens.

45 Mineral wool or ceramic fibre manufacturing

This ERA involves manufacturing mineral wool or ceramic fibre. Mineral wool or ceramic fibre manufacturing includes manufacture of insulation batts and mouldings.

The main emissions of interest are—

- sulfur dioxide
- oxides of nitrogen
- particulates (PM10)
- volatile organic compounds
- metals
- carcinogens.

Part 10 Sawmilling, woodchipping and wooden product manufacturing

46 Chemically treating timber

This ERA involves using chemicals to treat timber for preservation on a commercial basis. Chemically treating timber includes surface treatment as well as infusion using, for example, pressure to aid penetration. Any quantity of products will be regulated but the term commercial was included to clarify that home businesses and backyard operations treating timber for non-commercial purposes will not be included.

This ERA does not include home activities that use/treat timber.

The main emissions of interest are—

- carcinogens.

47 Timber milling and woodchipping

This ERA involves kiln-drying logs that have been milled and producing timber veneer. Mobile operations conducted for more than 2 consecutive days are included. Mobile mulchers are regulated. Truss plants have been removed from this category because they generate very little waste and do not use glue.

This ERA threshold has increased to 5000 tonnes per year.

The main emissions of interest are—

- volatile organic compounds
- carcinogens
- persistent organic pollutants.

48 Wooden and laminated product manufacturing

This ERA involves fabricating wooden products and manufacturing reconstituted timber products and laminated products. This includes a product made by a cabinet maker, joiner or other woodworker, manufacture of cabinets, furniture, coffins and timber boats, manufacturing plywood, chipboard, veneer and laminated timber.

The manufacturing of laminated products relates to the ‘manufacture of laminate-covered wooden or reconstituted timber products’.

This would involve products where the laminate is fully integrated into the manufacturing process for that product.

Simply applying a sheet of laminate, for example to a kitchen bench top, as might occur in another aspect of this ERA is not considered to be ‘manufacturing a laminate-covered wooden product’. Local government will still be responsible for those activities.

This ERA threshold has increased to 5000 tonnes per year of reconstituted timber products or 100 tonnes per year of wooden products and laminated products. The increase in the threshold is to avoid regulating artisan millers.

This ERA is administered partly by the local government for the area and partly by the EPA.

The main emissions of interest are—

- volatile organic compounds
- halogens
- carcinogens.

Part 11 Transport and maritime services

49 Boat maintenance or repair

This ERA involves operating, on a commercial basis, a boat maintenance or repair facility for maintaining or repairing hulls, superstructure or mechanical components of boats or seaplanes. This includes cleaning or maintaining hulls in water at a boat maintenance or repair facility. This ERA does not include sail making.

The scope of regulation has expanded from the *Environmental Protection Regulation 1998* as this ERA will now regulate cleaning and repair undertaken in a place other than a facility for cleaning, repair and maintenance. An example of this is in-water hull cleaning and propeller cleaning/polishing of large ships in open water. These arrangements ensure greater consistency with the Australian and New Zealand Environment and Conservation Council (ANZECC) Code of Practice for Antifouling and In-water Hull Cleaning and Maintenance. The Environmental Protection Agency has responsibility for this component of the ERA.

The local government for the area administers the remainder of the ERA.

The main emissions of interest are—

- volatile organic compounds.

50 Bulk material handling

This ERA continues to regulate stockpiling, loading and unloading of bulk materials at ports. An example of this may be unpackaged goods such as cereal grain or a mineral ore.

The ERA has been broadened from the *Environmental Protection Regulation 1998* to regulate stockpiling, loading or unloading minerals at a place other than a port. An example is stockpiling coal in an area not covered by a mining lease. The broader scope of this ERA means that coal dust (off the site of a mining lease) can be appropriately managed with environmental conditions.

This ERA does not include loading, unloading or stockpiling materials under an Environmental Authority under the *Environmental Protection Act 1994* in that circumstance.

‘Minerals’ are defined under the *Mineral Resources Act 1989*.

The main emissions of interest are—

- oxides of nitrogen
- particulates (PM10)
- volatile organic compounds
- halogens
- carcinogens.

51 Road tunnel ventilation stack operation

This ERA involves operating a road tunnel ventilation stack. It includes stacks from multi-use vehicle tunnels, but not bus ways. The reason that road tunnel ventilation stacks will be regulated is due to the point source emissions of a concentrated level of particulates to air, at one place.

There is no threshold set for this ERA and it applies to all operations.

The main emissions of interest are—

- oxides of nitrogen
- volatile organic compounds
- carcinogens.

Part 12 Waste management

52 Battery recycling

This ERA involves operating a facility for receiving and recycling or reprocessing any type and any quantity of battery. Battery recycling includes recovery of metal plates used in wet cell and dry cell batteries. This is the same as the *Environmental Protection Regulation 1998*.

53 Composting and soil conditioner manufacturing

This ERA involves manufacturing soil conditioners or conditioned soil. Organic waste includes animal manure and sewage. Note that this activity

now includes facilities that manufacture compost or condition soil on site (the previous definition referred to receiving only).

Soil conditioning manufacturing refers to materials which are used to build the organic content in soils.

Composting manure as part of ERA 2 (intensive animal feedlotting), 3 (pig keeping) or 4 (poultry farming) is exempt because composting manure would be regulated under these ERAs.

The threshold for this ERA has not changed and is still at 200 tonnes per year.

This ERA does not include manufacturing spent mushroom growing substrate.

The main emissions of interest are—

- oxides of nitrogen
- particulates (PM10)
- volatile organic compounds
- total nitrogen.

54 Drum and container reconditioning

This ERA involves operating a facility on a commercial basis for receiving and reconditioning metal or plastic drums or containers. This includes applying a protective coating by spraying cleaned drums or containers. Drum reconditioning includes cleaning of drums by physical and chemical processes, removal of dents and painting. There is an exemption for containers containing regulated waste. There is no threshold for this ERA and it applies to all operations.

55 Regulated waste recycling or reprocessing

This ERA involves operating a facility for receiving, recycling or reprocessing, regulated waste to produce saleable products.

There is no threshold for this ERA and it applies to all operations.

This section incorporates chemical or oil recycling under ERA 78 of the *Environmental Protection Regulation 1998*. Chemical or oil recycling

includes processes used to separate impurities from chemicals and oils by physical and chemical means such as distillation, precipitation or filtration.

This ERA does not include—

- activities carried out under ERAs 25 (meat processing), 34 (mushroom growing substrate manufacture) or 53 (drum and container reconditioning) if the activity is carried out within the specified threshold
- activities carried out under section 52 (battery recycling) or 54 (drum and container reconditioning)
- recycling or reprocessing tyres.

The main emissions of interest are—

- particulates (PM10)
- volatile organic compounds
- halogens
- metals
- organohalogens
- carcinogens.

56 Regulated waste storage

This ERA involves operating a facility for receiving and storing regulated waste. The ERA outlines a number of exemptions to clarify that regulated waste storage should be licensed under the primary ERA (for example, a business operating with a waste disposal ERA will not need a regulated waste storage ERA).

The main emissions of interest are—

- particulates (PM10)
- volatile organic compounds
- organohalogens
- carcinogens.

57 Regulated waste transport

This ERA involves transporting regulated waste in a motor vehicle or transporting on a commercial basis any quantity of regulated waste in any type of motor vehicle.

There are 2 thresholds, 1 for transporting tyres and the other for transporting regulated waste in vehicles (with an increasing scale based on the number of vehicles).

The ERA does not include transporting organic regulated waste for reuse on a farm if transported by the generator of the waste or using a motor vehicle to carry another motor vehicle carrying regulated waste if it malfunctioned. These are not mentioned in the *Environmental Protection Regulation 1998*.

The main emissions of interest are—

- particulates (PM10).

58 Regulated waste treatment

This ERA involves operating a facility that receives regulated waste or contaminated soil from another site and then treats it to render the waste or soil non-hazardous or less hazardous. This ERA does not regulate activities that generate waste on-site and then treat it in-situ. This ERA applies to all operations in the *Environmental Protection Regulation 1998* and is the same as this regulation.

There are a number of exemptions which clarify that this ERA is not required if the activity is regulated under the primary ERA. Note that a landfill may require this ERA if undertaking remediation works for contaminated soil that it receives to the site.

Additional exemptions under this section include using organic regulated waste as stock feed or soil conditioner or fertiliser at or below the beneficial reuse rate in carrying out an agricultural activity and on-site contaminated soil undergoing biological remediation.

This ERA does not include reconditioned drums or containers that are clean and free of residual waste.

The main emissions of interest are—

- particulates (PM10)

- volatile organic compounds
- halogens
- metals
- organohalogens
- carcinogens.

59 Tyre recycling

This ERA involves operating a facility on a commercial basis for receiving and recycling or reprocessing tyres. This ERA does not include manufacturing or retreading of tyres as these activities are regulated under ERA 13.

Tyre recycling may include shredding to produce a material used in manufacture of rubber products or playground fill.

One equivalent passenger unit of tyres is 9.5kg. This includes whole or part tyres.

60 Waste disposal

This ERA involves operating a facility for disposing of general waste or regulated waste (whether alone or in combination with general waste). Waste disposal includes landfills for municipal waste and special containment facilities for regulated wastes. It includes bioreactor facilities and monofills (i.e. single use landfills or landfills used for homogenous materials).

‘Clean fill’ has been redefined to be units of less than 100mm to help the intended purpose of the material, which is clean compact fill for reuse.

If a facility is operating a waste transfer station operation and a waste disposal operation on the same site, the facility should be licensed for both environmentally relevant activities.

The main emissions of interest are—

- volatile organic compounds
- halogens
- carcinogens

- persistent organic pollutants
- total nitrogen
- total phosphorous.

61 Waste incineration and thermal treatment

This ERA involves operating a facility for incinerating or thermally treating waste. This ERA includes operating a waste incineration facility or operating a thermal treatment facility which involves the application of heat to any waste or solid fuel manufactured from waste, to produce either a saleable or non-saleable product and/or to render the waste less hazardous for disposal. The thresholds in this section remain the same as under the *Environmental Protection Regulation 1998*.

To recognise the limitations in remote areas, hospitals or similar institutions receive clinical waste from a number of nearby facilities such as small doctor's surgeries and dentists. This ERA would not pick up a hospital that is receiving clinical waste, consolidating it for thermal treatment and thermally treating it for non-commercial purposes.

This ERA is administered partly by the local government for the area and partly by the EPA.

The main emissions of interest are—

- halogens.

62 Waste transfer station operation

This ERA relates to the operating of a waste transfer station on a commercial basis or in the course of carrying on a commercial enterprise. This is a facility used to sort and move waste. The threshold has changed from 20000 tonnes per year to an average quantity of waste received of 30 tonnes per day or 30 m³ per day if the facility operates over a year.

The main emissions of interest are—

- volatile organic compounds
- organohalogens.

Part 13

Water treatment services

63 Sewage treatment

This ERA covers sewage treatment plants over 21 equivalent persons (smaller plants than this are regulated under the *Plumbing and Drainage Act 2002*). A new special flow category has been added and is intended to capture the higher risk, larger pump stations and is referred to in this regulation as sewage pumping stations with a capacity throughput of more than 40KL per hour. Other types of sewage infrastructure such as the pipes carrying sewage from premises for treatment are not included in the ERA.

This ERA does not include off site effluent disposal or solid waste disposal, including beneficial reuse, from a sewage treatment works following transfer of legal responsibility for the effluent or solid waste to a third party (i.e. does not include beneficial reuse).

Sewage treatments are typically part of municipal sewerage systems, or commercial operations such as resorts and private residential developments. They may be operated by the State or a local government, under a contract with the State or a local government, or as a private or commercial activity treating sewage for such activities as resorts or private residential developments.

The equivalent person (EP) is worked using either maximum volume of sewage in litres or the total quality of phosphorus in grams depending of which of the calculations provides the highest EP. Total phosphorus was selected as the basis to determine the equivalent person scale of a sewage treatment plant due to its stability within the sewerage system and the minimal impact of climatic factors which influence other sewage quality parameters such as biochemical oxygen demand or total nitrogen. The use of phosphorus as a surrogate measure of equivalent person load is appropriate across the State.

The main emissions of interest are—

- ammonia
- volatile organic compounds
- organohalogens
- carcinogens
- halogens

- cyanuric acid (CYA)
- metals
- total nitrogen
- total phosphorous.

64 Water treatment

This ERA covers treatment of water for any purpose, including, for example, drinking or industrial use. It does not include water treatment if there is no waste discharged into the environment. In relation to all treatment processes and thresholds, the volume of water means the input volume of water.

Examples of raw water treatment include filtering, sedimentation and occasional disinfection.

Examples of advanced water treatment include recycling water.

Desalination has been clarified and thresholds based on waste water being released to saline or non-saline environments.

The main emissions of interest are—

- ammonia
- halogens
- metals
- total dissolved salts
- total suspended solids.

Schedule 3 Codes of environmental compliance

Part 1 Codes for environmental compliance for, or for aspects of, chapter 4 activities

This part contains a list of codes of environmental compliance for applicable chapter 4 activities. It was originally contained in schedule 6A of the *Environmental Protection Regulation 1998*. The code for a mobile and temporary motor vehicle workshop has been removed because this activity is no longer a schedule 2 ERA. The remaining codes have been updated.

Each code sets out standard environmental conditions.

Applicable ERAs which do not require a development approval, and so would ordinarily escape the imposition of conditions, instead have to comply with the relevant codes.

Part 2 Codes of environmental compliance for mining activities

This part contains a list of codes of environmental compliance for applicable mining activities.

Schedule 4 Scheduled local government areas

This schedule lists the local government areas which are classed as scheduled areas. The term ‘scheduled area’ is used in section 21 of this regulation to restrict the delivery of untreated clinical waste to an ERA 60—waste disposal facility to untreated clinical waste generated in a scheduled area only. It is also used in ERA 60 to identify 1 of the activities which qualifies as a waste disposal facility.

Schedule 5, level 1 petroleum activities and their aggregate environmental scores

Schedule 6 lists the level 1 petroleum activities and their associated aggregate environmental scores. There are eight such activities. A person intending to carry out a level 1 petroleum activity must apply for an environmental authority under section 102 of the *Environmental Protection Act 1994*. This is in addition to any permit or licence required under the federal and state petroleum legislation.

These activities have been moved from schedule 1 of the *Environmental Protection Regulation 1998*. Many of these activities have been separated into different items due to their varying potential for environmental harm and the subsequent difference in aggregate environmental scores and annual fees.

1 Geological storage of carbon dioxide

The main emissions of interest are—

- greenhouse gases.

2 A petroleum activity authorised under the Petroleum (Submerged Lands) Act 1982

This item lists a petroleum activity that was in the *Environmental Protection Regulation 1998* but has been separated out as a separate activity in this regulation.

The main emissions of interest are—

- oxides of nitrogen

- volatile organic compounds
- carcinogens
- total nitrogen
- metals.

3 A petroleum activity that is likely to have a significant impact on a category A or B environmentally sensitive area.

This item lists a petroleum activity that was in the *Environmental Protection Regulation 1998* but has been separated out as a separate activity in this regulation. Category A and B environmentally sensitive areas are defined in sections 25 and 26 of this regulation.

The main emissions of interest are—

- oxides of nitrogen
- volatile organic compounds
- carcinogens
- total nitrogen
- metals.

4 Extending an existing pipeline by more than 150km under a petroleum authority

This item lists a petroleum activity that was in the *Environmental Protection Regulation 1998* but has been separated for the petroleum activity related to constructing a pipeline.

The main emissions of interest are—

- volatile organic compounds
- carcinogens.

5 Constructing a new pipeline of more than 150km under a petroleum authority

This item lists a petroleum activity that was in the *Environmental Protection Regulation 1998*.

The main emissions of interest are—

- volatile organic compounds
- carcinogens.

6 A petroleum activity carried out on a site containing a high or significant hazard dam

This item lists a petroleum activity that was able to be regulated in the *Environmental Protection Regulation 1998*.

The main emissions of interest are—

- oxides of nitrogen
- carbon monoxide
- cyanides
- volatile organic compounds
- halogens
- substances causing greenhouse effect
- metals
- organohalogens
- total dissolved salts
- carcinogens.

7 A petroleum activity involving injection of a waste fluid into a natural underground reservoir or aquifer

This item lists a petroleum activity that was able to be regulated in the *Environmental Protection Regulation 1998*.

The main emissions of interest are—

- total nitrogen
- metals
- total dissolved salts
- carcinogens.

8 A petroleum activity, other than a petroleum activity mentioned in items 1 to 7, that includes a chapter 4 activity for which an aggregate environmental score is stated

This item lists a petroleum activity that was in the *Environmental Protection Regulation 1998*.

The main emissions of interest are—

- oxides of nitrogen
- volatile organic compounds
- carcinogens
- total nitrogen
- halogens
- metals.

Schedule 6 Aggregate environmental scores for level 1 mining projects

Schedule 6 lists the level 1 mining projects and their associated aggregate environmental scores. A person intending to carry out a level 1 mining activity must apply for an environmental authority under section 155 of the *Environmental Protection Act 1994*. This is in addition to any permit or licence required under the federal and state mining legislation.

Many of these activities have been separated into different items due to their varying potential for environmental harm and the subsequent difference in aggregate environmental scores and annual fees.

1 Drilling, costeaning, pitting or carrying out geological surveys causing significant disturbance

This item lists an activity that was a mining activity under the *Environmental Protection Regulation 1998*.

The main emissions of interest are—

- particulates (PM10)
- total suspended solids
- metals.

2 Investigating the potential development of a mineral resource by large bulk sampling or constructing an exploratory shaft, adit, or open pit

This item lists an activity that was a mining activity under the *Environmental Protection Regulation 1998*.

The main emissions of interest are—

- particulates (PM10)
- carcinogens
- total suspended solids
- metals.

3 Mining bauxite

This item lists an activity that was a mining activity under the *Environmental Protection Regulation 1998*.

The main emissions of interest are—

- sulfur dioxide
- oxides of nitrogen
- particulates (PM10)
- volatile organic compounds
- halogens
- metals
- carcinogens.

4 Mining mineral sand

This item lists an activity that was a mining activity under the *Environmental Protection Regulation 1998*.

The main emissions of interest are—

- sulfur dioxide
- oxides of nitrogen
- particulates (PM10)
- volatile organic compounds
- halogens
- metals
- carcinogens
- total phosphorous.

5 Mining black coal

This item lists an activity that was a mining activity under the *Environmental Protection Regulation 1998*.

The main emissions of interest are—

- oxides of nitrogen
- particulates (PM10)
- volatile organic compounds
- halogens
- metals
- carcinogens.

6 Mining iron ore

This item lists an activity that was a mining activity under the *Environmental Protection Regulation 1998*.

The main emissions of interest are—

- oxides of nitrogen
- particulates (PM10)
- volatile organic compounds
- halogens

- metals
- carcinogens
- total nitrogen.

7 Mining nickel ore

This item lists an activity that was a mining activity under the *Environmental Protection Regulation 1998*.

The main emissions of interest are—

- sulfur dioxide
- oxides of nitrogen
- particulates (PM10)
- volatile organic compounds
- metals
- carcinogens
- total nitrogen.

8 Mining gold ore

This item lists an activity that was a mining activity under the *Environmental Protection Regulation 1998*.

The main emissions of interest are—

- sulfur dioxide
- oxides of nitrogen
- particulates (PM10)
- cyanuric acid (CYA)
- volatile organic compounds
- metals
- halogens
- carcinogens
- total nitrogen.

9 Mining copper ore

This item lists an activity that was a mining activity under the *Environmental Protection Regulation 1998*.

The main emissions of interest are—

- sulfur dioxide
- oxides of nitrogen
- particulates (PM10)
- carbon monoxide
- cyanuric acid (CYA)
- volatile organic compounds
- metals
- halogens
- carcinogens.

10 Mining lead, silver or zinc separately or in any combination

This item lists an activity that was a mining activity under the *Environmental Protection Regulation 1998*.

The main emissions of interest are—

- oxides of nitrogen
- particulates (PM10)
- volatile organic compounds
- halogens
- metals
- carcinogens
- total nitrogen.

11 Mining metal ore, other than a metal ore mentioned in item 3, 4, 6, 7, 8 , 9 or 10

This item lists an activity that was a mining activity under the *Environmental Protection Regulation 1998*.

The main emissions of interest are—

- oxides of nitrogen
- particulates (PM10)
- volatile organic compounds
- halogens
- metals
- carcinogens
- persistent organic pollutants
- total nitrogen.

12 A level 1 mining project, other than a level 1 mining project mentioned in items 1 to 11

This item lists an activity that was a mining activity under the *Environmental Protection Regulation 1998*. These are mining projects that do not comply with the prescribed criteria in sections 29 to 32 of this regulation.

The main emissions of interest are—

- oxides of nitrogen
- particulates (PM10)
- volatile organic compounds
- halogens
- metals
- carcinogens
- total nitrogen.

Schedule 7 Regulated waste

Schedule 7 provides a list of substances classed as regulated waste for the purposes of the chapter 4 activities in ERA sections 55 to 58.

There are a number of activities which involve, in some way, a substance or substances listed in this schedule. Due to the nature of the substances, it is prudent to regulate these activities. The treatment, storage, or transport of regulated waste will need to be notified to the administering authority because regulated waste is a prescribed waste as per section 67 of this regulation.

Activities involving regulated waste may also warrant listing of the relevant land/premises as contaminated land on the environmental management register.

This schedule contains an improved list of regulated wastes from schedule 6 of the *Environmental Protection Regulation 1998*.

Schedule 8 Prescribed organisations

Schedule 8 contains a list of organisations whose members must be used in the conduct of certain activities. There are 5 such activities. Three of these relate to contaminated land matters, and the remaining 2 relate to fees.

The activities which relate to contaminated land matters are listed in section 66 of this regulation and include—

- a site investigation under section 381 of the *Environmental Protection Act 1994*
- the preparation of a validation report under section 395 of the *Environmental Protection Act 1994*
- the preparation of a site management plan for section 410 of the *Environmental Protection Act 1994*.

The remaining 2 activities relate to a reduced fee in some circumstances for a holder of an environmental authority, development approval or registration certificate. Section 122 of this regulation defines ‘an appropriately qualified person’ as a member of 1 of the organisations

mentioned in schedule 8. If a person claims a discount for an approved EMS, they must submit a statutory declaration stating compliance with the environmental management system and the conditions of their environmental authority or development approval. If a discount is claimed for a lower emissions score, a statutory declaration which details the lower emission score and verifies the data used to calculate the lower emission score. The declaration must be submitted by an appropriately qualified person.

The member of an organisation on the list who conducts any of the above activities must have qualifications and experience relevant to its conduct. This is the guiding factor in choosing an organisation from the schedule to conduct those activities.

The list is reproduced from schedule 8A of the *Environmental Protection Regulation 1998*.

Schedule 9 Prescribed water contaminants

Schedule 9 provides a list of substances prescribed as water contaminants for the purposes of chapter 8, part 3C of the *Environmental Protection Act 1994* (Offences relating to water contamination), in particular sections 440ZF (Prescribed water contaminants) and 440ZG (Depositing prescribed water contaminants in waters and related matters).

Local governments will be devolved responsibility for the administration and enforcement of provisions in part 3C of the *Environmental Protection Act 1994*.

This schedule has been revised to account for contaminants prohibited for deposit, release or build-up in a roadside gutter, stormwater drain or water under sections 31 and 32 of the *Environmental Protection (Water) Policy 1997*.

This schedule is purposefully broad to reduce uncertainty both for the potential offender (residential, commercial or industrial) and for compliance and enforcement purposes. It has been compiled so that all likely potential contaminants are described either chemically or on the basis of activity/production (unless covered by other legislation e.g. radioactive substances).

This schedule is informed by, and as far as possible consistent with, lists used interstate (such as schedule 3 of the NSW *Protection of the Environment Operations (General) Regulation 1998*) to reduce regulatory inconsistency for businesses with potential cross-border interests such as the construction industry.

‘Chemical’ is defined in the dictionary in schedule 12 of this regulation.

Schedule 10 Fees

Schedule 10 provides the application, transfer, amendment and late fees associated with a registration certificate, environmental authority and development approval.

It also lists the annual fees for activities that do not have an aggregate environmental score.

Note: Chapter 8 of this regulation contains the rules for when fees are payable. This schedule just lists the amount of those fees.

Schedule 11 Consequential amendments

Schedule 11 makes minor technical, administrative and consequential corrections to the following subordinate legislation—

- *Environmental Protection (Waste Management) Policy 2000*
- *Environmental Protection (Waste Management) Regulation 2000*
- *Integrated Planning Regulation 1998*
- *Stock (Cattle Tick) Notice 2005.*

Schedule 12 Dictionary

Schedule 12 defines the terms used in this regulation.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Environmental Protection Agency.

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