

Environment Protection (Sea Dumping) Amendment Regulations 2001 (No. 1) 2001 No. 199

EXPLANATORY STATEMENT

Statutory Rules 2001 No. 199

Environment Protection (Sea Dumping) Act 1981

Environment Protection (Sea Dumping) Amendment Regulations 2001 (No. 1)

The *Environment Protection (Sea Dumping) Act 1981* (the Act) regulates the dumping of wastes and other matter at sea, in accordance with Australia's international obligations under the *1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972* (the Protocol to the London Convention), and the placement of artificial reefs.

Section 41 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 40 provides that the Regulations may prescribe the fees to be paid in respect of an application for a permit or of any other application under the Act.

The Environment Protection (Sea Dumping) Regulations 1983 (the Sea Dumping Regulations) *inter alia* prescribe fees payable in respect of applications for permits, made under section 18 of the Act, to dump wastes or other matter at sea.

The purpose of the Environment Protection (Sea Dumping) Amendment Regulations 2001 (the Amendment Regulations) was to amend the Sea Dumping Regulations to take account of amendments to the Act, as effected by the *Environment and Heritage Legislation Amendment Act 2000* (the Amendment Act), including by varying the fees payable in respect of applications for sea dumping permits, imposing fees in respect of applications for artificial reef permits, and by making other consequential amendments.

The primary changes affecting the imposition of fees, as a result of implementation of the Protocol to the London Convention, are the removal of the "Special" and "General" permit categories, for which fees were previously prescribed by the Sea Dumping Regulations at \$2,500 and \$5,000, respectively.

The Amendment Regulations prescribed new fees in respect of an application for a permit, based on a graduated scale, as detailed, for the most common type of sea dumping permit applications received, and a flat fee, as detailed, in respect of all other categories.

Specifically, the fees prescribed by the Amendment Regulations are:

- for an application for a dumping permit to dump dredged or excavated material at sea - \$5,500, \$11,000 or \$16,500, depending upon the criteria specified, which relate to the duration of the term of the permit sought, the volume and contamination status of the material which is the subject of the application, and the proximity of the dumping activities to sensitive sites;
- for an application for a dumping permit to dump a platform at sea - \$10,000;
- for an application for a dumping permit to dump a vessel at sea - \$5,000;

- for an application for a dumping permit to bury a deceased person at sea - \$1000;
- for an application for a dumping permit to dump any other material at sea - \$5,000;
- for an application for an artificial reef permit - \$5,000; and
- for an application for a variation to a permit - \$500.

The new fees enable, either part or full, recovery of the costs incurred by the Government in assessing and processing sea dumping and artificial reef permit applications, and applications for variations to permits.

The extensive consultation that was undertaken with industry to determine the appropriate level of fees for applications also examined the likely impacts of the new fees. This examination revealed that, of the options available, a structure of graduated fees, designed to recover assessment costs, was generally supported by industry, and would not significantly affect the economic efficiency or viability of those industries requiring permits.

Furthermore, whilst some of the new fees represent relatively significant increases from those that were previously imposed, they are significantly less than the total costs of the activity for industry, and the availability of long term permits will, in some cases, mean that applicants pay less than they would have paid under the fees previously prescribed for consecutive annual permits.

In other cases, the new fees are generally either at the same level as previously prescribed, or are less than previously payable.

The discretion to waive or remit fees in whole or in part (section 40) remains available to reduce the cost to applicants in appropriate cases.

Other changes to the Sea Dumping Regulations were required either as a consequence of amendments to the Act, or for other purposes, and include:

- Regulation 2A, which previously declared *Australian waters* for the purposes of the Act, was repealed as it was no longer valid given the definition of *Australian waters* currently provided by the Act; and
- Regulation 3, which previously prescribed the information that was required to be submitted in a report by a party seeking to rely on a defence to an offence that existed under the Act prior to the commencement of the Amendment Act, was revised to prescribe the information that must be provided in a report by a party seeking to rely on an 'emergency' exception to an offence as currently provided by the Act under subsection 15(3).

The Regulations commenced upon Gazettal.