

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 57

Environment Protection (Sea Dumping) Act 1981

Environment Protection (Sea Dumping) Amendment Regulations 2009 (No. 1)

The *Environment Protection (Sea Dumping) Act 1981* (the Act) provides for the protection of the environment by regulating dumping into the sea, incineration at sea, artificial reef placements and related matters. The Act prohibits certain actions from being undertaken without a permit.

Section 41 of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all 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 of the Act provides, in part, that the regulations may prescribe fees to be paid in respect of an application for a permit or any other application under the Act.

The *Environment Protection (Sea Dumping) Regulations 1983* (the Principal Regulations) prescribed fees payable for permits to dump dredged or excavated material into the sea (regulation 5) and for certain other applications made under the Act (regulation 5A).

These Regulations amend the Principal Regulations to:

- adjust the fees payable by persons applying for a permit or applying for a variation to a permit under the Act; and
- simplify the fee structure in relation to dredged or excavated material by:
 - removing the distinction between contaminated and non-contaminated materials;
 - removing the distinction between environmentally sensitive and non-environmentally sensitive areas;
 - removing a category of fees based on the time period for which the permit is sought; and
 - amending the category of fees relating to the quantity of material proposed to be dumped, by removing reference to material of 500 000 m³ or more.

The amended fees give effect to the Australian Government Cost Recovery Policy, which requires agencies to set charges to recover the full cost of regulation, where it is efficient to do so. The previous fee structure achieved only partial cost recovery. The amendments were therefore necessary to achieve compliance with current Government policy. The Regulations do not substantially alter existing administrative arrangements.

The previous distinction between contaminated and non contaminated materials in regulation 5 created an unnecessary level of complexity in the permit fee structure. The *National Ocean Disposal Guidelines for Dredged Material* establishes a comprehensive framework for the assessment of the environmental impacts caused

by the disposal at sea of dredged material. The contamination level of material and the environmental sensitivity of proposed dumping areas are currently considered in the permit assessment process under the Act in accordance with these guidelines.

The Regulations combine regulations 5 and 5A, specifying fees for:

- permits for the dumping of two categories of dredged or excavated material into the sea:
 - large scale (greater than 100 000 m³); and
 - small scale (100 000 m³ or less);
- a permit to dump a vessel into the sea;
- a permit to dump a platform into the sea;
- an artificial reef permit;
- a permit to bury a person at sea; and
- the variation of a permit granted under the Act.

Consultation was undertaken with industry groups that will be affected by these amendments, through Ports Australia, formerly the Association of Australian Ports and Marine Authorities (AAPMA). Consultation involved Departmental officers attending by invitation the AAPMA's annual Environment and Sustainability Working Group meeting in 2007. At this meeting industry representatives were briefed on the amendments and the reason for them and were able to provide direct feedback.

Details of the Regulations are set out in the [Attachment](#).

These Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments.

Details of the *Environment Protection (Sea Dumping) Amendment Regulations 2009 (No. 1)***Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations is the *Environment Protection (Sea Dumping) Amendment Regulations 2009 (No. 1)*.

Regulation 2 – Commencement

This regulation provides that the Regulations commenced on the day after they were registered.

Regulation 3 – Amendment of *Environment Protection (Sea Dumping) Regulations 1983*

This regulation provides that the *Environment Protection (Sea Dumping) Regulations 1983* (the Principal Regulations) are amended as set out in Schedule 1.

Regulation 4 – Transitional

This regulation provides that regulations 5 and 5A of the Principal Regulations, which were repealed by these Regulations, continue to apply to permit applications made before the commencement of these Regulations.

Schedule 1 – Amendments**Item [1] – Regulations 5 and 5A**

Regulation 5 of the Principal Regulations prescribed the permit fees applicable for a permit to dump contaminated and non-contaminated dredged or excavated material into the sea. This regulation also set different fees for the length of the permit applied for and distinguished between three classes of material based on quantity. Regulation 5A of the Principal Regulations prescribed the fees applicable for other applications made under the Act.

Item 1 substituted regulations 5 and 5A of the Principal Regulations with new regulation 5. It simplified the permit fee structure by removing the distinctions between contaminated material, environmentally sensitive areas and length of time for which the permit is sought. Furthermore, the fee category for dredged or excavated material of 500 000 m³ or more was removed. A permit for material of this volume is now captured under the category of large-scale dredged or excavated material over 100 000 m³.

Item 1 also amended the fee amount payable for a permit application in accordance with the following table:

Application Type	Previous Permit Application Fee (\$)	Current Permit Application Fee (\$)
Dumping of large-scale dredged or excavated material (over 100 000 m ³)	11,000 - 16,500	23,500
Dumping of small-scale dredged or excavated material (100 000 m ³ or less)	5,500 – 16,500	10,000
Dump a vessel into any part of the sea	5,000	12,700
Dump a platform into any part of the sea	10,000	12,700
Create an artificial reef	5,000	10,000
Bury a person at sea	1,000	1,675
Dumping of other material controlled by the Act	5,000	5,000
Vary a permit granted under the Act	500	860

Item [2] – Regulation 5B

Regulation 5B of the Principal Regulations provided for the time for payment of the fee for an application mentioned in regulation 5 or 5A. Item 2 is of a minor and technical nature and removed reference to regulation 5A as a consequence of the amendments in item 1.

Item [3] – Schedule 2

Schedule 2 to the Principal Regulations specified screening levels for various substances including metals, metalloids and organics, in order to determine if the substance was classified as ‘contaminated’. This item omits Schedule 2 as a consequence of the amendments in item 1, which removed the distinction between contaminated and non-contaminated material.