

Operational Policy

Environmental Protection Act 1994

Amending timeframes of PRC plan transition notices

Operational policies provide a framework for the consistent application and interpretation of legislation and for the management of non-legislative matters by the Department of Environment, Science and Innovation. Operational policies are not intended to be applied inflexibly in all circumstances. Individual circumstances may require a modified application of policy.

1. Purpose

The purpose of this operational policy is to provide clear business rules when considering amendments to progressive rehabilitation and closure plan (PRC plan) transition notice timeframes under section 24AA of the *Acts Interpretation Act 1954* (AI Act).

2. Background

There are transitional provisions relating to the PRC plan requirements in the *Environmental Protection Act 1994* (EP Act). These provisions provide a three-year period from the PRC plan start date (1 November 2019 – 1 November 2022) for the Department of Environment, Science and Innovation (the department) to issue transition notices to all existing site-specific mining environmental authority (EA) holders.

Each transition notice must specify the period, of not less than 6 months, within which the holder must prepare and submit a proposed PRC plan. However, there are no provisions within the EP Act that allow for the period specified on a transition notice to be amended.

Developing a PRC plan that complies with the requirements of the EP Act and the PRC plan guideline may be a significant undertaking for some EA holders, potentially requiring technical investigations and data gathering over a period of many months or even years. In recognition, the department conducts detailed pre-lodgement engagement with each EA holder prior to deciding the relevant timeframe stated in the transition notice. However, there can still be uncertainty in some cases about exactly how long it may take to complete the work required to develop a proposed PRC plan. There is also the potential, given the timeframes stated in the transition notices, that circumstances may change, or unforeseen events may occur, which may impact on the EA holder's ability to comply with a transition notice.

The EP Act contains an offence provision stating that an EA holder must not carry out activities unless there is a PRC plan schedule (PRCP schedule) in place (section 431A). The transitional provisions specify that the section 431A offence does not apply until the earlier of the following:

- The EA holder has a PRCP schedule approved; or
- The EA holder fails to comply with a transition notice (either by not providing a proposed PRC plan in the relevant timeframe, or because the administering authority ultimately refuses to approve the proposed PRC plan).

So, it is reasonable to conclude the following:



Amending timeframes of PRC plan transition notices

- Transition notice timeframes are important because failure to comply will mean an EA holder can no-longer lawfully operate.
- The department should allow a reasonable amount of time for the EA holder to develop a PRC plan that meets the content requirements of the EP Act and PRC plan guideline (ESR/2019/4964)¹. A PRC plan that does not contain sufficient information or meet the content requirements is unlikely to be approved.
- There may be a degree of uncertainty about the time required to develop a PRC plan and unforeseen events may occur which impact on the development of a proposed PRC plan.

For these reasons, it is necessary to consider potential mechanisms to amend or provide flexibility to transition timeframes.

3. Policy Statement

Mechanism for amending a PRC plan transition notice timeframe

Section 24AA of the AI Act states:

If an Act authorises or requires the making of an instrument or decision –

- (a) the power includes power to amend or repeal the instrument or decision; and*
- (b) the power to amend or repeal the instrument or decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.*

The transition notice is an instrument where s. 24AA of the AI Act could be applied. Based on the wording of the transition provisions, it is considered that the “amend” action, rather than the “repeal” (and re-issue) action provides the better approach. Additionally, there are some relevant considerations pertaining to part (b) above, as follows:

- the EP Act states that the period specified on the transition notice must not be less than 6 months. If an extension to the transition time period of less than six months is required, it would be necessary to use s24AA to “amend” the timeframe of the relevant notice rather than repeal and issue the transition notice again.
- the EP Act states that the transition notices must be issued within a three-year period (November 2019 – November 2022), so it follows that s. 24AA could not be used to “amend” or “repeal” (and re-issue) a transition notice outside of this timeframe. However, amalgamated or de-amalgamated EAs may extend outside of the three-year period.

How/when should a mining EA holder request an amendment to a transition timeframe

Mining EA holders should be advised to engage with the department as early as possible if it appears that they will be unable to comply with the timeframe of a transition notice.

There is no “application process” as such and instead, mining EA holders will request that the department consider an amendment to the transition notice to allow further time for preparation and submission of a PRC plan.

All requests **must be made in writing** at least 30 business days prior to the PRC plan submission date specified in the transition notice and include sufficient detail and evidence to enable the department to consider the request appropriately. This includes, but is not necessarily limited to:

- The new timeframe that is being requested for the submission of the PRC plan.

¹ This is the publication number. The publication number can be used as a search term to find the latest version of a publication at www.qld.gov.au.

Amending timeframes of PRC plan transition notices

- A description of the circumstances that have resulted in the request for further time to prepare and submit the PRC plan, including applicable documentary evidence.
- A description of the additional work that is required to enable the submission of a proposed PRC plan that meets the content requirements of the EP Act and the PRC plan guideline (ESR/2019/4964)². This should include as much detail as possible to provide the department with an understanding of the scope of work required and the applicable timeframes associated with each task, and preferably documentary evidence. Where applicable, the EA holder should also describe the options/alternatives that were considered to enable the PRC plan to be completed in the shortest possible time and why the proposed course of action has been chosen.
- A description of any benefits that will be provided by enabling the further time and a description of any risks associated with not providing further time to prepare and submit the PRC plan.

Circumstances where an amendment may be considered

The department invests considerable time discussing PRC plan transition timeframes with each mining EA holder and considers any representation received in deciding the final timeframe for submission. For this reason, the department considers that amendments to transition notice timeframes under s. 24AA of the AI Act should be considered only where exceptional circumstances exist that impact on the EA holder's ability to prepare a PRC plan and these circumstances are outside of the EA holder's control or were not reasonably foreseeable.

These circumstances may include, but are not necessarily limited to:

- Equipment delays (e.g. specialist equipment required to complete investigations for the PRC plan where limited alternatives are available);
- Expert/consultant unavailability (e.g. specialist technical expertise required to input into the PRC plan);
- Works conditional on the outcome of other works (e.g. where certain investigations are required to enable the PRC plan to be prepared but the timeframe for submission is impacted by the outcome of these investigations);
- Amendments to instruments under legislation (e.g. a planning instrument amendment impacts on the intended land use outcomes, requiring further time to carry out consultation or other PRC plan development activity);
- Major EA amendment under assessment or subject to court proceedings where the outcome has a bearing on PRC plan development;
- Health and safety reason (e.g. a major health and safety incident prevents activities from being undertaken/completed or works are required to make the operation safe prior to undertaking works to obtain information to support the PRC plan development); and
- Extreme weather events.

Note that the list above is not intended to be an exhaustive list. It provides examples of circumstances that **may** be compelling grounds for an amendment to the PRC plan transition notice timeframe. The department will evaluate each request on individual merit.

How the department will consider such a request

The department will consider any requests that are received in writing and at least 30 business days prior to the PRC plan submission date specified in the transition notice. Requests to amend a

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Operational Policy

Amending timeframes of PRC plan transition notices

transition notice timeframe where the PRC plan submission date specified in the transition notice has already passed will not be considered. Non-compliance with a transition notice may be subject to enforcement action under the enforcement guidelines.

The department may request additional supporting information and evidence in relation to a request and will consider all supporting information provided. The key considerations about whether a request is likely to be approved or not are the nature of the exceptional circumstances that have led to the request (in particular, were they outside of the EA holder's control and not reasonably foreseeable) as well as the benefits and risks associated with approving or not approving the request.

Likely timeframe for a decision

There is no statutory timeframe applicable for the department to consider a request for an amendment to a transition notice. The department will endeavour to provide a decision within 20 business days of receiving a request or receiving additional information in support of a request.

4. Further information

Legislative obligations relating to the transition process are outlined in Part 27, sections 750 to 756 and 796 to 802 of the EP Act. Legislative obligations relating to the preparation of a PRC plan are outlined in sections 126B, 126C and 126D of the EP Act and in the PRC plan guideline (ESR/2019/4964)³.

Disclaimer

While this document has been prepared with care it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Department of Environment, Science and Innovation should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.

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Version history

Version	Effective date	Comments
1.00	03 August 2021	Document first published
2.00	29 March 2023	Inclusions to reflect added transitional provision to the EP Act as part of the <i>Environmental Protection and Other Legislation Amendment Act 2023</i> .
2.01	4 March 2024	Document rebranded in line with machinery of government changes.

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