



New South Wales

Environmental Planning and Assessment Amendment (ARTC) Regulation 2005

under the

Environmental Planning and Assessment Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Environmental Planning and Assessment Act 1979*.

FRANK SARTOR, M.P.,
Minister for Planning

Explanatory note

The object of this Regulation is to amend the *Environmental Planning and Assessment Regulation 2000* as follows:

- (a) to provide that provisions requiring the Australian Rail Track Corporation Ltd (*ARTC*) to obtain or be furnished with an environmental impact statement in relation to activities for the purposes of ARTC rail infrastructure facilities will have an ongoing effect (commencing on 1 September 2005) if a Code prepared by ARTC and approved by the Minister is not at any time in force in relation to those activities. Currently, those provisions are only in force on a transitional basis,
- (b) to provide that certain activities for the purposes of ARTC rail infrastructure facilities that are partly carried out on land, or partly of a kind, to which *State Environmental Planning Policy No 14—Coastal Wetlands* or *State Environmental Planning Policy No 26—Littoral Rainforests* applies will require an environmental impact statement and may not be regulated by an approved Code,
- (c) to make it clear that special provisions relating to activities for the purposes of ARTC rail infrastructure facilities do not affect any other requirement for ARTC to obtain or be furnished with an environmental impact statement under Part 5 of the *Environmental Planning and Assessment Act 1979* in relation to such facilities,
- (d) to make other minor, transitional and consequential amendments, including an amendment in connection with the commencement of the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005*.

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Environmental Planning and Assessment Amendment (ARTC) Regulation 2005

Explanatory note

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 112 and 157 (the general regulation-making power) and clause 1 of Schedule 6. This Regulation is also made under section 88R of the *Transport Administration Act 1988*.

Environmental Planning and Assessment Amendment (ARTC) Regulation 2005

under the

Environmental Planning and Assessment Act 1979

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (ARTC) Regulation 2005*.

2 Amendment of Environmental Planning and Assessment Regulation 2000

The *Environmental Planning and Assessment Regulation 2000* is amended as set out in Schedule 1.

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Environmental Planning and Assessment Amendment (ARTC) Regulation
2005

Schedule 1 Amendments

Schedule 1 Amendments

(Clause 2)

[1] Clause 244D Definitions

Insert in alphabetical order:

wetlands affected activity means a project for the purposes of ARTC rail infrastructure facilities (other than a project listed in Schedule 1 to *State Environmental Planning Policy (ARTC Rail Infrastructure) 2004*) that, but for clause 5 (2) (b) of that Policy, would include designated development under *State Environmental Planning Policy No 14—Coastal Wetlands* or *State Environmental Planning Policy No 26—Littoral Rainforests*.

[2] Clause 244E Code required for rail infrastructure facilities must be complied with by ARTC

Omit “for which it is not required to furnish or obtain an environmental impact statement” from clause 244E (1).

Insert instead “if a Code is in force under this Part in relation to the activity”.

[3] Clause 244E (4)

Omit the subclause.

[4] Clause 244F Approved Code

Insert after clause 244F (1):

- (1A) The Code is to apply to activities for the purposes of ARTC rail infrastructure facilities, other than activities for which ARTC is required to furnish or obtain an environmental impact statement.

[5] Clause 244G Circumstances in which an environmental impact statement is or is not required for ARTC rail infrastructure facilities (other than wetlands affected activities)

Omit clause 244G (1). Insert instead:

- (1) This clause takes effect on 1 September 2005 or on such later date as the Minister may approve.

[6] Clause 244G (2)

Insert “(other than an activity for which an environmental impact statement must be obtained under section 244H)” after “facilities”.

[7] Clause 244G (3)

Omit the subclause. Insert instead:

- (3) However, an activity for those purposes is not a prescribed activity for the purposes of section 112 (1) of the Act if:
 - (a) the Minister gives written notice to ARTC that the activity is not an activity covered by subclause (2), or
 - (b) an approved Code is in force in relation to the activity, or
 - (c) an exemption is in force under clause 244E (2) in relation to the activity.

[8] Clause 244G (5)

Insert after clause 244G (4):

- (5) This Division does not affect any requirement (other than a requirement arising under this Division) arising under Part 5 of the Act in relation to an activity for the purposes of ARTC rail infrastructure facilities.

[9] Clauses 244H–244J

Insert after clause 244G:

244H Wetlands affected activities that require environmental impact statements

- (1) For the purposes of section 112 (1) of the Act, a wetlands affected activity is a prescribed activity for which an environmental impact statement must be furnished or obtained.
- (2) Subclause (1) does not apply to a wetlands affected activity if the only part of the project concerned that relates to land and development affected by *State Environmental Planning Policy No 14—Coastal Wetlands* or *State Environmental Planning Policy No 26—Littoral Rainforests* concerns the maintenance or operation of rail infrastructure facilities.

244I Existing environmental impact statements and assessments

To avoid doubt, the preparation of an environmental impact statement and any other thing done under Part 5 of the Act before the commencement of this clause in connection with rail infrastructure facilities or a wetlands affected activity are taken to have been done for the purposes of the preparation of an environmental impact statement or other thing under that Part as a result of the operation of this Division.

244J Continuing application of Division 4 of Part 5 of Act to Sandgate rail project

- (1) This clause is made under clause 1 of Schedule 6 to the Act, as a consequence of the enactment of the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005*.
- (2) The clause relating to pending or previous matters under Division 4 of Part 5 of the Act, as inserted in Schedule 6 to the Act by Schedule 1 [33] to the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005*, applies to the Sandgate rail project in the same way as it applies to an activity for which the Minister's approval was sought under Division 4 of Part 5 of the Act before its repeal.
- (3) To avoid doubt, an application for the Minister's approval in relation to the Sandgate rail project may be made under Division 4 of Part 5 of the Act, and that Division continues to apply to any such application, as if the Division had not been repealed.
- (4) In this clause:
Sandgate rail project means the proposed project relating to a grade separation of the rail lines at Sandgate, as described in the environmental impact statement for the Sandgate Rail Grade Separation, prepared by GHD Pty Ltd and dated 18 March 2005 (as modified by the Representations Report for the Sandgate Rail Grade Separation prepared by GHD Pty Ltd and dated July 2005).