

Draft Environment Protection (Scheduled Premises and Exemptions) Regulations 2007

Under the Environment Protection Act 1970 premises which have the potential for significant environmental impact are subject to works approvals (for construction or modification of facilities or processes) and/or licences (for operating conditions, discharge limits, monitoring and reporting requirements). The Environment Protection (Scheduled Premises and Exemptions) Regulations 1996 list the premises that are subject to works approval and/or licensing by the EPA, and provide for exemptions in certain circumstances.

The 1996 Regulations were due to expire on 15 July 2007 and were therefore under review. As part of the review, the Draft Environment Protection (Scheduled Premises and Exemptions) Regulations 2007 were available for public comment until 17 May 2007.

The Draft Regulations still prescribe which activities are scheduled for the purposes of the Act and, therefore, may require a works approval and/or licence. But as a result of the review there are two major differences:

- The existing six categories of scheduled premises have been combined into one, and
- Companies with multiple scheduled premises can now hold one amalgamated licence, rather than separate licences for each premises (as of 1 July 2007).

The bulk of sites that currently require a licence and works approval under the 1996 Regulations are covered by the 2007 Regulations. New activities include carbon capture and storage, container washing, composting, intensive bird industries and waste to energy.

The Draft Regulations only remove works approval and licensing requirements where there is either a demonstrated reduced environmental risk or where EPA is satisfied that environmental outcomes will be effectively achieved through other more appropriate regulatory mechanisms. For example a new exemption applies for small sewage treatment plants that discharge solely to land. The noise exemption provisions are the only exemption provisions that have materially changed from the 1996 Regulations. These have been modified as it was found that it was still possible at the existing level of acceptable noise to pose potential noise problems.

The Draft Regulations also define the categories of premises that may be subject to financial assurance requirements and the environment protection and landfill levies.

A copy of the Draft 2007 Regulations is available on the EPA website: www.epa.vic.gov.au.

QUEENSLAND

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Steady stream of amendments to Queensland environmental law

There has been a steady stream of amendments to Queensland environmental law during Autumn 2007, including to water, infrastructure, planning and nature conservation laws.

(i) Water reforms

The introduction of level 5 water restrictions in South East Queensland in April 2007;

Additional catchments being subject to water metering;

Bans on new bores for domestic and commercial/industrial use in Toowoomba and Brisbane;

Approval of the Resource Operations Plan for the Great Artesian Basin;

Release of the Logan Basin Water Resource Plan;

Amendment of the Gold Coast Water Resource Plan to reduce the amount allocated for environmental flows;

New guidelines under the Water Regulation for removing vegetation, excavation or placing fill in a watercourse, lake or spring;

A state government discussion paper proposing amending Queensland tenancy laws to make renters responsible for water use as private owners, by allowing landlords pass on the charges for water consumption to encourage tenant water saving, but only if an individual water meter has been attached to the property, and the landlord has installed water wise devices.

(ii) Nature conservation reforms

Changes to the access rights for state forests for four-wheel drivers, motorcycle riders, cyclists and horse riders;

Changes to leasehold land including longer leases being permitted where environmental condition is improved;

A draft crocodile conservation plan under the *Nature Conservation Act 1992* (Qld);

Release of the new Moreton Island Management Plan;

National heritage listing of Fraser Island, the Great Barrier Reef, Kakadu National Park and the Wet Tropics.

(iii) Planning and infrastructure law reforms

Activation of the Environmental Impact Assessment provisions of the *Integrated Planning Act 1997* (Qld), to be used for accredited assessment under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*;

Amendments to the *Integrated Planning Act 1997* (Qld) to facilitate acquisition and subdivision of land for the Traveston Dam on the Mary River;

Amendments to the *State Development and Public Works Organisation Act 1971* (Qld) to hurry along construction of the Traveston Dam;

Release of the updated South East Queensland Regional Infrastructure Plan and Program.

(iv) Local government reforms

Amendments to the *Integrated Planning Act 1997* (Qld) to facilitate proposed local Council amalgamations, including establishment of a Local Government Reform Commission;

Amendments to the *Local Government Act 1993* (Qld) to make elections more transparent and tighten the rules on conflicts of interests and electoral funding disclosures;

New powers under the *Integrated Planning Act 1997* (Qld) for local governments to issue on-the-spot fines for breach of development conditions.

(v) Other reforms

Amendments to the *Electricity Regulation 2006* (Qld) regarding energy efficiency of water heaters;

Amendments to the *Environmental Protection Act 1994* (Qld) to better regulate littering, particularly from motor vehicles, including broader enforcement powers;

Whistleblower reforms to include disclosures to members of Parliament and extend protection to people employed by public sector entities;

Amendments to the *Geothermal Exploration Act 2004* (Qld) to simplify the exploration and production process.

Caselaw update - Appeal in first Queensland climate change case: QCC v Xstrata

In the first ever climate change case to be heard by the Queensland Court of Appeal, the Queensland Conservation Council represented by Environmental Defenders Office (Qld) will appeal the February 2007 decision of the Land and Resources Tribunal. Readers will recall from the last NELR Queensland update that QCC had argued in the Tribunal that a mining lease application by Xstrata Coal should not be approved unless conditions were imposed requiring Xstrata to avoid, reduce or offset its greenhouse gas emissions.

The appeal to the full court of the Court of Appeal is based on a number of grounds including breach of natural justice and mistake of law. The appeal will be heard by the Queensland Court of Appeal on 9 August 2007.

For more information about the appeal, see <http://www.envlaw.com.au/greenhouse.html>.

For updates on other recent Planning and Environment Court and relevant Court of Appeal cases, see Deacons Lawyers' website www.deacons.com.au and follow links to updates by the Environment and Planning section, or Corrs Chambers Westgarth's website www.corrs.com.au and follow links to the Planning Environment and Local Government Practice Area.

SOUTH AUSTRALIA

Rebecca McAulay

Development (Assessment Procedures) Amendment Act 2007

The Development (Assessment Procedures) Amendment Act 2007 came into operation on 26 April 2007 and is a further initiative of the Government to amend the Development Act 1993 ("the Act").

The amendments consist of, but are not limited to, the following:

- The language used in the Act has been simplified. 'Provisional' has been removed from the terms 'provisional development plan consent' and 'provisional building rules consent';
- The maximum penalties have been increased for breaches regarding:
 - Section 44 – General Offences
 - Section 45 – Building Work Offences
 - Section 55 – Removal of work not substantially completed
 - Section 66 – Classification of Buildings
 - Section 67 – Certificates of Occupancy
 - Section 84 – Enforcement Notices;
- Development Assessment Panels must comprise at least one male and one female, with a preference for an equal gender balance, unless otherwise exempted by the Minister;
- Prescribed authorities will now be able to issue enforcement notices under Section 84 of the Act;
- Sustainability of proposed buildings will become a consideration of development assessment; and
- Appeal rights to the Environment, Resources and Development Court have been expanded.

The Act has a number of provisions for which operation is delayed such as:

- The opinion of a prescribed body obtained under Section 37 of the Act may be obtained before a development application is lodged. If the prescribed body is of the opinion that the development application should be granted approval no further referral to that body is then required under Section 37.
- The introduction of a fourth category of public notification, Category 2A, for the notification of adjoining owners and occupiers to land upon which building work is proposed which abuts the common boundary. Notification will be required in prescribed circumstances, providing that the land of the adjoining owner or occupier is used for residential purposes.
- The Swimming Pools (Safety) Act 1972 will be repealed and all swimming pools will be addressed under the Act regardless of the date of construction.

Native Vegetation Variation Regulations 2007

The Native Vegetation Variation Regulations 2007 No. 26 (SA) came into operation on 29 March 2007 amending the existing Native Vegetation Regulations 2003 by including an additional exemption from the requirement to obtain consent in order to clear native vegetation under the Native Vegetation Act 1991.

The new exemption, Regulation 5(1)(ab), enables clearance in the absence of consent from the Native Vegetation Council where an approval has been obtained to undertake a land division for use for residential purposes (after the construction of roads and other infrastructure has been taken into account), provided that certain criteria are satisfied and provided that the clearance is undertaken in accordance with an approved management plan. The exemption will only apply if a payment is made into the Native Vegetation Fund of an amount sufficient to achieve a significant environmental benefit that outweighs the value of retaining the vegetation.