

The legislation includes a number of offences; in summary, it will be an offence for:

- Any person (including master or owner) to apply or re-apply a harmful anti-fouling compound to any Australian ship;
- Any person (including master or owner) to apply or re-apply a harmful anti-fouling compound to any foreign ship in an Australian port, shipyard or offshore terminal;
- The master or owner of a ship that does not comply with the Convention to take the ship to an Australian port, shipyard or offshore terminal;
- The master or owner of a ship that does not comply with the Convention to permit the ship to remain in an Australian port, shipyard or offshore terminal.

NEW SOUTH WALES

Dr Nicholas Brunton

Planning Reforms Discussion Paper

Last week, the Department of Planning released an in depth discussion paper on further planning reform in NSW. In the paper, the Government proposes a number of wide ranging reforms to the NSW planning system to make the planning system easier for families and small business and to tailor planning assessments and pathways to the scale, impact and significance of individual proposals.

The proposed changes include:

Changing the plan-making process

It is proposed to introduce a gateway screening system for land use changes prior to any re-zoning or LEP being commenced. A re-zoning or LEP would need to meet certain criteria. The criteria would vary according to the risks and scale of the re-zoning and apply regardless of whom initiated it. Smaller proposals would be delegated to other authorities. Re-zonings could be either temporary or permanent. There would be different processes for making the re-zonings depending on their scale. For example, small re-zonings could be made without the need for going through the entire plan making process. Private proponents would be required to pay a fee and consultation with State agencies would be provided at the gateway screening stage.

New development assessment regime

It is proposed to introduce a hierarchy of decision making bodies for development proposals. The Minister would delegate the majority of state level applications (other than critical infrastructure) to a newly established Planning Assessment Commission (**PAC**). The PAC could also undertake other planning functions including public hearings and advice to the Minister. Joint Regional Planning Panels (**JRPP**) would be established to determine applications of regional significance. These might include such things as applications by State agencies and development exceeding \$50 million. JRPPs would be modelled on the current Central Sydney Planning Committee. At the local level, Councils could be directed to establish an Independent Hearing and Assessment Panel to deal with certain development eg, a major SEPP 1 variation. These IHAPs would be advisory only and appointed from an accredited register.

For smaller application such as single dwellings and matters worth less than \$1 million, it is proposed to establish a system of planning arbitrators for eg, section 82A reviews and deemed refusals for small matters. The proposals would also introduce “deemed to comply” periods including a ten day period for complying development, twenty days for DAs not requiring exhibition, forty days for small scale development, sixty days for medium scale development and ninety days for development equivalent to designated development.

Exempt and Complying Development

The ambit of exempt and complying development would be extended and mandatory state-wide guidelines developed. Councils could prepare alternate mandatory codes provided they are consistent with the state-wide code and accredited by the Department of Planning. A Complying Development Experts Panel would be established to advise on the guidelines and work with local government. Fully compliant development could be approved by a certifier. If there are minor non-compliances a certifier could also approve the development, subject to council having a seven day period to challenge the approval in which case a DA must be lodged.

More accountable certification of development

There will be measures taken to prevent conflicts of interest including restricting the number of certificates which can be issued by a certifier to any one builder in a calendar year. In addition, only a landowner would be able to appoint a certifier to issue a construction certificate or complying development certificate. With larger projects, the Building Professionals Board would appoint the accredited certifier subject to the developer having a right to object to the first two certifiers proposed.

The accreditation system would be widened so that companies could also be accredited, not just individuals. Councils would also seek corporate accreditation under these rules. The proposal also suggests that consideration be given to allow private certificate of subdivisions.

ePlanning

The Spatial Information Exchange system, already used by the Department of Lands, will be the platform for ePlanning. ePlanning will be pushed by the Department in conjunction with local councils so that development information is available on line and so that certain steps of the development process can be conducted on-line such as lodging objections to DAs.

Discussion

This is a further major overhaul of the planning system by Frank Sartor. It's designed to streamline the development process, especially for local development and reduce delays in assessing and determining DAs.

The Protection of the Environment Operations Amendment (Scheduled Activities and Waste) regulation 2007-**Proposed Changes to schedule 1 of the POEO Act**

The NSW Government is currently exhibiting the Protection of the Environment Operations Amendment Act (Schedules Activities and Waste) Regulation 2007 (the 2007 Draft Regulation).

The 2007 Draft Regulation proposes changes to the licensing of waste activities and waste facilities, as well as changes to the definition of non-waste activities.

The aim of the draft amendments is to align scheduled activities scheduled under the POEO Act with their potential environmental risks, increase consistency and remove duplication between related regulations and acts. The overarching objective is to promote internal and legislative simplicity.

Changes to Scheduled activities

The changes to the definition of 'waste' propose that any substance partly or wholly produced from waste will be 'waste' for regulatory purposes when applied to land or used as fuel. Application to land can occur in any of a number of ways eg, by spraying, injecting or filling.

All substances that are used as fuel will also now be classified as waste.

Proposed changes to licensing and waste classification

The proposed new licensing categories are waste processing, waste storage, waste disposal by application to land and waste disposal by thermal treatment.

In addition, there are proposed changes to the number and names of waste classes and waste assigned to those classes. For example, current waste classifications including 'non-controlled liquid', 'Group A' waste, 'Group B' waste and hazardous liquid and hazardous solid waste will be simplified under new classifications to either 'liquid waste' and 'hazardous waste'.

These categories consolidate the existing categories of waste such as hazardous, industrial and group waste.

The threshold for requiring a licence to generate or store hazardous, liquid or restricted solid waste will be changed. Currently the thresholds vary across the types of waste. The new categories will have a fixed threshold of 5 tonnes of waste.

Existing licenses will continue to apply. However, the EPA has the ability to replace an existing licence with a new licence, whether with or without any variation.

Licence fees will be 8 or 16 units depending on the volume of that waste (noting that in 2007/2008 a unit will be \$100).

Exemptions

Exemptions from waste regulations will be available where it is demonstrated that the proposed use is beneficial and would not cause harm to the environment or human health. Exemptions will also be available for legitimate re-uses of waste, where appropriate. The aim of this aspect of the regulation is to allow for genuine reuse of waste and the management of waste disposal.

Proponents need to apply to the Department of Environment and Climate Change (DECC) for exemptions which can be granted conditionally.

In addition, licensing exemptions have been removed for waste such as animal waste, food waste, natural organic fibrous material, wood waste, garden waste and treated greasetrap waste.

The existing arrangements for the management of bio solids, effluent, stormwater, manure and bulk agricultural crop waste will be maintained.

Changes to asbestos waste management

Changes will be made to the requirements for the transportation, disposal, re-use and recycling of asbestos waste.

The selection and storage of asbestos waste is currently regulated both by the DECC and by WorkCover NSW. It is proposed that the *collection and storage* of asbestos waste will be solely regulated by WorkCover NSW under the current OH&S Regulations. DECC will retain responsibility for regulating the *transport and disposal* of asbestos waste.

There will be a number of changes affecting the way in which landfills manage the disposal of asbestos waste, including the need for prior notification about asbestos waste and the need to immediately cover asbestos waste.

Penalties for mismanaging asbestos waste have also been doubled.

Proposed changes to clinical waste management

New requirements in relation to clinical waste are proposed, if disposing to an unlicensed land facility, or if a person collects waste for disposal at a waste facility that is a landfill site.

Penalties for mismanaging clinical waste have also doubled.