

# **Review of the Protection of the Environment Operations Act 1997**

**Summary of submissions  
and local council survey results**



ENVIRONMENT PROTECTION AUTHORITY

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Environment Protection Authority  
59-61 Goulbourn Street, Sydney.  
PO Box A290  
Sydney South NSW 1232  
Phone: (02) 9995 5000 (main switchboard)  
Phone: 131 555 (information and publication requests)  
Fax: (02) 9995 5999  
Email: [info@epa.nsw.gov.au](mailto:info@epa.nsw.gov.au)  
Website: [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au)

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## **Submissions on terms of reference for the POEO Act Review**

### Who made submissions?

#### *Industry*

Australian Container Reconditioners  
Australian Environment Business Network  
Australian Industry Group  
Australian Lot Feeders Association  
Australian Waste Oil Refineries  
BHP  
Boating Association  
Cammeray Marina  
D'Albora Marinas  
Delta Electricity  
Drum Master  
Energy Australia  
Energy Services Environmental  
Housing Industry Association  
HTT Huntley Heritage  
LV Rawlinson & Associates  
Macquarie Generation  
Murrumbidgee Irrigation  
Northern Professional Fishermen  
NSW Farmers  
NSW Minerals Council  
NSW Pork and Australian Pork Limited  
Tyco Water

#### *Environment/community groups*

Armidale Air Quality Group  
Australian Ethical Research Centre  
CABRA (raising Community Awareness about the Health effects of Burning wood in Residential Areas)  
Environmental Defenders Office/Total Environment Centre/Nature Conservation Council  
Inland Rivers Network  
North Orange Clean Air Coalition  
North Shore Local Area Command Community Safety Committee  
White Bay Noise Committee

### *Government agencies*

Department of Public Works and Services

Environment Australia

NSW Agriculture

NSW Health

Office of the Coordinator General of Rail

Planning NSW

Resource NSW

Roads and Traffic Authority

Sydney Catchment Authority

Sydney Olympic Park Authority

Sydney Water

### *Local councils*

Marrickville Council

North Sydney Council

Randwick City Council

Woollahra Council

### *Individuals*

G Blaschke

S Hanisch

LA du Plessis

M Power

J Tsoukalas

## What did submissions say?

The EPA has used the submissions received to inform the development of proposals outlined in the issues paper. There will be further opportunity to discuss the issues raised in these submissions at the consultation sessions planned for June 2003. The EPA is also holding individual discussions with key stakeholders.

### *POEO Act objectives*

Submissions from industry have suggested that the objectives in the POEO Act need to incorporate environmental outcomes goals, cost-effectiveness considerations and risk management principles. One submission suggested the objectives were more about 'looking behind' than 'looking ahead' and that the language used was restrictive. Other submissions supported the objectives as a means of promoting a range of approaches to environment protection.

### *The licensing regime*

A significant number of submissions suggested that the licensing regime for waste activities and facilities needed to be simplified. Specific comments made about waste included:

- The waste regulatory system needs to be strengthened and simplified to ensure better waste management in Sydney's catchment area.
- Consider extra provisions in the POEO Act for dealing with waste issues, for example, allow monitoring/audit information from licensed premises to be referred to Resource NSW in appropriate circumstances.
- The definition of waste is too broad and encompasses redundant equipment even if it is being sold for direct reuse or if it is being sold as scrap, and can mean that reuse or recycling activities are burdened with the onerous conditions of waste tracking or licensing.
- Definition of clinical waste should be reviewed.
- The definition of waste makes it difficult for industry to assess if they are fully complying with licence conditions and it discourages reuse.
- The adoption of initiatives for beneficial reuse (e.g. waste to energy, waste to asphalt, contaminated soils to structural concrete etc) is difficult under the current legislation. There is a need for plain English guidelines.
- The Act does not provide any specifications for waste materials that have been processed or recycled into non-waste materials and should better define what recycled materials are.
- The Act needs to recognise beneficial reuse of agricultural by-products (offence provision and definitions) and remove the definition of 'owner of waste' in offence provisions which make the producer of organic fertilisers responsible for the actions of customers.
- Concern about the recycling of industrial waste as fertiliser.
- The use of unsuitable wastes for land application (e.g. shampoos, toothpaste, medicine, untreated greasetrap waste) is continuing in the Sydney region and should be prohibited, with the onus on the land application company to identify suitable materials. Determinations should be made by an independent party such as the EPA as to whether a material is suitable for land application. This could be done by amending the Act to identify wastes which are deemed unsuitable for land application, as determined by an independent party.
- The definition of virgin excavated natural material is too prescriptive and impractical for people handling it. Non putrescible bulk agricultural waste doesn't exist and shouldn't be included in the Act. The term 'and no other material' which appears in a number of definitions relating to waste in the Act needs to be clarified as it does not appear to be logical or in keeping with the intent of the Act.
- Mobile plant processing or recycling of oil is not being encouraged in NSW due to uncertainties and barriers in obtaining licences and suitable emission limits.
- Organic or green wastes should be returned as nutrients to soil and not used to generate energy through methane gas production, as the former technology is more sustainable, results in the highest recovered resource, has lower costs, greater waste and greenhouse gas reduction and is better for the Australian environment as it improves the soil.



- Immobilisation approval process under the Regulations can be extremely expensive and very slow. The approvals issued can also be unclear and ambiguous
- Specifications for fuel waste oils or boiler fuels should be set for NSW to ensure cleaner emissions when burnt. Unsuitable untreated waste oils should not be used as fuels.
- All oil filters should be shredded to enable total recycling and ensure that no hydrocarbons are released to landfills and hence to groundwater.

The following comments were made about waste tracking requirements:

- Waste tracking is too unwieldy. Need an online system hosted by the EPA to ensure consistency of documentation without duplication and facilitating periodic auditing and reporting.
- Transportation of waste records should not be required for waste transported between premises occupied by the same entity or person.
- Waste tracking requirements should not require that the location, date of reprocessing and final destination be recorded for specific loads or individual drums, as it is impossible to comply with, and appears unnecessary.
- Waste tracking forms should be changed to make collection and reprocessing of empty containers easier to administer.
- A lower threshold limit for waste tracking requirements should be introduced so trivial items do not need to be tracked, for example, empty liquid paper containers.

A number of submissions raised more general licensing issues. Comments included:

- The individual licence system should remain as it can take into account local environmental issues better than a regulation covering, say, air or water emissions.
- An accredited licence scheme should be introduced for good performers, as in Victoria.
- Industry requires more forewarning of possible post-closure requirements so companies can plan accordingly.
- Pollution Reduction Programs should be mandatory requirements of all licences.
- Independent monitoring should be a mandatory requirement of all licences.
- Licences should require certification and audit of international standard environmental management plans.
- Environmental management plans should be required as conditions of licences and the EPA should consider specifying standard environmental management processes.
- The POEO Act should require the EPA to consider cumulative impacts when granting licences and setting conditions.
- The POEO Act needs to recognise that other activities may impact on a licensee's discharges.
- The term 'Environment Protection Licence' is not appropriate. It can be seen as a licence to pollute.
- Need to review definition of 'proper and efficient' operation.

- Need to review definition of 'fit and proper person'.
- A whole-of-government approach is needed for licensing work in waterways.
- The POEO Act should prevent or resolve conflicting regulatory requirements for emissions control for different media.
- There is a lack of common regulatory standards between States and Territories – a particular problem for mobile operations.

### *The licensing schedule (Schedule 1)*

A number of submissions raised issues concerning Schedule 1. Many of these issues have been addressed in the proposals. The issues raised included:

- Schedule 1 should be consistent with Schedule 3 of the Environmental Planning and Assessment Act 1979 (EP&A Act) to allow for proper public participation.
- Complexity and overlap in definitions. Need to simplify and strengthen waste definitions and ensure they align with environmental impact.
- Major subdivisions, major tourist development and large-scale agriculture should be added to Schedule 1 and Schedule 3 of the EP&A Act.
- Land management activities resulting in diffuse source pollution should be added to the Schedule (some agriculture, land clearing, fertilizer use).
- Construction and operation of dams and weirs should be added to the Schedule.
- All activities at White Bay and car loading at Glebe Island should be on the Schedule.
- Marinas and boat repair facilities should be removed from the Schedule or the threshold should be increased.
- Drum reconditioning activity is poorly defined – need to close loopholes. All drum reconditioning works or activities that recondition, recycle or store packaging containers for business or commercial purposes should be required to be licensed. Administrative fee for small drum reconditioners too high.
- Pig production threshold is too low – not comparable with other Australian industries or overseas counterparts. Limits should be based on standard livestock units rather than population numbers.
- Change to definition of extractive industry required so it does not cover ancillary activities.
- Greater clarity is needed for certain types of construction activity, as the present provisions related to extractive industries are confusing.
- Freeway or tollway definition is too broad and difficult to interpret.
- It is not appropriate to categorise urban water recycling schemes as sewage treatment systems – need to review licensing of these activities.
- Need to examine whether administrative and LBL licence fees exceed the cost of licensing and if so, reduce fees or divert money to support of ARAs and general education.
- The use of recycled materials in road construction (such as crushed concrete, brick or reclaimed asphalt pavement) should be encouraged and should not trigger licensing under the Act.

- Remove the licensing threshold for waste transportation so all commercial waste transporters require a licence.
- The waste licensing provisions are complex, expensive, unfair and impracticable. The licensing requirements for waste generators are too inflexible, with trivial amounts of waste triggering the onerous administrative burdens of licensing and tracking.
- Mobile waste plant processing oil that is not for fee or reward but carried out as part of the maintenance of equipment and to prolong the life of the oil should be exempt from licensing. The financial burden of licensing discourages this kind of materials reuse.
- There should be no distinction between the Sydney region and other areas in respect to the exemption from licensing for the application of solid food wastes. The direct application of the floatable portion of food-derived greasetrap wastes to land should be exempt from licensing.
- Rail industry has changed since the POEO Act was introduced and licensing requirements should be similar to those for roads (i.e. licensing for construction or substantial redevelopment of rail lines but not for operation of the rail network). Removing the licensing requirement for operation of the rail network should be supported by a policy framework for management of noise impacts.

#### *Appropriate regulatory authorities (ARAs)*

Several submissions raised issues about the effectiveness and consistency of ARA roles, suggesting that lack of resources, training and conflicts of interest were a problem especially for local councils. Local government responses to the POEO Act questionnaire confirmed that resources and training are ongoing issues affecting some councils' regulatory capacity (see Summary of Local Government Survey Report on page 10 for more detail).

In other submissions, some extensions to ARA powers were suggested.

A number of submissions said that EPA should retain the overarching authority to intervene.

#### *Community consultation and access to information*

A number of submissions raised the issue of licence review. One industry group suggested the licence review period be extended from 3 to 5 years. Another said more clarity was required about the timeframe for starting and finishing reviews. Other industry groups argued that EPA should be penalised for non-compliance with licence review provisions. A number of environment groups argued that licences should be issued for 3 year periods in order to force a review at that point, with reviews within the 3-year period required if environmental damage might or did occur.

Submissions from environment groups argued that the community consultation and access to information provisions should be further extended to provide the following:

- advertising of and public submissions on the issue, alteration or renewal of all licences
- third party appeals on licensing decisions
- licensing decisions and reasons available on the public register.

Comments made in other submissions included:

- the existing regime on consultation and disclosure provides an important tool in ethical investment
- the Act needs to recognise and support the role played by “beyond compliance” disclosure
- need to ensure information on notices, breaches and penalties is publicly and easily available
- the Government needs to take a more participatory approach to policy development, based on the OECD framework.

### *Compliance and enforcement*

A number of submissions raised concerns about the effectiveness of the POEO Act in dealing with amenity issues generally, and in particular odour and noise. A number of proposals in the discussion paper aim to improve the effectiveness of POEO Act in this regard.

A number of submissions from the agricultural sector raised odour issues including the need to clarify enforcement provisions, particularly for non-scheduled premises, and rectify inequities between non-scheduled and scheduled premises. A common comment was that the offensive odour provisions are subjective and encourage vexatious complaints with high costs for industry. One submission suggested the issue could be addressed through application of the Act (the process for setting defence conditions in licences) rather than legislative amendment.

Environment groups were concerned that the offensive odour provisions are a retreat from the previous standard (which referred to any odour, not just ‘offensive’) and are inconsistent with ecologically sustainable development.

A number of submissions from environment groups, local councils and individuals sought greater powers in the Act to deal with woodsmoke emissions.

A couple of submissions suggested changes to court order provisions. One submission suggested additional court orders could include corporate probation (which would allow the court to insist the corporate defendant undertake satisfactory internal disciplinary action in response to the commission of an offence) and equity fines (whereby shares from a convicted corporation go to a public interest trust fund whose funds are directed to conservation groups). Another submission said that loss of income should be included in court orders for costs.

A number of submissions made comments about waste offences such as:

- existing tools are not effective for illegal dumping
- extend clean-up notices to cover non-polluting events, for example waste dumping
- construction and demolition reprocessors should be able to deal appropriately with unsolicited or unwanted asbestos found in loads without facing enforcement action for breach of licence – more flexibility is required.

A number of other suggestions regarding compliance and enforcement provisions were made in submissions, such as:

- clarify pollution of water offence provision (s120) – for example ‘is a tea-bag pollution?’ - this issue was raised by a number of industries suggested the provision was ambiguous and/or too onerous
- need broader defences for breach of licence

- Tier 1 offences should be tied to serious environmental harm, as in Queensland
- technical breaches not resulting in environmental harm should be a Tier 2(a) offence
- increase chapter 7 offence fines
- clarify the duty to notify pollution incidents (Part 5.7) – definition and interpretation problems
- clarify powers of entry – some suggested these were too broad and should be confined to emergency situations while others suggested they should be widened, for example to provide power of entry to residential premises to disconnect noisy alarms
- need definition of ‘due diligence’
- exemptions (Part 9.1) should not be limited to 5 years
- some improvements to the motor vehicle provisions were suggested, including clarification and tightening defences
- need offence and other provisions to better control billposter advertising, litter and graffiti. Newspapers should be subject to the same anti-litter laws as other advertising materials
- allow councils to keep fines for penalty infringement notices for smoky vehicles. Need gradation of value of penalty infringement notices for water offences
- prevention notices should not be issued for potential to pollute – only actual pollution. Need to define ‘good environmental practice’
- notice administration costs are too high
- administrative costs should be extended to all notices
- improve effectiveness of cost-compliance notices by providing an administrative fee for issue and penalty for non-payment
- ozone related provisions will need to be repealed when Commonwealth ozone legislation is passed
- all scheduled activities should be subject to mandatory audits every three years
- industry be required to publish environmental audits annually, like financial audits
- the Act should include a general environmental duty
- the Act should be amended to provide for civil penalties.

### *Economic measures and incentives*

There was some general support in submissions for the use of economic instruments under the Act. This included support from environment groups, provided such instruments are used to complement, not replace regulatory actions. Some industry submissions said there were not sufficient economic instruments and while a few others suggested there should be clearer processes for developing and reviewing such instruments.

Some industry submissions raised issues regarding monitoring loads under the Load-based Licensing (LBL) Scheme, in terms of the practicality and cost of monitoring, and the process for seeking approval from the EPA for changes to the Load Calculation Protocol. One submission questioned whether LBL should apply to their industry.

Other issues raised in industry submissions included:

- concern with the potential misapplication of powers for financial assurances and suggests that the provisions be amended to provide for additional process and decision-making review safeguards
- green offset schemes should be confined to emissions normally regulated by the EPA
- recycling industry sought exemption from the payment of the levy on residual waste generated by their recycling operations on the basis that, like other exempted waste, recycling residue is unavoidable and that the levy undermines the viability of recycling some materials.

### *Protection of the Environment Policies*

A few submissions commented on PEPs. There was some concern from environment groups that none had yet been made and that their proposed role in control of cumulative impacts has not been fulfilled. It was argued that PEPs should be made enforceable, which would increase their status to equal planning and other instruments. One submission suggested the relationship between PEPs and planning instruments needed to be reconsidered under planFIRST. Others suggested the classification of waters needed to be reconsidered.

Some suggestions in submissions for possible PEPs included odour and noise policies and water quality.

### *Other policy issues*

A number of policy issues were raised in submissions, for example:

- The EPA should develop a pre-licence negotiation policy to address confusion about when a licence is a draft or final.
- Water quality criteria are unclear since the repeal of Schedule 2 of the Clean Water Regulations.
- EPA's noise policies are impractical and expensive.
- Rural noise restrictions are more stringent than urban – due to incorrect application of the industrial noise policy to unrelated activities.
- Noise regulations should be revised to be consistent with Australian design rules.
- Noise control regulations are outdated.
- Noise regulations enforced by councils should stipulate permissible noise levels and not rely on offensive noise test.
- Council findings using 'offensive noise' test are variable and not equitable.
- EPA's odour policy needs to be finalised.
- Review should consider how the Act could make better use of non regulatory approaches, especially for non-scheduled activities.

## Summary of local government survey report

This paper summarises the results of questionnaires regarding the POEO Act which were completed by 93 of 178 local government councils of NSW, a response rate of 54%.

In summary the results of the research are as follows:

- Councils rated the **potential environmental impact of activities** within their local government area on a scale of 1 to 5 with 5 being 'great impact'. The average ratings are:
  - Building construction – 3.5
  - Industrial activities – 3.2
  - Agriculture – 3.1
  - Commercial – 2.8
  - Domestic – 2.7.
- The approach Councils take to **address the above activities** (rated 1 to 5 with 5 being 'use very often') are as follows:
  - Education and persuasion – 4.1
  - Policy and planning instruments – 3.5
  - Enforcement using legislation – 3.3
  - Economic incentives 1.6.
- The most frequently mentioned **environmental issues** in Council areas are:
  - Water management (87% of Councils)
  - Biodiversity (55%)
  - Air quality (34%)
  - Soil contamination (32%)
  - Salinity (29%).
- The significant **pollution prevention or control issues** most frequently mentioned by Councils are:
  - Water pollution (77%)
  - Waste management (60%)
  - Noise pollution (29%)
  - Air pollution (23%).

- The following percentages of Councils **agreed and disagreed** with each of the following statements:

Statement	% Agree	% Disagree
The POEO Act has given our Council <b>effective tools</b> to manage the environmental issues.....	83	16
<ul style="list-style-type: none"> <li>The POEO Act has provided our Council with the means to increase opportunities for the <b>local community to be involved</b> and participate in environment protection .....</li> </ul>	49	41
<ul style="list-style-type: none"> <li>The POEO Act has <b>clarified the regulatory roles</b> of the EPA and local government .....</li> </ul>	78	21
<ul style="list-style-type: none"> <li>The POEO Act has <b>strengthened the regulatory framework</b> for local government environment protection work .....</li> </ul>	90	6
<ul style="list-style-type: none"> <li>The POEO Act has helped to ensure that the <b>community has access</b> to relevant and meaningful information about pollution .....</li> </ul>	50	36
<ul style="list-style-type: none"> <li>The <b>benefits achieved</b> with the POEO Act outweigh the compliance and administrative costs associated with administering the Act .....</li> </ul>	65	22
<ul style="list-style-type: none"> <li>The POEO Act has set a regulatory framework that is <b>flexible</b> enough to accommodate changing circumstances ..</li> </ul>	80	4

- There were generally no major differences between metropolitan and regional/rural Councils in the above responses, although smaller rural councils tended to disagree more with the above statements. (Metropolitan Councils include Sydney, Hunter, Illawarra and Central Coast while all other Councils are included in the regional/rural Councils.)
- 83% of Councils agreed that the POEO Act has **given them an effective tool** to manage environmental issues with similar proportions in metropolitan (82%) and regional/rural Councils (83%) agreeing.
- Councils have appointed an average of 11 **staff** as authorised officers under s187 of the POEO Act. As would be expected, metropolitan Councils have appointed more staff on average than regional/rural councils.
- 46% of Councils have **ongoing issues** in regulating the premises transferred to Councils from the EPA. The most frequently mentioned issues are lack of information on previous licences, inadequate resources, funding or staff. Greater metropolitan and regional councils were most likely to have ongoing issues (64% and 67% respectively). Sydney metropolitan councils and smaller rural councils were least likely to have ongoing issues (50% and 31% respectively).
- 24% of Councils have POEO Act **performance indicators** included in their Management Plan. Metropolitan Councils (36%) were more likely than regional/rural Councils (15%) to have POEO Act performance indicators in their Management Plans.



- 61% of Councils have established a **public register** under the POEO Act. Smaller rural Councils are less likely to have established public registers (41%) than other Councils.
- 44% of Councils have incurred **additional costs** in administering the POEO Act, primarily staff, training and administration costs.
- 46% of Councils regularly use **cost recovery mechanisms** for clean up and prevention notices.
- 32% of Councils don't use cost recovery, primarily because they are not issuing these notices, or they use other methods to 'make the owner pay'.
- Metropolitan Councils are much more likely to regularly use cost recovery mechanisms for clean up and prevention notices (76%) compared to regional/rural Councils (22%).
- 35% of Councils use **Cost Compliance notices** (s104). The main reason for not using them was that cases where such notices would be necessary have not arisen. Metropolitan Councils were much more likely to use cost compliance notices (90%) than regional/rural councils (57%).
- In year 2001-02, an average of **36 penalty notices, 13 clean up notices and 4 prevention notices** were issued per Council under the POEO Act. Significantly more use is made of these notice powers by metropolitan Councils.
- In terms of **air** issues:
  - 5% of Councils use POEO Act tools to address air issues weekly, 39% at least monthly and 38% use them annually
  - Prevention notices are used by 43% of Councils to address air issues. The next most frequently used tool is penalty notices (19%)
  - Industry (42%) and domestic activities (28%) are most frequently targeted
  - Most actions are triggered by responding to an issue only (63%), rather than being program-based.
  - Metropolitan Councils are more likely to use the POEO Act to address air issues and more likely to use prevention notices than regional/rural Councils.
- In terms of **noise** issues:
  - 23% of Councils use POEO Act tools to address noise issues weekly, 45% at least monthly and 23% use them annually
  - Noise control notices (35%) and prevention notices (36%) are used by most Councils to address noise issues
  - Domestic (60%), industry (32%) and commercial activities (25%) are most frequently targeted
  - Most actions are triggered by responding to issues only (74%).
  - Metropolitan Councils are more likely to target industry in regard to noise issues than are regional/rural Councils and are more likely to use noise control notices.

- In terms of **water** issues:
  - 20% of Councils use POEO Act tools to address water issues weekly, 60% at least monthly, and 20% use them annually
  - PINs (39%), prevention notices (27%) and clean up notices (26%) are used by most Councils to address water issues
  - Industry (46%), commercial (27%) and domestic activities (24%) are most frequently targeted
  - Most actions are triggered by responding only (43%) or response and programs (33%).
  - Metropolitan Councils are more likely to use the POEO Act to address water issues and more likely to use PINs and target industry than are regional/rural Councils.
- In terms of **waste** issues:
  - 20% of Councils use POEO Act tools to address waste issues weekly, 58% at least monthly, and 26% use them annually
  - PINs (45%) and clean up notices (39%) are used by most Councils to address waste issues
  - Domestic (48%), industry (35%) and commercial activities (39%) are most frequently targeted
  - Most actions are triggered by response only (60%) or response and programs (20%).
  - Metropolitan and regional/rural Councils are similar in regard to using the POEO Act for waste issues.
- 24% of Councils have **commenced prosecutions** in court under the POEO Act, with the main reason for not commencing prosecution being the use of notices or other enforcement. Metropolitan Councils (41%) were more likely than regional/rural Councils (11%) to have commenced prosecutions under the POEO Act.
- Since the POEO Act commenced, 12% Councils have received **self-reports** under part 5.7 Duty to Notify. The majority of Councils receiving self-reports were metropolitan.
- 27% of Councils had used powers under the **POEO Act** to enter a **residential property**, mostly to investigate pollution incidents and complaints. The main reasons for not using the powers were no requirement to do so and access given. Metropolitan councils (41%) were more likely than regional/rural councils (17%) to use powers of entry.
- Councils say the **main benefits** of the extra powers in the POEO Act are cost recovery (12%), the clean up notices (11%) and greater powers (11%). 13% of Councils said there were no benefits from the extra powers. The **main weaknesses** in implementing the POEO Act are lack of resources, time or staff (8%) and difficulty in recovering administration fees (4%). 22% of Councils said there were no weaknesses in using the POEO Act.