

Our ref: R96/0003-04 Sub-698

Endorsed by LGNSW Board
in June 2022

14 April 2022

NSW Environment Protection Authority
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Via POEOGenReq.Review@epa.nsw.gov.au

Draft Protection of the Environment Operations (General) Regulation 2022

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and associated entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to make a submission on the Draft Protection of the Environment Operations (General) Regulation 2022 as this is a matter of importance to councils and other key stakeholders within the local government sector. LGNSW has consulted with councils and other key stakeholders to help inform the content of this submission.

Background

The NSW Environment Protection Authority (EPA) has reviewed the Protection of the Environment General Regulation 2021 to ensure it is relevant and up to date. LGNSW welcomes the opportunity to make comment on key amendments proposed within the draft regulation as we understand that there are specific amendments which will impact the local government sector.

LGNSW acknowledges and supports the purpose of the amendments which are to:

- Ensure the provisions of the POEO Act can be implemented in an efficient and effective manner.
- Enable the EPA and other appropriate regulatory authorities to more fully recover their costs of administering the POEO Act and the POEO General Regulation.
- Improve the strength and effectiveness of the POEO General Regulation.
- Clarify and simplify the POEO General Regulation.
- Refine definitions and improve the operation of Schedule 1 of the POEO Act.

LGNSW supports the objectives detailed above and endorses any actions that will make implementation of the regulation more effective and efficient. In addition, we support measures to ensure that user pays, and polluter pays principles are applied to relieve any additional cost burden from councils and taxpayers.

LGNSW notes four key changes to the draft regulation which are likely to impact the local government sector.

- The introduction of new licence application fees to enable the EPA to recover its costs to assess licence applications and develop licences.
- Amendments to activity definitions in Schedule 1 of the POEO Act for extractive activities as well as marinas and boat repairs.
- Fee changes to allow for increasing and indexing to maintain fee value over time.
- Clarifying requirements relating to testing of pollution incident response management plans.

These are the four key areas we have responded to below, noting that our comments are supportive of the proposed amendments in line with feedback received from councils.

Response

Licence Application Fee

This proposed amendment relates to section 8 of the current POEO (General) Regulation 2021 and section 19 of the draft POEO (General) Regulation 2022. LGNSW concurs with the implementation of a licence fee to be paid by the applicant when they lodge a new licence application. This represents an improved application of the user pays and polluter pays principles and will enable effective cost recovery for regulatory authorities and relieve the burden on taxpayers.

The Regulatory Impact Statement identifies that the new application fee will better reflect the work of the EPA through the development approval process when processing a licence application. Rather than simply being an administrative fee, the new licence application fee will be reflective of the time and resources required to identify improved outcomes, including those in line with circular economy principles.

It is evident that a number of the objectives contained within the NSW Government's waste and circular economy policies cannot be achieved without additional EPA resources being available to drive change through application assessments. It is noted however that there are many other factors which will continue to influence the shift towards a circular economy, and this is just one positive regulatory measure.

Furthermore it is agreed that improving cost recovery through the implementation of licence application fees will better enable the EPA to further implement strategies to benefit human and environmental health. The implementation of a licence fee paid by applicants is also consistent with other EPA policies.

Extractive Activities

This proposed amendment relates to section 19, Schedule 1 of the POEO Act. We note that an unintended consequence of the 2019 changes to the definition of 'extractive activities' contained within the Act is that some activities presenting a moderate to high environmental risk were no longer required to hold a licence. These activities included:

- Quarries operated by local councils where the extracted materials are used for their own infrastructure projects (that is, where the materials are not sold).

- Dredging operations where the extracted material is disposed of rather than sold.
- Some bridge construction projects that do not require a licence to authorise road or rail infrastructure construction
- Large water storage projects
- Other types of large infrastructure construction projects.

We note that NSW EPA is seeking to ensure a level playing field by regulating the extraction sector, regardless of the end-use of the extracted materials and that the proposed amendment will require extractive activities that pose a moderate to high risk to the environment are licensed and regulated by the EPA. Therefore those activities that extract more than 30,000 tonnes of material (or equivalent) per year will require a licence. This amendment would affect NSW councils that own and operate quarries to extract materials for engineering works however feedback from local government has indicated that the licensing requirement and proposed threshold is considered reasonable.

Schedule 1 – Marina and Boat Repairs

This proposed amendment relates to section 25, Schedule 1 of the POEO Act. We note the proposal is to change the definitions around marina and boat repairs to encompass the environmental impacts associated with these activities such as water pollution, air pollution, land contamination, noise, handling, storage and management of dangerous goods and waste.

We note that this amendment will update the terminology within the Act to ensure that boat construction/repair/maintenance irrespective of whether it occurs on dry/floating docks as well as all water and land-based facilities will be included. This will result in some facilities that were not previously licensed requiring a licence and others that are currently licensed no longer being captured by the definition.

Local government welcomes the removal of any ambiguity in the definitions, ensuring that all marina and boat repair related activities, whether singly or jointly undertaken, are subject to licence conditions.

Fee Changes Applying Indexation

Various fee amendments are proposed to sections of the current POEO (General) Regulation 2021 and the draft POEO (General) Regulation 2022. The indexation of fees is covered under Section 6 of the Regulatory Impact Statement and refers to the fees that all licence holders pay based on the type and size of the licensed activity. These fees are aimed at recovering the costs associated with the EPA's ongoing regulatory oversight of a facility. LGNSW concurs with the need to increase various fees in line with appropriate inflation indexes which in turn impact the cost of administering the POEO Act. Local government is supportive of the proposed indexation of fees and charges.

Penalty Notice Offence Fees

This proposed amendment relates to Schedule 6 of the current POEO Act and the POEO (General) Regulation 2021, whereby the EPA may issue an environment protection notice to address environmental harm that has occurred or is about to occur. The penalty notice amount for an individual is \$500 which is less than the stated administrative fee of \$577. LGNSW supports the specific proposed fee increase as detailed to enable the continual

application of user pays and polluter pays principles ensuring that taxpayers do not bear the financial cost of compliance.

Testing of pollution incident response management plans (PIRMPs)

This proposed amendment relates to section 133 of the current POEO (General) Regulation 2021 and section 73 of the draft POEO General Regulation 2022. The proposed amendment will clarify when a PIRMP must be tested to better align requirements with the objects of the POEO Act. The current post-incident testing requirement means a licensee must test a PIRMP following any incident including those where the PIRMP did not need to be implemented. The proposed amendment will result in a PIRMP only being tested following a pollution incident that causes or threatens material harm to the environment, which would align with the PIRMP implementation requirements in the General Regulation and minimise the time and resources that councils need to assign to PIRMP testing. This amendment is supported by local government noting that councils will continue to test their PIRMPs annually as well as after a specified incident.

The only additional comment regarding this proposed amendment would be to consider further clarifying the term 'material harm' to ensure that councils have a clear understanding of what should trigger the testing of the PIRMP. This would ensure that rigorous testing can continue where appropriate. However we note that this is likely to be outside the scope of this review.

Conclusion

Thank you again for the opportunity to comment on the Draft Protection of the Environment Operations (General) Regulation 2022. As noted throughout this submission local government is broadly supportive of the proposed amendments.

For further information in relation to this submission, please contact Alison Thompson, Senior Policy Officer – Waste on 02 9242 4056 or alison.thompson@lgnsw.org.au.

Yours sincerely



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