

(introducing postal voting for 1994 elections); Savings and Transitional provisions, and Consequential Amendments.

This package continues the process of modernisation begun by the amalgamation of local councils which has now reduced the number from 46 to 29. It establishes an operating framework for councils which provides flexibility and independence yet balances these with appropriate levels of accountability.

One of the most significant general principles contained within the legislation is a general **presumption of power** unless a council is specifically constrained by legislation from undertaking any particular function. This means that councils will no longer have to rely on specific legislative authority and can now do whatever they consider to be necessary or convenient to enable them to carry out their functions. At the same time they will be accountable to local electors through strategic planning, open and public procedures, annual reports, public meetings and polls of residents.

A more detailed account of the changes will be provided when the legislation has finally passed the Parliament.

NEW PLANNING REFORMS PASS THROUGH THE PARLIAMENT

The package of reform legislation reviewed in the last edition of the AELN has passed through the Parliament with only two significant amendments. First, **State Policies** will be subject to disallowance by either House of Parliament, a concession which gives the traditionally conservative Upper House a considerable power of veto over the government and over Policies which have been subjected to a full range of public consultation provided for in the legislation. Second the possibility of **subdivision by severance title** as indicated has been abolished. This was a method by which separate title to blocks of land could be issued where a property in single ownership was bisected by a road, either physically or merely recorded on the title, without the need to go through the subdivision approvals process. Amendment in the Upper House has delayed the introduction of this reform for twelve months, presumably to protect the interests of landowners. The interests of consumers, not to mention the public interest in sensible planning control, have consequently been overridden. Titles created by severance can continue to be sold; but

consumers can be caught unawares by planning restrictions which do not, for example, allow a dwelling automatically to be built upon such land.

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NEW SOUTH WALES

EPA DISCUSSION PAPER ON DEVELOPMENT OF A COMPREHENSIVE SCHEME OF ENVIRONMENTAL AUDIT

The New South Wales Environment Protection Authority (EPA) has released a discussion paper considering ways in which environmental auditing can be incorporated into the environmental management system.

Definition of Environmental Audit

The discussion paper notes that the term environmental audit means different things to different industries, government bodies and public groups. It contrasts the definition used by the Australian Chamber of Commerce, the **Environment Protection Act 1970 (Vic)** and the International Chamber of Commerce. The International Chamber of Commerce definition has been endorsed by the United Nations Environment Program, the International Labour Office and the International Organisation of Employers, the European Commission and the Business Council of Australia. It describes an environmental audit as :

a management tool comprising a systematic, documented, periodic and objective evaluation of how well an environmental organisation, management and equipment are performing with the aim of helping to safeguard the environment by:

- (a) facilitating management control of environmental practices
- (b) assessing compliance with environmental policies, including meeting regulatory requirements.

Role of Auditing in Environmental Management Systems

The discussion paper identifies the value of environmental management systems (EMS) in wider corporate planning strategies, and the value of environmental auditing within the EMS. It

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recognises that the method and timing of audits is obviously at the discretion of the individual corporation, but that it is desirable to address the following elements of the organisation:

- policies and principles
- systems and procedures
- operational practices
- process and equipment.

The size and coverage of the audit will depend to a large extent on the size and nature of the operation. Essentially, however, the discussion paper indicates that an audit should assess a company's current environmental performance, options for improvement, and options for improved efficiency.

Proposed Scheme for Environmental Auditing

The discussion paper proposes a scheme that will emphasise the use of voluntary audits. The key elements of the scheme are:

Protection of the results of voluntary audits from use in prosecutions

- Mandatory auditing as a condition of granting a licence or as part of the on-going licence conditions
- Authorisation of EPA officers to undertake audits at any time

Sector-specific auditing guidelines to encourage small- and medium-sized enterprises to audit

- Performance indicators developed in cooperation with public authorities to assist in the regular reporting of environmental performance.

The scheme includes three types of audit:

- Compliance audits by the EPA
- Voluntary audits by industry
- Mandatory audits by industry

Incentives to Encourage Voluntary Auditing by Industry

The Discussion Paper recognises that voluntary auditing will assist a variety of ways. First, the company or individual corporate officer will be more likely to be able to raise a defence of due diligence under the **Environmental Offences and Penalties Act 1989**. Second, companies can enjoy improved management performance for example by increasing employee awareness, identifying and addressing risk areas, enhancing market opportunities, and making it easier to obtain insurance cover for environmental impairment liability. Third, the cost of auditing is tax deductible and the results of the audit may even yield cost savings to the company.

Disincentives of Auditing

The major disincentive to auditing that the Discussion Paper identifies is the concern over confidentiality of audit documents. The paper lists four possible solutions to the fear that audit documents may be used against a company in prosecutions.

1. No statutory protection but a policy, similar to that in the United States and Canada, that the EPA will not seek out voluntary audits during routine investigations.
2. Statutory protection of voluntary audits from use in prosecution where they are undertaken for the sole purpose of the audit.
3. Statutory protection from use to found a prosecutions, but could be required to be produced in proceedings instituted based on other evidence.
4. Complete statutory protection.

The second major disincentive is the high cost of auditing. The Discussion Paper suggests that savings in efficiency or improved technology will offset some of the cost involved in undertaking the audit.

Accreditation of Auditors

The Discussion Paper indicates that the NSW EPA will only establish an auditor accreditation scheme if such a scheme does not evolve voluntarily through industry. The Paper suggests that the EPA might be empowered to make regulations on the control or accreditation of auditors and to deal with false or misleading information in a mandatory report.

Public Disclosure

The discussion paper supports the publication of audit results, but notes the current lack of guidelines for environmental reporting. A number of multinational companies already provide details of their auditing policies and the results of such audits, and the discussion paper notes five principles common to all of the reports:

- Environmental issues are integrated into all company reports
- The reports aim to present a comprehensive and understandable view of the issues and not obscure them with details
- The reports provide details of environmental policy and management systems
- An attempt is made to provide quantitative performance data and evaluation against specified targets

- Environmental expenditure is clearly distinguished from other financial data.

The EPA proposes to develop a set of key environmental performance indicators for use by agencies to report on their environmental management performance in annual reports.

Submissions on the Proposal close on 1 March 1994.

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QUEENSLAND

ENVIRONMENT PROTECTION BILL

A draft Environmental Protection Bill (the draft Bill) was released for public consultation by the Department of Environment & Heritage (DEH) in November 1993.

Object and Main Features

The object of the new **Environment Protection Act** (the "Act") is to protect Queensland's environment by:

- (a) establishing the state of the environment and defining environmental objectives; and
- (b) developing and implementing effective environmental strategies and integrating them into efficient resource management.

The Act will introduce a new regime of monitoring and control of the environment, the main features of which are:

- specific requirements relating to discharges and emissions will be contained in legally binding environmental protection policies ("EPPs") to be prepared by the DEH;
- a new system of environmental authorisations will require licences or approvals for the carrying out of environmentally relevant activities;
- the power of the relevant authority to require environmental audits or environmental investigations of operations to be carried out and environmental management programs ("EMPs") to be developed; and
- increased responsibility and liability of executive officers for the actions of a body corporate subject to a statutory "due diligence" defence.

Environmental Protection Policies

EPPs will be legally binding and will contain specific requirements relating to, for example, air emissions, water discharges, noise, waste management and other pollution issues. The DEH will prepare EPPs but, in doing so, must follow a course of public consultation. EPPs for noise, air emissions, discharges to water and wastes are expected to be issued by the DEH in September next year.

Contravention of an EPP is an offence for which penalties up to \$100,000 or two years imprisonment may be imposed. The extent of the penalty will depend on the class of the offence (which should be stated in the particular EPP) and whether the contravention of the EPP was wilful.

Environmental Authorisations

A system of environmental authorisations for environmentally relevant activities will be introduced, making it an offence to carry out the activities without the appropriate authorisation. The appropriate authorisation will be a licence or an approval depending upon the type of activity and the seriousness of the risk of environmental harm posed by it. Failure to obtain the licence or approval may attract a penalty of up to \$6000.

An indicative list of industries requiring licences or approvals has been issued by the DEH. The licence will apply to the whole of the premises in respect of which it is granted and separate licences will not be required for different types of emissions or discharges.

General points to note regarding environmental authorisations are:

- the application will be made to the DEH or, following a devolution of powers (see below), a local authority (the "administering authority");
- all members of the public will be entitled to make submissions in respect of an application for a licence, which application must be advertised;
- there are no time limits within which the administering authority must make a decision in respect of the application for a licence or approval;