

DENTONS

Environment

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Environment

1. Regulation of environmental impact

Projects that impact on the environment in Australia are subject to a range of requirements, generally aimed at reducing, limiting or controlling the potential environmental impacts.

These controls can be broadly described as:

- Control of land use and development impacts through approvals systems
- Pollution, waste and contamination laws through approvals and licensing
- Environmental protection laws

2. Development approvals

At a state level, most projects which involve development (this includes use) of land or water, including any building works or change of use, will require approval from the relevant consent authority, usually a local council but in some cases a state government. The development or project approvals process is different in each state and territory, but in most cases includes an assessment of the environmental impact of the project.

Depending on the scale and complexity of a project, the environmental impact assessment of a project can range from a simple town planner statement for small projects, through to a comprehensive report addressing all impacts of the project including impacts on:

- Biodiversity, native vegetation, threatened or endangered species
- Ground water, hydrological systems, wetlands, stormwater run-off, water conservation
- Soil, including soil salinity and soil stability
- Items of environmental (natural or man-made) heritage significance

In addition, reports can be made on impacts arising from specific aspects of the project such as:

- Odour, dust or other air or water pollution, or noise or traffic generated by the project

- Heritage, urban design and town planning considerations (such as bulk and scale of buildings, light or view loss), and local amenity impacts of the project
- Noise or traffic generated by the project
- Site contamination

In addition, at a federal level, some projects will also require approval under federal environmental legislation if the project is likely to have a significant impact on a matter of national environmental significance. Matters of national environmental significance include federally listed threatened species and ecological communities, migratory species, Ramsar wetlands, World and National Heritage places, Commonwealth marine areas, uranium and nuclear facilities and the Great Barrier Reef Marine Park.

3. Pollution

Most states have laws which regulate or license the generation of pollution by setting specific limits for pollutant emissions. Approvals or licences to pollute are usually obtained through a state environmental protection authority.

Polluting activities without prior permission can be the subject of criminal sanctions. In each state and territory this includes:

- Pollution offences (for pollution of land, air or water without an approval to do so).
- Pollution clean-up requirements (which may be based on a 'polluter pays' principle, but in some cases, where the polluter is not identifiable, the landowners (this can sometimes include a mortgagee as a national owner or occupiers may be held responsible).
- Differing regimes for personal liability of directors (for pollution offences caused by a company).

In some states, the penalties for breaching pollution laws can be over A\$5 million and/or imprisonment for serious offences.



4. Contamination

It is advisable to conduct an environmental site investigation before commencing a project or signing a lease in order to ensure that land is not contaminated, and to avoid any liability for contamination which may be found on land.

Land that is contaminated with chemicals or waste (such as petrochemicals or manufacturing process by-products) should be comprehensively investigated, monitored, and remediated.

Different requirements apply in each state and territory regarding:

- The duties of owners or occupiers to notify authorities or purchasers of contamination to land
- Positive obligations of owners, occupiers, or notional owners (such as mortgagees) to investigate contamination
- Liabilities of owners, occupiers, or notional owners for costs of remediation and/or impacts on land

5. Waste and chemicals

Each state and territory has its own laws to control the handling and transportation of waste, and the transportation of hazardous waste which is subject to stricter rules. At the federal level, hazardous waste cannot be exported or imported to Australia without a permit.

The federal government issues certificates and authorisations to regulate the manufacture or importation of industrial chemicals via the Australian Industrial Chemicals Introduction Scheme.

The National Waste Policy sets a national framework to achieve targets to regulate Australia's waste exports, reduce and recover waste, increase recycling and reduce the amount of organic waste and unnecessary plastic generated in Australia.

6. Due diligence

All projects which have the potential to impact on the environment should be the subject of thorough due diligence to ensure the correct approvals and licences, as set out above, are in place.

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