

DELWP IS REVIEWING PLANNING CONTROLS FOR BUFFERS AND SEPARATION DISTANCES - HERE'S WHAT YOU NEED TO KNOW

29 January 2019 | Australia

Legal Briefings - By **Heidi Asten and Thomas Ellicott**

The Victorian Department of Environment, Land, Water and Planning (**DELWP**) is undertaking a review of planning controls for buffers and separation distances as part of its response to the Major Hazard Facilities Advisory Committee, the Independent Inquiry into the Environment Protection Authority, and Action 98 of Plan Melbourne 2017-2050.

DELWP's review is currently in the public consultation phase. If your business is subject to current or future potential land use conflicts, now is the time to play a role in shaping the reform agenda.

WHAT DOES THE REVIEW INVOLVE?

The review is likely to result in significant changes to the treatment of buffers and separation distances in the Victorian Planning Provisions (**VPPs**), with the potential to impact a wide range of industrial and sensitive land use development in Victoria. In particular, there is the potential for the changes to lead to the imposition of buffer distances to sensitive uses affecting many more industries and uses than at present. While clause 53.10 of the VPPs currently generally applies to those uses for which an EPA works approval or licence is required, the increased approvals requirements under the new Environment Protection Act 2018, approved last year by Parliament (and commencing in 2020), may expand the range of uses to which these provisions may apply.

WHAT POTENTIAL REFORMS ARE ON THE HORIZON?

DELWP has commenced public consultation on potential reforms, focusing on reverse amenity, clause 53.10, zones and overlays, SEPPs and other information and guidance required to inform buffer management in the planning system. See DELWP's consultation page [here](#), and download the ERM report [here](#).

As part of the consultation package, DELWP has released a technical report prepared by ERM assessing current planning policy mechanisms, and comparative approaches from other local and international jurisdictions.

Some of the potential reforms canvassed in the ERM report would impact a wide range of industrial and sensitive land uses if implemented, including:

- amendments to clause 53.10, including changes to threshold distances, the introduction of the 'agent of change' principle, and the addition of a 'risk to human health or safety' trigger which would capture safety related issues such as risks of explosion from gas migration;
- a requirement for site specific assessments to be undertaken to determine appropriate buffer zones for new industrial land uses;
- a statutory trigger for EPA engagement on strategic planning processes for specific land uses and development; and
- the use of zones and overlay mechanisms to make buffer zones and separation distances more visible in planning schemes.

HAVE YOUR SAY

This is an important opportunity for your business to input on the potential reforms, particularly if your business is subject to current or future potential land use conflicts.

DELWP has invited submissions until **15 February 2019**.

If you have any questions or would like to know more about the DELWP consultation, please contact Heidi using the details below.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



HEIDI ASTEN

PARTNER,
MELBOURNE

+61 3 9288 1710
Heidi.Asten@hsf.com

LEGAL NOTICE

The contents of this publication are for reference purposes only and may not be current as at the date of accessing this publication. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

© Herbert Smith Freehills 2023

SUBSCRIBE TO STAY UP-TO-DATE WITH INSIGHTS, LEGAL UPDATES, EVENTS, AND MORE

Close

© HERBERT SMITH FREEHILLS LLP 2023