



# CONDITSIS LAWYERS

*Passion · Logic · Ethics*

Postal Address: PO Box 1357 Gosford NSW 2250 DX 7237 Gosford

Phone: (02) 4324 5688  
Fax: (02) 4323 2184  
Email: enquiry@conditsis.com  
Web: www.conditsis.com  
Suite 305, Level 3  
Kensmen Building  
131-133 Donnison Street,  
Gosford NSW 2250

2 December 2011

The Manager  
Crighton Properties Pty Ltd  
PO BOX 3369  
TUGGERAH NSW 2259

Att: Peter Childs

Dear Sir

**Re: Protection of the Environment Operations Act 1997 licensing requirements**

We refer to your instructions.

We understand that:

1. you will be engaging a contractor to excavate more than 30,000 tonnes in any one year of natural virgin excavated material from your land and you will be using that material on your land for purposes in connection with the subdivision and related development of your land (filling and road construction purposes, but not roads with 4 or more traffic lanes);
2. the work being done by that contractor ("the work") is a "land-based extractive industry" as defined in clause 19 of Schedule 1 of the Protection of the Environment Operations Act 1997 ("the POEO Act"), and is therefore a "scheduled activity" as declared by Part 1 of Schedule 1 of the POEO Act, and not "scheduled development work" as defined in section 47 of the POEO Act;
3. "mobile plant" is defined in clause 50 of Schedule 1 of the POEO Act as:

*any equipment or machinery that:*

- (a) *is capable of carrying on any one or more of the activities referred to in Part 1 of this Schedule, and*
- (b) *is capable of moving under its own motive power or being transported, and*
- (c) *is operated at a particular site on a temporary basis only (that is, for a total period of not more than 6 months in any 12-month period),*

*but does not include rolling stock.*

#### DIRECTORS:

- Emanuell Conditsis Dip.Law (S.A.B.) Accredited Specialist Criminal Law
- Samar Singh-Panwar B.A. LLB Accredited Specialist Criminal Law

#### CONSULTANTS:

- Rodney Dawson LLB Accredited Specialist Local Govt. & Plan. Law (RR Dawson & Co Pty Ltd)
- Natasha Konic B.A. (Hons) LLB (Mechlaw Pty Ltd)
- Donald G Henderson B.A. (Hons) LLB
- Jan Worland B.Legs.S.B.A. Dip Ed Dip Spec.Ed
- Mark F Cotter LLB MBA

#### ASSOCIATES:

- Graham Carson B.A. LLB
- Fiona Wicks Dip. Law (L.P.A.B)
- Emma Mason B.Com. LLB (Hons)

#### CONVEYANCER:

- Vicki Kerr Licensed Conveyancer



4. The contractor will only be using “mobile plant” in carrying out the work; and
5. In the above circumstances, you wish to know whether you, as occupier of the land, are required to hold a licence pursuant to section 48 of the POEO Act.

Attached are copies of:

1. Section 48 of the POEO Act;
2. Clause 1 of Part 1 of Schedule 1 of the POEO Act; and
3. Clause 19 of Part 1 of Schedule 1 of the POEO Act.

#### **Advice**

We advise that section 48 of the POEO Act does not require you to hold a licence for the premises at which the work will be carried out.

This is because:

1. Although the work is a “land-based extractive industry” as referred to in clause 19 of Part 1 of Schedule 1 of the POEO Act, and is declared to be a scheduled activity, section 48 of the POEO Act only applies to those scheduled activities where Schedule 1 of the POEO Act indicates that a licence is required for premises at which the activity is carried out.
2. Clause 1 (1) of Part 1 of Schedule 1 of the POEO Act provides that a licence is required by section 48 of the POEO Act for premises at which “premises-based” activities are carried out – that is, those premises at which a scheduled activity (such as a “land-based extractive industry” is carried out.
3. However clause 1 (2) of Part 1 of Schedule 1 to the POEO Act provides that an activity such as a “land-based extractive industry” is not a “premises-based” activity (as referred to in clause 1 (1) of Part 1 of Schedule 1) if the activity is carried out by means of “mobile plant”.
4. The contractor will only be using “mobile plant”, thus making the activity not “premises-based”, and hence not an activity that requires a licence pursuant to Part 1 of Schedule 1.

2 December 2011  
Crighton Properties Pty Ltd

---

Please contact us if you require further advice.

Yours faithfully

**Conditis & Associates**

Per: Don Henderson

A handwritten signature in black ink, appearing to be 'D Henderson', written over a horizontal line.



[Whole title](#) | [Regulations](#) | [Historical versions](#) | [Historical notes](#) | [Search title](#) | [PDF](#)

---

## Protection of the Environment Operations Act 1997 No 156

Current version for 1 November 2011 to date (accessed 2 December 2011 at 11:35)

[Chapter 3](#) » [Part 3.2](#) » [Section 48](#)

<< page >>

---

### 48 Licensing requirement—scheduled activities (premises-based)

#### (1) Application of section

This section applies to scheduled activities where Schedule 1 indicates that a licence is required for premises at which the activity is carried on.

#### (2) Offence

A person who is the occupier of any premises at which any such scheduled activity is carried on is guilty of an offence, unless the person is, at the time that activity is carried on, the holder of a licence that authorises that activity to be carried on at those premises.

Maximum penalty:

- (a) in the case of a corporation—\$1,000,000 and, in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
- (b) in the case of an individual—\$250,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.

Top of page





Whole title | Regulations | Historical versions | Historical notes | Search title | PDF

## Protection of the Environment Operations Act 1997 No 156

Current version for 1 November 2011 to date (accessed 2 December 2011 at 11:28)

Schedule 1

<< page >>

### Schedule 1 Scheduled activities

(Section 5)

**Note.** Parts 1 and 2 of this Schedule list the activities that are scheduled activities for the purposes of this Act (see sections 48 and 49). Part 3 defines various words and expressions that are used in Parts 1 and 2.

#### Part 1 Premises-based activities

##### 1 Application of Part

- (1) For the purposes of section 48, any activity that is declared by this Part to be a scheduled activity is taken to be an activity for which a licence is required for the premises at which it is carried out (the activity is *premises-based*).

**Note.** Section 48 (2) provides that the occupier of premises at which such an activity is carried out is guilty of an offence unless he or she holds a licence that authorises the activity to be carried out at those premises.

- (2) However, such an activity is not premises-based if it is carried out by means of mobile plant.

**Note.** But see clause 47 by operation of which activities carried out by means of mobile plant are declared for the purposes of section 49.

##### 2 Agricultural processing

- (1) This clause applies to the following activities:

**dairy processing**, meaning the processing of dairy produce as part of the production of milk, evaporated or condensed milk, buttermilk, cream, cheese, butter, ice-cream or similar products.

**general agricultural processing**, meaning the processing of agricultural produce (otherwise than as part of the manufacture of beer, wine, spirits, vinegar, acetic acid or similar products), but excluding:

- (a) dairy processing and grape processing, and
- (b) the processing of agricultural produce by means of mobile processing operations.

**grape processing**, meaning the processing of grapes (otherwise than by distilling) as part of the manufacture of wine, spirits, vinegar, acetic acid or similar products.

- (2) Each activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if it meets the criteria set out in Column 2 of that Table.

- (c) the recovery of gases that are dangerous goods of Class 2 within the meaning of the *Transport of Dangerous Goods Code*.
- (3) Each activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if:
- it meets the criteria set out in Column 2 of that Table, and
  - the regulations under section 286 exempt the person carrying out the activity from the requirements of section 48 (2) as they apply to waste disposal (thermal treatment).
- (4) For the purposes of this clause, 1 litre of waste is taken to weigh 1 kilogram.

### Table

Column 1 Activity	Column 2 Criteria
energy recovery from general waste	involves processing more than 200 tonnes per year of waste (other than hazardous waste, restricted solid waste, liquid waste or special waste)
energy recovery from hazardous and other waste	involves having on site at any time more than 200 kilograms of hazardous waste, restricted solid waste, liquid waste or special waste

## 19 Extractive activities

- (1) This clause applies to the following activities:
- land-based extractive activity***, meaning the extraction, processing or storage of extractive materials, either for sale or re-use, by means of excavation, blasting, tunnelling, quarrying or other such land-based methods.
- water-based extractive activity***, meaning the extraction of extractive materials, either for sale or re-use, by means of dredging or other such water-based methods.
- (2) In this clause, ***extractive materials*** means clay, sand, soil, stone, gravel, rock, sandstone or similar substances that are not minerals within the meaning of the *Mining Act 1992*.
- (3) Each activity referred to in Column 1 of the Table to this clause is declared to be a scheduled activity if it meets the criteria set out in Column 2 of that Table.

### Table

Column 1 Activity	Column 2 Criteria
land-based extractive activity	involves the extraction, processing or storage of more than 30,000 tonnes per year of extractive materials
water-based extractive activity	involves the extraction of more than 30,000 cubic metres per year of extractive materials

## 20 Helicopter-related activities