

**ENVIRONMENTAL PLANNING AND ASSESSMENT (PART 5)
AMENDMENT ACT 1993 No. 93**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Environmental Planning and Assessment Act 1979 No. 203
4. Consequential amendment of other Acts

SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL PLANNING AND
ASSESSMENT ACT 1979

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF OTHER ACTS

**ENVIRONMENTAL PLANNING AND ASSESSMENT (PART 5)
AMENDMENT ACT 1993 No. 93**

NEW SOUTH WALES



Act No. 93, 1993

An Act to amend the Environmental Planning and Assessment Act 1979 with respect to proposed activities of government agencies that are subject to environmental impact statements under Part 5 of that Act; and to consequentially amend certain other Acts. [Assented to 30 November 1993]

The Legislature of New South Wales enacts:**Short title**

1. This Act may be cited as the Environmental Planning and Assessment (Part 5) Amendment Act 1993.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Environmental Planning and Assessment Act 1979 No. 203

3. The Environmental Planning and Assessment Act 1979 is amended as set out in Schedule 1.

Consequential amendment of other Acts

4. The State Owned Corporations Act 1989 and the Timber Industry (Interim Protection) Act 1992 are amended as set out in Schedule 2.

**SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
PLANNING AND ASSESSMENT ACT 1979**

(Sec. 3)

(1) Section 23 (**Delegation**):

In section 23 (8) (b), after "118", insert "(or by Division 4 of Part 5)".

(2) Part 5, Division 1, heading:

Before section 110, insert:

Division 1—Preliminary

(3) Section 110 (**Definitions**):

(a) In the definition of "proponent", after "the activity", insert "and includes any person taken to be the proponent of the activity by virtue of section 110B".

(b) At the end of the section, insert:

(2) The Minister is not a determining authority in relation to an activity for the purposes of this Part merely because the Minister's approval is required under Division 4.

SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
PLANNING AND ASSESSMENT ACT 1979—*continued*

(4) Section 110B:

After section 110A, insert:

Determining authorities taken to be proponents of activities

110B. (1) A proponent of an activity for the purposes of this Part is taken to include the following:

- (a) the Forestry Commission in respect of forestry activities authorised by that Commission on land under the management of that Commission;
- (b) any determining authority which the Minister certifies in writing to be the proponent of a particular activity specified in the certificate or which the regulations declare to be the proponent of activities of the kind specified in the regulations.

(2) In any such case, a reference in this Part to a determining authority carrying out an activity includes a reference to the Forestry Commission or such a determining authority granting an approval in relation to the activity.

(5) Part 5, Division 2, heading:

Before section 111, insert:

Division 2—Duty of determining authorities to consider environmental impact of activities

(6) Part 5, Division 3, heading:

Before section 112, insert:

Division 3—Activities for which EIS required

(7) Section 112 (**Decision of determining authority in relation to certain activities**):

(a) After section 112 (1) (c), insert:

- (cl) if Division 4 applies—any requisite approval of the Minister has been obtained and the activity is carried out in accordance with that approval;

(b) After section 112 (6), insert:

(6A) However, the provisions of subsection (4) do not authorise a determining authority which is the proponent of an activity to do anything contrary to an approval under Division 4.

SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
PLANNING AND ASSESSMENT ACT 1979—*continued*

(8) Section 113 (**Publicity and examination of environmental impact statements**):

In section 113 (5), after “section 119”, insert “or Division 4 applies”.

(9) Part 5, Division 4:

After section 115, insert:

Division 4—Minister administering this Act to be approving authority instead of proponent where EIS prepared

Requirement for Minister’s approval

115A. (1) A determining authority is not to carry out an activity to which this Division applies if it is the proponent of the activity unless the Minister has approved of the activity being carried out. The determining authority is to comply with any conditions to which such an approval is subject.

(2) This Division applies to an activity only if

- (a) the proponent has obtained an environmental impact statement in respect of the activity; and
- (b) the proponent of the activity is not an authority excluded from this Division by section 115D.

(3) When considering whether to approve of an activity, the Minister is to review the decision of the proponent to carry out the activity having regard to the assessment of the activity under this Part and the rights and obligations of the proponent.

Provisions relating to Minister’s approval

115B. (1) A proponent may seek the Minister’s approval under this Division after it has complied with section 112 (1) (a)–(c).

(2) If a proponent seeks the Minister’s approval under this Division, the Minister is required to approve of the activity (with or without conditions or modifications) or disapprove of the activity. The Minister is to notify the proponent of the decision and indicate the reasons for any conditions or modifications or any disapproval of the activity.

**SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
PLANNING AND ASSESSMENT ACT 1979—*continued***

(3) The Minister, when approving of an activity, must consider the environmental impact of the activity in accordance with section 111.

(4) Before making a decision under this Division, the Minister is to obtain a report from the Director under section 115C. A report is not required if the Minister has directed that an inquiry be held in accordance with section 119.

(5) If the proponent is not a Minister, the Minister is to consult the Minister responsible for the proponent before making a decision under this Division.

(6) When making a decision under this Division, the Minister is to take into account any report of the Director under section 115C, any findings and recommendations of a Commission of Inquiry and, if the proponent is not a Minister, any submission from the Minister responsible for the proponent.

(7) If the Minister has directed that an inquiry be held in accordance with section 119 with respect to an activity to which this Division applies, the Minister is to defer a decision on the activity until the proponent advises the Minister whether it proposes to proceed with or modify the activity following its consideration of the findings and recommendations of the Commission of Inquiry and any advice of the Minister.

(8) The Minister's decision on an activity is to be made within 21 days after the Minister receives the Director's report under section 115C or (if subsection (7) applies) within 21 days after the proponent advises the Minister that it proposes to proceed with or modify the activity. The proponent may agree to an extension of any such period.

(9) If the Minister's decision is not made within the period required by subsection (8), the approval of the Minister under this Division is no longer required in respect of the activity. This subsection does not affect any obligation of the proponent under the other Divisions of this Part.

**SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
PLANNING AND ASSESSMENT ACT 1979—*continued*****Director's report**

115C. (1) The Director is to report to the Minister on the assessment of a proposed activity under this Part and the decision of the proponent to carry out the activity.

(2) When preparing a report, the Director is to examine the environmental impact statement, the representations made in response to the public exhibition of the statement, any submissions from the proponent and any other thing the Director considers relevant.

(3) A copy of the report is to be given to the proponent immediately after it is given to the Minister.

(4) The report is to be made within 3 months after the proponent seeks the Minister's approval under this Division to carry out the activity. The proponent may agree to an extension of any such period.

(5) If the report is not made within the period required by subsection (4), the approval of the Minister under this Division is no longer required in respect of the activity. This subsection does not affect any obligation of the proponent under the other Divisions of this Part.

(6) The Director may make a report under this section even though an inquiry is held in accordance with section 119. However, subsections (4) and (5) do not apply to the report.

Excluded determining authorities

115D. The following determining authorities are excluded from this Division:

- (a) the Minister or the corporation constituted by section 8 (1);
- (b) a council or county council;
- (c) any person or body excluded from this Division by an Act or by the regulations.

SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL
PLANNING AND ASSESSMENT ACT 1979—*continued*

Miscellaneous provisions

115E. (1) Any public authority or body to which an appeal may be made by or under any Act in relation to an activity to which this Division applies is, in deciding the appeal, to consider and take into account a report of the Director to the Minister under section 115C and the decision of the Minister.

(2) The following are to be made public:

- (a) a decision of the Minister to approve or disapprove of an activity under this Division (together with any report of the Director to the Minister under section 115C);
- (b) a decision of the Minister to impose (or revoke or vary) a condition or modification to which such an approval is subject.

(3) Nothing in this Division prevents the proponent of an activity approved by the Minister under this Division from modifying the activity after that approval is given, unless the modification is not consistent with the terms of the approval or the modification is such that a further environmental impact statement is required under this Part.

(4) A proponent obtains an environmental impact statement for the purposes of this Division if it obtains an environmental impact statement itself or if it is furnished, at its request, with such a statement.

Transitional arrangements

115F. (1) This Division does not apply to an activity if:

- (a) the proponent obtained the environmental impact statement before the commencement of this Division; or
- (b) the proponent obtained the environmental impact statement after that commencement, but the Director had duly notified the person preparing the statement before that commencement of requirements with respect to the form and contents of the statement.

SCHEDULE 1—AMENDMENT OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979—*continued*

(2) However, if the activity to which an environmental impact statement relates has not been carried out, this Division applies to the activity if the Minister (by notice in writing to the proponent) so directs.

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF OTHER ACTS

(Sec. 4)

State Owned Corporations Act 1989 No. 134

Omit section 37A (4) and (5), insert instead:

(4) The Minister administering the Planning Act may direct, by notice in writing to a State owned corporation, that the corporation is required to obtain an environmental impact statement under Part 5 of that Act in respect of development to which subsection (3) applies. Accordingly, the State owned corporation is taken to be the determining authority under Part 5 of that Act and must obtain the approval of that Minister under Division 4 of Part 5 of that Act before carrying out the development.

(5) If an environmental impact statement is not required to be obtained in respect of development to which subsection (3) applies, the State owned corporation is not to carry out the activity unless it has obtained the approval of the Minister administering the Planning Act. Before giving that approval, that Minister is required to comply with section 111 of that Act as if that Minister were the determining authority.

Timber Industry (Interim Protection) Act 1992 No. 1

(1) Section 6 (**Moratorium on logging operations on Schedule 1 or 2 land**):

Omit section 6 (2).

(2) Section 8 (**Logging Operations on Schedule 4 land and their environmental assessment**):

(a) After section 8 (3), insert:

(3A) After it obtains any such environmental impact statement and it has complied with section 112 (1) (a)–(c) of

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
OTHER ACTS—*continued*

the EPA Act, the Forestry Commission is required to seek the Minister for Planning's approval under Division 4 of Part 5 of the EPA Act in respect of the logging operations to which the statement applies as if Part 5 of the EPA Act were not suspended.

- (b) From section 8 (4), omit "section 9", insert instead "Division 4 of Part 5 of the EPA Act".
 - (c) Omit section 8 (5).
- (3) Section 9 (**Minister for Planning to be determining authority for environmental impact statements on logging operations**):
Omit the section.
- (4) Section 9A:
Before section 10, insert:
Transitional provision consequent on repeal of section 9
9A. (1) A determination of the Minister for Planning under section 9 that was made before the repeal of that section by the Environmental Planning and Assessment (Part 5) Amendment Act 1993 is taken, after that repeal, to be a determination of that Minister under Division 4 of Part 5 of the EPA Act.
(2) If, on the repeal of section 9, a determination of the Minister for Planning is pending under that section, anything done under that section is taken on that repeal to have been done under Division 4 of Part 5 of the EPA Act.
- (5) Section 16 (**Expiry of this Act**):
Omit " , except for sections 1, 2, 4, 9 (8), 13, 14 and 16".
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