



New South Wales

Environmental Planning and Assessment Amendment (Offences and Enforcement) Regulation 2015

under the

Environmental Planning and Assessment Act 1979

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Environmental Planning and Assessment Act 1979*.

ROBERT STOKES, MP
Minister for Planning

Explanatory note

The objects of this Regulation are as follows:

- (a) to provide that certain time periods are not included in the calculation of the assessment period for State significant development and are not counted in the calculation of the deemed refusal period for that category of development,
- (b) to increase the maximum penalties for certain fire safety offences, and an offence relating to signs on development sites, by omitting the stated penalties and relying on the default maximum penalty of \$110,000 (fixed by section 125D (2) of the *Environmental Planning and Assessment Act 1979*, as inserted by the *Environmental Planning and Assessment Amendment Act 2014*),
- (c) to update a reference to a provision about fire brigade inspection powers that has been amended,
- (d) to allow authorised fire officers to issue penalty notices, but only in respect of the contravention of orders given by authorised fire officers and certain other fire-related offences,
- (e) to provide for the enforcement of court orders to cease the use of premises as backpackers' accommodation and boarding houses by the making of utilities orders (directing that a provider of water, electricity or gas to the premises concerned cease to provide those services),
- (f) to modify the application to planning matters of provisions of the *Protection of the Environment Operations Act 1997* relating to court orders in connection with offences,
- (g) to extend the expanded offence of providing false or misleading information in connection with a planning matter to the provision of information in response to a requirement of a condition of a development consent, an approval to carry out a project that is a transitional Part 3A project or an approval under Part 5.1 of the *Environmental Planning and Assessment Act 1979*,
- (h) to provide for further offences to be dealt with by penalty notices (or "on-the-spot fines"),
- (i) to increase the penalties for certain offences that are dealt with by penalty notice,
- (j) to omit penalty notice offences that are outdated or otherwise considered unnecessary,
- (k) to make savings and transitional provisions that are consequential on amendments made by the *Environmental Planning and Assessment Amendment Act 2014* in relation to offences, penalties, enforcement and the disclosure of political donations and gifts.

This Regulation is made under the *Environmental Planning and Assessment Act 1979* (as amended by the *Environmental Planning and Assessment Amendment Act 2014*), including sections 119T (1) (b), 121ZS (1) (b) and (10), 126 (2A), 127A, 148B (3) (d) and 157 (the general regulation-making power) and clause 1 (1) of Schedule 6.

Environmental Planning and Assessment Amendment (Offences and Enforcement) Regulation 2015

under the

Environmental Planning and Assessment Act 1979

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Offences and Enforcement) Regulation 2015*.

2 Commencement

- (1) This Regulation commences on 31 July 2015, except as provided by subclauses (2) and (3), and is required to be published on the NSW legislation website.
- (2) Schedule 1 [2]–[5], [7]–[11] and [14] commence on 14 August 2015.
- (3) Schedule 1 [13] and [15] commence on 30 September 2015.

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

- [1] **Clause 106 Definitions**
Omit “or 60” from clause 106 (d). Insert instead “, 60 or 90”.
- [2] **Clause 183 Fire safety notices**
Omit the penalty from clause 183 (1).
- [3] **Clause 184 Fire exits**
Omit the penalty.
- [4] **Clause 185 Doors relating to fire exits**
Omit the penalty.
- [5] **Clause 186 Paths of travel to fire exits**
Omit the penalty.
- [6] **Clause 189 Fire brigades inspection powers**
Omit “section 118L (1) (b)”. Insert instead “section 119T (1) (b)”.
- [7] **Clause 227A Signs on development sites**
Omit the penalty from clause 227A (2).
- [8] **Clause 284 Penalty notice offences**
Omit clause 284 (1) (b). Insert instead:
 (b) the prescribed penalty for such an offence is the amount specified in:
 (i) if the person alleged to have committed the offence is an individual—Column 2 of Schedule 5, or
 (ii) if the person alleged to have committed the offence is a corporation—Column 3 of Schedule 5.
- [9] **Clause 284 (3) (e)**
Insert after clause 284 (3) (d):
 (e) any *authorised fire officer* (being an authorised fire officer within the meaning of section 121ZC of the Act).
- [10] **Clause 284 (4) (a)**
Insert “, 115W (1) or (2)” before “or 147 (3)”.
- [11] **Clause 284 (5)**
Insert after clause 284 (4):
 (5) Despite subclause (3), an authorised fire officer is declared to be an authorised person for the purposes of section 127A of the Act only in respect of the following:
 (a) an offence referred to in section 125 (1) of the Act in relation to a contravention of order No 6, 8, 10 or 11 in the Table to section 121B of the Act, where the order was given by an authorised fire officer,

- (b) an offence referred to in section 125 (2) of the Act in relation to a contravention of clause 183 (1), 184 (a) (b) or (c), 185 (b) or 186 (a) (b) or (c),
- (c) an offence referred to in section 146A of the Act in relation to a contravention of clause 186A (2), (3), (4), (5) or (6), 186AA (2) or 186C (1) or (1A).

[12] Clauses 285 and 285A

Insert after clause 284:

285 Enforcement of orders by cessation of utilities

- (1) For the purposes of section 121ZS (1) (b) of the Act, backpackers' accommodation and boarding houses are prescribed.
- (2) For the purposes of section 121ZS (10) of the Act, the making of utilities orders for premises used as boarding houses is authorised.
- (3) In this clause, *backpackers' accommodation* and *boarding house* have the same meaning as they have in the standard instrument set out in the *Standard Instrument (Local Environmental Plans) Order 2006*.

285A Modification of Part 8.3 of the Protection of the Environment Operations Act 1997

For the purposes of section 126 (2A) of the Act, Part 8.3 (Court orders in connection with offences) of the *Protection of the Environment Operations Act 1997* applies subject to the following modifications:

- (a) references in that Part to preventing, controlling, abating or mitigating any harm to the environment caused by the commission of the offence are taken to include a reference to reversing or rectifying any unlawful development or activity related to the commission of the offence,
- (b) the terms *environment* and *public authority*, when used in that Part, have the same meaning as they have in the *Environmental Planning and Assessment Act 1979*,
- (c) references in that Part to a "regulatory authority" or "the EPA" are to be read as references to a "public authority",
- (d) the reference to the Environment Trust established under the *Environmental Trust Act 1998* in section 250 (1) (e) is to be disregarded,
- (e) the maximum penalty for an offence under section 251 of failing to comply with an order is:
 - (i) in the case of a corporation—"\$50,000", and
 - (ii) in the case of an individual—"\$10,000".

[13] Clause 285B

Insert after clause 285A (as inserted by item [14]):

285B Provision of false or misleading information in connection with a planning matter

For the purposes of section 148B (3) (d) of the Act, the provision of information in response to a requirement imposed by any of the following conditions (except a condition imposed under section 122C of the Act) is

declared to be the provision of information in connection with a planning matter for the purposes of section 148B of the Act:

- (a) a condition of development consent,
- (b) a condition of an approval to carry out a project that is a transitional Part 3A project (as defined in clause 2 of Schedule 6A to the Act),
- (c) a condition of an approval to carry out State significant infrastructure under Part 5.1 of the Act.

[14] Schedule 5

Omit the Schedule. Insert instead:

Schedule 5 Penalty notice offences

(Clause 284)

Column 1	Column 2	Column 3
Offence	Individual	Corporation
	\$	\$
Section 125 (1) of the Act in relation to contravention of the following provisions of the Act		
section 75D (as applying to a transitional Part 3A project under Schedule 6A to the Act):		
(a) in the case of a penalty notice served by a person referred to in clause 284 (3) (c) or (d), or	3,000	6,000
(b) in any other case	7,500	15,000
section 76A (1):		
(a) in the case of a class 1a or class 10 building	1,500	3,000
(b) in the case of development that, at the time of the alleged offence, is designated development or state significant development that is not a class 1a or a class 10 building:		
(i) in the case of a penalty notice served by a person referred to in clause 284 (3) (c) or (d), or	3,000	6,000
(ii) in any other case	7,500	15,000
(c) in any other case	3,000	6,000
section 76B	3,000	6,000
section 81A (2):		
(a) in the case of the erection of a class 1a or class 10 building	1,500	3,000
(b) in any other case	3,000	6,000
section 81A (4)	1,500	3,000
section 85A (10A)	1,500	3,000
section 86 (1):		
(a) in the case of the erection of a class 1a or class 10 building	1,500	3,000
(b) in any other case	3,000	6,000
section 86 (2)	1,500	3,000

Column 1	Column 2	Column 3
Offence	Individual \$	Corporation \$
section 109D (2) or (3)	3,000	6,000
section 109E (3) (d)	1,500	3,000
section 109F (1) (b)	1,500	3,000
section 109H (3) (a) or (b), (4) (a), (5) (a) or (b) or (6) (a)	3,000	6,000
section 109J (1) (a), (b), (e), (f) or (g) or (2) (a)	3,000	6,000
section 109M (1):		
(a) in the case of a class 1a or class 10 building	1,500	3,000
(b) in any other case	3,000	6,000
section 109N (1):		
(a) in the case where the change of building use results in a class 1a or class 10 building	1,500	3,000
(b) in any other case	3,000	6,000
section 115W (1)	7,500	15,000
section 115W (2)	7,500	15,000
section 119M (1)	3,000	6,000
order No 1 in the Table to section 121B	3,000	6,000
order No 2 in the Table to section 121B given in relation to an unlawfully erected building	3,000	6,000
order No 3, 4, 6, 7, 8, 9, 10, 11, 13, 15, 18 or 19 in the Table to section 121B	3,000	6,000
section 122E (3)	3,000	6,000
section 147 (3), (4) or (5)	1,500	3,000
Section 125 (2) of the Act in relation to contravention of the following provisions of this Regulation		
clause 126 (2)	500	1,000
clause 130 (3) or (4)	1,500	3,000
clause 134 (1) or (2A)	1,500	3,000
clause 134 (2)	3,000	6,000
clause 138 (1), (2) or (3)	1,500	3,000
clause 142 (1) or (2)	1,500	3,000
clause 143A (2)	3,000	6,000
clause 144 (2), (5), (6) or (7)	3,000	6,000
clause 146	1,500	3,000
clause 147 (1)	1,500	3,000
clause 147 (2)	3,000	6,000
clause 151 (1) or (2)	1,500	3,000
clause 152 (2), (3) or (5)	1,500	3,000

Column 1	Column 2	Column 3
Offence	Individual \$	Corporation \$
clause 153 (1) or (2)	3,000	6,000
clause 154A (2)	1,500	3,000
clause 154B (2)	1,500	3,000
clause 154C (1)	500	1,000
clause 155 (1)	1,500	3,000
clause 155 (2)	3,000	6,000
clause 157 (5)	500	1,000
clause 160 (1) or (2)	1,500	3,000
clause 162 (1)	1,500	3,000
clause 162B (1)	1,500	3,000
clause 162B (2)	500	1,000
clause 162C (4) or (5) (a) or (b)	1,500	3,000
clause 163	1,500	3,000
clause 169 (2)	3,000	6,000
clause 172 (1) (b)	1,500	3,000
clause 177 (1):		
(a) for the offence of failing to give an annual fire safety statement that occurs during the first week after the time for giving the statement expires	1,000	1,000
(b) for the offence of failing to give an annual fire safety statement that occurs during the second week after the time for giving the statement expires	2,000	2,000
(c) for the offence of failing to give an annual fire safety statement that occurs during the third week after the time for giving the statement expires	3,000	3,000
(d) for the offence of failing to give an annual fire safety statement that occurs during the fourth or any subsequent week after the time for giving the statement expires	4,000	4,000
clause 177 (3) (b)	580	580
clause 180 (1):		
(a) for the offence of failing to give a supplementary fire safety statement that occurs during the first week after the time for giving the statement expires	1,000	1,000
(b) for the offence of failing to give a supplementary fire safety statement that occurs during the second week after the time for giving the statement expires	2,000	2,000
(c) for the offence of failing to give a supplementary fire safety statement that occurs during the third week after the time for giving the statement expires	3,000	3,000
(d) for the offence of failing to give a supplementary fire safety statement that occurs during the fourth or any subsequent week after the time for giving the statement expires	4,000	4,000

Column 1	Column 2	Column 3
Offence	Individual \$	Corporation \$
clause 180 (3) (b)	580	580
clause 182 (1)	3,000	6,000
clause 183 (1)	1,500	1,500
clause 184 (a), (b) or (c)	1,500	1,500
clause 185 (b)	1,500	1,500
clause 186 (a), (b) or (c)	1,500	1,500
clause 186N	3,000	6,000
clause 186O (1)	3,000	6,000
clause 186P	580	580
clause 227A (2)	580	580
Section 146A (3) of the Act in relation to contravention of the following provisions of this Regulation		
clause 186A (2) or (4)	200	200
clause 186A (3), (5) or (6)	300	300
clause 186AA (2)	200	200
clause 186C (1) or (1A)	200	200

[15] Schedule 5 (as substituted by item [14])

Insert in appropriate order under the heading “**Section 125 (1) of the Act in relation to contravention of the following provisions of the Act**”:

Section 148B (1) of the Act in the case where the person ought reasonably to have known that the information provided was false or misleading 1,500 3,000

[16] Schedule 7 Savings and transitional provisions

Insert after clause 35:

36 Existing investigations may continue

An investigation may be conducted under Division 1C of Part 6 of the Act in relation to a matter that arose before the commencement of that Division.

37 Existing requirements to furnish information imposed by council officers

- (1) Section 119M (1) of the Act does not apply to a failure to comply with an existing requirement to furnish information. Section 118N (1) (a) of the Act, as in force immediately before its repeal by the amending Act, continues to apply in such circumstance, as if it had not been repealed by the amending Act.
- (2) Section 119M (2) of the Act does not apply to the provision of information in response to an existing requirement to furnish information. Section 118N (1) (c) of the Act, as in force immediately before its repeal by the amending Act, continues to apply in such circumstance, as if it had not been repealed by the amending Act.

- (3) In this clause:

existing requirement to furnish information means a requirement to furnish information, or to answer a question (including by requiring attendance at a specified place at a specified time to answer a question), imposed on a person by a person authorised by a council under Division 1A of Part 6 of the Act (as in force immediately before its repeal by the amending Act) that has not been fully complied with before the commencement of section 119M of the Act.

38 Existing requirements to furnish information imposed by Departmental officers

- (1) Section 119M (1) of the Act does not apply to a failure to comply with an existing requirement to furnish information. Section 122T (1) of the Act, as in force immediately before its repeal by the amending Act, continues to apply in such circumstance, as if it had not been repealed by the amending Act.
- (2) Section 119M (2) of the Act does not apply to the provision of information in response to an existing requirement to furnish information. Section 122T (2) of the Act, as in force immediately before its repeal by the amending Act, continues to apply in such circumstance, as if it had not been repealed by the amending Act.
- (3) In this clause:
existing requirement to furnish information means a requirement to furnish information, or to answer a question (including by requiring attendance at a specified place at a specified time to answer a question), imposed on a person by a person authorised by the Department under Division 2C of Part 6 of the Act (as in force immediately before its repeal by the amending Act) that has not been fully complied with before the commencement of section 119M of the Act.

39 Existing authorised council investigation officers

- (1) For the purposes of the operation of Division 1C of Part 6 of the Act, persons who were authorised by a council under section 118A (1) of the Act immediately before the commencement of the Division are taken to be council investigation officers.
- (2) A written authority issued under section 118I (2) of the Act, that was in force immediately before the repeal of that subsection by the amending Act, is taken to be an identification card for the purposes of section 119B (4) of the Act.

40 Existing authorised departmental investigation officers

- (1) For the purposes of the operation of Division 1C of Part 6 of the Act, persons who were authorised officers appointed by the Secretary under section 122I (1) of the Act immediately before the commencement of the Division are taken to be departmental investigation officers.
- (2) An identification card issued under section 122I (3) of the Act, that was in force immediately before the repeal of that subsection by the amending Act, is taken to be an identification card for the purposes of section 119B (4) of the Act.

41 Enforcement of existing brothel closure orders by cessation of utilities

Section 121ZS of the Act, as in force immediately before it was substituted by the amending Act, continues to apply to proceedings instituted under that section before its substitution in relation to existing failures to comply with a brothel closure order.

42 Enforcement of existing orders to cease use as backpackers' accommodation or boarding houses by cessation of utilities

Section 121ZS of the Act, as substituted by the amending Act, extends to a brothel closure order or an order to cease the use of premises as backpackers' accommodation or a boarding house that was made before the date of substitution, but only where the failure to comply with the relevant order occurred after the date of substitution.

43 Alternative sentencing options in relation to existing proceedings

Section 126 (2A) of the Act, as inserted by the amending Act, extends to the power to make court orders in connection with offences in proceedings that have been instituted, but not finally disposed of, before the commencement of the subsection (including proceedings where the offence has been proven before the commencement of the subsection but where the offender has not yet been sentenced).

44 Construction of reference to maximum penalty relating to native vegetation

The reference to section 126 of the *Environmental Planning and Assessment Act 1979* in section 12 (2) of the *Native Vegetation Act 2003* is to be read as a reference to section 126 (1) of the *Environmental Planning and Assessment Act 1979* as in force immediately before its repeal by the amending Act.

45 Disclosure of existing political donations or gifts by persons associated with each other

- (1) Section 147 (8) of the Act, as substituted by the amending Act, applies to all reportable political donations and gifts made on and from 30 September 2015, whether the relevant planning application or relevant public submission was made before or after 30 September 2015.
- (2) To avoid doubt, section 147 (8) of the Act, as substituted by the amending Act, applies to all new relevant planning applications and relevant public submissions on and from 30 September 2015, including in relation to political donations and gifts made before 30 September 2015 but only during the period commencing 2 years before the relevant planning application or relevant planning submission is made.

46 Provision of false or misleading information in relation to an existing planning matter

Section 148B of the Act, as inserted by the amending Act, applies to all information provided by a person in connection with a planning matter on or after 30 September 2015, whether the information relates to an application or request made, or a consent, approval or certificate issued, before or after that date.

[17] Schedule 7

Insert at the end of the Schedule with appropriate Part and clause numbering:

**Part Provision consequent on making of Environmental
Planning and Assessment Amendment (Offences
and Enforcement) Regulation 2015**

**Assessment period for development applications for State significant
development**

The amendment made to clause 106 by the *Environmental Planning and Assessment Amendment (Offences and Enforcement) Regulation 2015* does not apply in respect of a development application that was made but not finally determined before the commencement of that amendment.