

# Environmental Planning and Assessment Amendment Act 2014 No 79

[2014-79]



New South Wales

## Status Information

### Currency of version

Historical version for 8 July 2015 to 31 July 2015 (accessed 1 July 2024 at 11:18)

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### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Note**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### Authorisation

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# Environmental Planning and Assessment Amendment Act 2014 No 79



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# Environmental Planning and Assessment Amendment Act 2014 No 79



New South Wales

An Act to amend the *Environmental Planning and Assessment Act 1979* with respect to offences and penalties, enforcement powers and ePlanning; and for other purposes.

## 1 Name of Act

This Act is the *Environmental Planning and Assessment Amendment Act 2014*.

## 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedules 4 (except Schedule 4 [6]) and 5 commence on the date of assent to this Act.

## Schedule 1 Amendment of *Environmental Planning and Assessment Act 1979 No 203*—Offences and penalties

### [1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

***tier 1 maximum penalty, tier 2 maximum penalty*** or ***tier 3 maximum penalty*** in relation to an offence, indicates the maximum penalty that a court may impose for the offence—see sections 125A, 125B and 125C for the relevant maximum amounts.

### [2] Section 81A Effects of development consents and commencement of development

Omit section 81A (7).

### [3] Section 86 Commencement of complying development

Omit section 86 (4).

**[4] Section 109M Occupation and use of new building requires occupation certificate**

Omit the maximum penalty from section 109M (1).

**[5] Section 109N Change of building use of existing building requires occupation certificate**

Omit the maximum penalty from section 109N (1).

**[6] Section 122E Offences relating to monitoring and environmental audits**

Omit section 122E (4). Insert instead:

(4) **Penalty** The maximum penalty for an offence under section 125 arising under this Division is a tier 3 maximum penalty.

**[7] Section 125 Offences against this Act and the regulations**

Insert after section 125 (3):

(3A) A person who:

- (a) aids, abets, counsels or procures another person to commit, or
- (b) conspires to commit,

an offence against this Act or the regulations arising under any other provision is guilty of an offence against this Act or the regulations arising under that provision and is liable, on conviction, to the same penalty applicable to an offence arising under that provision.

**[8] Sections 125A, 125B, 125C and 125D**

Insert after section 125:

**125A Maximum penalties for offences against Act: Tier 1**

(1) This section applies to an offence against this Act under section 125 (1) if the prosecution establishes (to the criminal standard of proof):

- (a) that the offence was committed intentionally, and
- (b) that the offence:
  - (i) caused or was likely to cause significant harm to the environment, or
  - (ii) caused the death of or serious injury or illness to a person.

For this section to apply, the court attendance notice or application commencing

the proceedings must allege that those factors apply to the commission of the offence.

- (2) A person who is guilty of an offence to which this section applies is liable to a ***tier 1 maximum penalty***, being a penalty not exceeding:
  - (a) in the case of a corporation:
    - (i) \$5 million, and
    - (ii) for a continuing offence—a further \$50,000 for each day the offence continues, or
  - (b) in the case of an individual:
    - (i) \$1 million, and
    - (ii) for a continuing offence—a further \$10,000 for each day the offence continues.

#### **125B Maximum penalties for offences against Act: Tier 2**

- (1) This section applies to an offence against this Act under section 125 (1), other than an offence to which section 125A applies or an offence for which a tier 3 maximum penalty applies.
- (2) A person who is guilty of an offence to which this section applies is liable to a ***tier 2 maximum penalty***, being a penalty not exceeding:
  - (a) in the case of a corporation:
    - (i) \$2 million, and
    - (ii) for a continuing offence—a further \$20,000 for each day the offence continues, or
  - (b) in the case of an individual:
    - (i) \$500,000, and
    - (ii) for a continuing offence—a further \$5,000 for each day the offence continues.
- (3) However, this section is subject to any provision of this Act that declares a different maximum penalty for a particular offence to which this section applies.

#### **125C Maximum penalties for offences against Act: Tier 3**

- (1) This section applies to:
  - (a) a certificate-related offence, or

- (b) any other offence against this Act under section 125 (1) for which a tier 3 maximum penalty is declared by this Act to apply.
- (2) A person who is guilty of an offence to which this section applies is liable to a **tier 3 maximum penalty**, being a penalty not exceeding:
- (a) in the case of a corporation:
    - (i) \$1 million, and
    - (ii) for a continuing offence—a further \$10,000 for each day the offence continues, or
  - (b) in the case of an individual:
    - (i) \$250,000, and
    - (ii) for a continuing offence—a further \$2,500 for each day the offence continues.
- (3) In this section, a **certificate-related offence** is an offence under section 125 arising under any of the following provisions of this Act:
- (a) section 81A (except subsections (2) (a), (2) (b) (i), (4) (a) and (4) (b)),
  - (b) section 85A (10A) and (11),
  - (c) section 86 (except subsections (1) (a) (i) and (2) (a)),
  - (d) section 109D,
  - (e) section 109E (3) (d) and (e),
  - (f) section 109F,
  - (g) section 109G,
  - (h) section 109H,
  - (i) section 109J.

### **125D Maximum penalties for offences against regulations**

- (1) This section applies to an offence against the regulations under section 125 (2).
- (2) A person who is guilty of an offence to which this section applies is liable to a penalty not exceeding \$110,000.
- (3) However, this section is subject to any provision of the regulations that prescribes a different maximum penalty for a particular offence to which this section applies.

**[9] Section 126 Additional provisions relating to penalties**

Omit section 126 (1) and (2).

**[10] Section 126 (2A)**

Insert before section 126 (3):

(2A) Part 8.3 of the *Protection of the Environment Operations Act 1997* (Court orders in connection with offences) applies to an offence against this Act or the regulations in the same way as it applies to an offence against that Act or the regulations under that Act, but only in relation to proceedings before the Court and subject to any modifications prescribed by the regulations under this Act.

**Note—**

An offence under section 251 of that Act in relation to an order will become an offence against this Act.

**[11] Section 146A Smoke alarms in buildings providing sleeping accommodation**

Omit section 146A (3). Insert instead:

(3) The maximum penalty for an offence against the regulation arising under this section is \$550 (and not the maximum penalty of \$110,000 provided by section 125D for offences against other regulations).

**[12] Section 148 Disclosure and misuse of information**

Omit the penalty set out at the end of the section. Insert instead:

(5) The maximum penalty for an offence under section 125 arising under this section is a tier 3 maximum penalty or imprisonment for a period not exceeding 6 months, or both.

**[13] Section 148B**

Insert before section 149:

**148B Offence—false or misleading information**

- (1) A person must not provide information in connection with a planning matter that the person knows, or ought reasonably to know, is false or misleading in a material particular.
- (2) The maximum penalty for an offence under section 125 arising under this section is a tier 3 maximum penalty.

- (3) For the purposes of this section, a person provides information in connection with a planning matter if:
- (a) the person is an applicant for a consent, approval or certificate under this Act (or for the modification of any such consent, approval or certificate) and the information is provided by the applicant in or in connection with the application, or
  - (b) the person is engaged by any such applicant and the information is provided by that person for the purposes of the application, or
  - (c) the person is a proponent of proposed development and the information is provided in or in connection with a formal request to the Minister, a council, the Secretary or other planning authority for the making of provisions of an environmental planning instrument, Ministerial planning order, plan or other document under this Act in relation to the proposed development, or
  - (d) the person provides information in connection with any other matter or thing under this Act that the regulations declare to be the provision of information in connection with a planning matter for the purposes of this section.
- (4) An environmental impact statement or other document is part of information provided in connection with a matter if it forms part of or accompanies the matter or is subsequently submitted in support of the matter.

**Note—**

The *Crimes Act 1900* contains other offences relating to false and misleading information: section 192G (Intention to defraud by false or misleading statement—maximum penalty 5 years imprisonment); sections 307A, 307B and 307C (False or misleading applications/information/documents—maximum penalty 2 years imprisonment or \$22,000, or both).

## **Schedule 2 Amendment of *Environmental Planning and Assessment Act 1979 No 203*—Enforcement powers**

### **[1] Part 6, Division 1A Local enforcement powers**

Omit the Division.

### **[2] Part 6, Division 1C**

Insert before Division 2 of Part 6:



## Division 1C Investigative powers

### Subdivision 1 Preliminary

#### 119A Definitions

In this Division:

**authorised fire officer** means an authorised fire officer within the meaning of section 121ZC.

**investigation authority** means:

- (a) a council, in relation to an investigation officer appointed by the council, or
- (b) the Secretary, in relation to any other investigation officer.

**investigation officer** means a person appointed as an investigation officer under this Division by the Secretary (a **departmental investigation officer**) or by a council (a **council investigation officer**).

**investigation purpose** means a purpose for which a power may be exercised under this Division.

**occupier** of premises means the person who has the management or control of the premises (including a tenant or other lawful occupant who is not the owner).

**records** includes plans, specifications, maps, reports, books and other documents (whether in writing, in electronic form or otherwise).

**this Act** includes the regulations.

#### 119B Appointment of investigation officers

- (1) The Secretary or a council may appoint persons (including any class of persons) as investigation officers for the purposes of this Division.

**Note—**

Because of the definition of **investigation officer**, a person appointed by the Secretary becomes a **departmental investigation officer** and a person appointed by the council becomes a **council investigation officer**.

- (2) A person's appointment as an investigation officer may be made generally, or made subject to conditions or restrictions or only for limited purposes.
- (3) A person's appointment as an investigation officer is to be made by written instrument (in the case of an individual appointment) or by notice published on the NSW planning portal or in the Gazette (in the case of the appointment of a class of persons).

- (4) Every investigation officer is to be provided by the investigation authority with an identification card as an investigation officer.
- (5) If persons of a class are appointed as investigation officers, they need not be provided with an identification card if the investigation authority is satisfied that they possess adequate identification as persons of that class.

### **119C Purposes for which powers under Division may be exercised**

- (1) A departmental investigation officer may exercise powers under this Division for any of the following purposes:
  - (a) enabling the Minister or the Secretary to exercise their functions under this Act,
  - (b) determining whether there has been compliance with or a contravention of this Act, including any instrument, consent, approval or any other document or requirement issued or made under this Act,
  - (c) obtaining information or records for purposes connected with the administration of this Act,
  - (d) generally for administering this Act.
- (2) A council investigation officer may exercise powers under this Division for any of the following purposes:
  - (a) enabling a council to exercise its functions under this Act,
  - (b) at the request of the Commissioner of Fire and Rescue NSW, determining whether or not adequate provision for fire safety has been made in or in connection with a building.
- (3) Nothing in this Division affects any function under any other provision of this Act or under any other Act.

## **Subdivision 2 Powers of entry and search**

### **119D Powers of investigation officers to enter premises**

- (1) An investigation officer may enter:
  - (a) any premises at which the officer reasonably suspects that any industrial, agricultural or commercial activities are being carried out—at any time during which those activities are being carried out there, and
  - (b) any other premises—at any reasonable time.
- (2) An investigation officer may enter a part of premises used for residential

purposes only:

- (a) with the consent of the occupier, or
  - (b) under the authority of a search warrant issued under this Division, or
  - (c) if it is necessary to do so to inspect work being carried out under a consent, approval or certificate under this Act, or
  - (d) if a building certificate has been sought under this Act and it is necessary to do so to inspect the premises for the purpose of issuing the certificate.
- (3) An investigation officer may enter any premises under the authority of a search warrant issued under this Division.
  - (4) The power to enter premises authorises entry by foot or by means of a motor vehicle or other vehicle, or in any other manner.
  - (5) Reasonable force may be used to enter premises under this Division.
  - (6) An investigation officer may enter premises under this Division with the aid of such investigation officers, police officers or other persons as the investigation officer considers necessary.

### **119E Notice of entry of residential premises**

- (1) This section applies to the entry into any part of premises used for residential purposes only for the purpose of inspecting work being carried out under a consent, approval or certificate under this Act or for the purpose of issuing a building certificate sought in respect of the premises.
- (2) An investigation officer or the investigation authority must give the owner or occupier of the premises written notice of the intention to enter the premises before a person authorised to enter premises under this Division does so.
- (3) The notice must specify the day on which the person intends to enter the premises and must be given before that day.
- (4) Notice is not required to be given:
  - (a) if entry to the premises is made with the consent of the owner or occupier of the premises, or
  - (b) if entry to the premises is made under the authority of a search warrant issued under this Division, or
  - (c) if entry to the premises is required because of the existence or reasonable likelihood of a serious risk to health or safety, or

- (d) if entry is required urgently and the case is one in which the investigation authority has authorised in writing (either generally or in the particular case) entry without notice.

**119F Powers of investigation officers to do things at premises**

- (1) An investigation officer who lawfully enters premises may do anything that the officer thinks is necessary to be done for an investigation purpose, including (but not limited to) the following things:
  - (a) examine and inspect any works, plant or other article,
  - (b) take and remove samples,
  - (c) make such examinations, inquiries and tests as the officer thinks necessary,
  - (d) take such photographs, films, audio, video and other recordings as the officer thinks necessary,
  - (e) for the purpose of an inspection:
    - (i) open any ground and remove any flooring and take any measures that may be necessary to ascertain the character and condition of the premises and of any pipe, sewer, drain, wire or fitting, and
    - (ii) require the opening, cutting into or pulling down of any work if the officer has reason to believe or suspect that anything on the premises has been done in contravention of this Act,
  - (f) take measurements, make surveys and take levels and, for those purposes, dig trenches, break up the soil and set up any posts, stakes or marks,
  - (g) require records to be produced for inspection,
  - (h) examine and inspect any records,
  - (i) copy any records,
  - (j) seize anything that the officer has reasonable grounds for believing is connected with an offence against this Act,
  - (k) do any other thing the officer is empowered to do under this Division.
- (2) The power to seize anything connected with an offence includes a power to seize:
  - (a) a thing with respect to which the offence has been committed, and
  - (b) a thing that will afford evidence of the commission of the offence, and

(c) a thing that was used for the purpose of committing the offence.

A reference to any such offence includes a reference to an offence that there are reasonable grounds for believing has been committed.

### **119G Search warrants**

- (1) An investigation officer may apply to an eligible issuing officer for the issue of a search warrant if the investigation officer believes on reasonable grounds that this Act is being or has been contravened at any premises.
- (2) An eligible issuing officer to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an investigation officer named in the warrant:
  - (a) to enter the premises, and
  - (b) to exercise any function of an investigation officer under this Division.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section:

***eligible issuing officer*** means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

### **119H Care to be taken**

- (1) An investigation officer must do as little damage as possible in the exercise of a power to enter or search premises under this Division. The investigation authority must provide, if necessary, other means of access in place of any taken away or interrupted by an investigation officer.
- (2) As far as practicable, entry on to fenced land is to be made through an existing opening in the enclosing fence. If entry by that means is not practicable, a new opening may be made in the enclosing fence, but the fence is to be fully restored when the need for entry ceases.

### **119I Notification of use of force**

- (1) An investigation officer who uses force for the purpose of gaining entry to premises must promptly advise the investigation authority.
- (2) The investigation authority must give notice of the entry to such persons or authorities as appear to the investigation authority to be appropriate in the circumstances.

## **Subdivision 3 Powers to obtain information**

### **119J Requirement to provide information and records**

- (1) An investigation officer may, by notice in writing given to a person, require the person to furnish to the officer such information or records (or both) as the notice requires in connection with an investigation purpose.
- (2) The notice must specify the manner in which information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished.
- (3) The notice may only require a person to furnish existing records that are in the person's possession or that are within the person's power to obtain lawfully.
- (4) The person to whom any record is furnished under this section may take copies of it.
- (5) If any record required to be furnished is in electronic, mechanical or other form, the notice requires the record to be furnished in written form, unless the notice otherwise provides.
- (6) An investigation officer may exercise a power under this section whether or not a power of entry is being or has been exercised.

### **119K Power of investigation officers to require answers and record evidence**

- (1) An investigation officer may require a person to answer questions in relation to a matter connected with an investigation purpose if the officer suspects on reasonable grounds:
  - (a) that it is necessary to require information about the matter for that purpose, and
  - (b) that the person has knowledge of the matter.
- (2) The investigation authority may require a corporation to nominate a director or officer of the corporation who is authorised to represent the corporation for the purposes of answering questions under this section.
- (3) An investigation officer may, by notice in writing, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.
- (4) The place and time at which a person may be required to attend is to be:
  - (a) a place or time nominated by the person, or

- (b) if the place and time nominated is not reasonable in the circumstances or a place and time is not nominated by the person, a place and time nominated by the investigation officer that is reasonable in the circumstances.
- (5) An investigation officer may exercise a power under this section whether or not a power of entry is being or has been exercised.

#### **119L Recording of evidence**

- (1) An investigation officer may cause any questions and answers to questions given under this Division to be recorded if the officer has informed the person who is to be questioned that the record is to be made.
- (2) A record may be made using sound recording apparatus or audio visual apparatus, or any other method determined by the investigation officer.
- (3) A copy of any such record must be provided by the investigation officer to the person who is questioned as soon as practicable after it is made.
- (4) A record may be made under this section despite the provisions of any other law.

### **Subdivision 4 Miscellaneous provisions applying to exercise of powers**

#### **119M Offences**

- (1) A person must not, without reasonable excuse, fail to comply with a requirement made of the person by an investigation officer in accordance with this Division.
- (2) A person must not furnish any information or do any other thing in purported compliance with a requirement made under this Division that the person knows is false or misleading in a material respect.
- (3) A person must not intentionally delay or obstruct an investigation officer in the exercise of the officer's powers under this Division.
- (4) The maximum penalty for an offence under section 125 arising under this section is a tier 3 maximum penalty.

#### **119N Identification card to be produced**

- (1) An investigation officer who is exercising a function under this Division must produce the officer's identification card, if requested to do so by a person affected by the exercise of the function.
- (2) In this section, **identification card** means an identification card issued under section 119B (4) or identification of the kind referred to in section 119B (5).

### **119O Assistance for investigation officers**

The investigation authority may, by notice in writing given to the owner or occupier of premises, require the owner or occupier to provide reasonable assistance and facilities to an investigation officer in the exercise of the officer's powers under this Division. The notice is to specify the assistance and facilities to be provided and the time and manner in which they are to be provided.

### **119P Compensation**

The State must compensate all interested parties for any damage caused by a departmental investigation officer (and a council must compensate all interested parties for any damage caused by a council investigation officer) in exercising a power of entering premises but not any damage caused by the exercise of any other power, unless the occupier obstructed or hindered the officer in the exercise of the power of entry.

### **119Q Recovery of cost of entry and inspection**

If, as a result of an inspection of premises under this Division by an investigation officer, the investigation authority requires any work to be carried out on or in the premises, the investigation authority may recover the reasonable costs of the entry and inspection from the owner or occupier of the premises.

### **119R Notices**

- (1) More than one notice under a provision of this Division may be given to the same person.
- (2) A notice given under this Division may be revoked or varied by a subsequent notice or notices (including by extending the time for compliance with the notice).
- (3) A notice may be given under this Division to a person in respect of a matter or thing even though the person is outside the State, or the matter or thing occurs or is located outside the State, so long as the matter or thing affects the environment of this State.

### **119S Provisions relating to requirements to furnish records or information or answer questions**

- (1) **Warning to be given on each occasion** A person is not guilty of an offence of failing to comply with a requirement under this Division to furnish records or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.
- (2) **Self-incrimination not an excuse** A person is not excused from a requirement



under this Division to furnish records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.

- (3) **Information or answer not admissible if objection made** However, any information furnished or answer given by a natural person in compliance with a requirement under this Division is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Division) if:
- (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
  - (b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.
- (4) **Records admissible** Any record furnished by a person in compliance with a requirement under this Division is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.
- (5) **Further information** Further information obtained as a result of a record or information furnished or of an answer given in compliance with a requirement under this Division is not inadmissible on the ground:
- (a) that the record or information had to be furnished or the answer had to be given, or
  - (b) that the record or information furnished or answer given might incriminate the person.

### **119T Fire brigades inspection powers**

- (1) An authorised fire officer may exercise the powers of an investigation officer under this Division for the purpose of inspecting a building to determine whether or not:
- (a) adequate provision for fire safety has been made in or in connection with the building, or
  - (b) the fire safety provisions prescribed for the purposes of this section by the regulations have been complied with.
- (2) An authorised fire officer cannot inspect premises under this section (other than places of shared accommodation) for the purposes of determining whether or not adequate provision for fire safety has been made except:
- (a) when requested to do so by the council of the area in which the building is

located, or

- (b) when requested to do so by a person who holds himself or herself out as the owner, lessee or occupier of the building, or
  - (c) when the Commissioner of Fire and Rescue NSW has received a complaint in writing that adequate provision for fire safety has not been made concerning the building.
- (3) A council must, at the request of the Commissioner of Fire and Rescue NSW, make available a council investigation officer for the purposes of an inspection under this section, and the officer concerned is to be present during the inspection.
- (4) The Commissioner of Fire and Rescue NSW must send a report of any inspection carried out under this section to the council concerned.
- (5) This Division applies (subject to the regulations) to an authorised fire officer in the same way that it applies to a council investigation officer. For that purpose (and subject to the regulations), a reference in this Division to the investigating authority is taken to be a reference to the Commissioner of Fire and Rescue NSW.
- (6) A council must, at the written request of the Commissioner of Fire and Rescue NSW, cause any building specified in the request to be inspected for the purpose of determining whether or not adequate provision for fire safety has been made in or in connection with the building. As soon as practicable after such an inspection has been carried out, the council must send a report of the inspection to the Commissioner.

#### **119U Accredited certifiers**

- (1) The regulations may confer on an accredited certifier specified powers of a council investigation officer under this Division for the purpose of exercising functions under this Act as an accredited certifier.
- (2) This Act applies (subject to the regulations) to any such accredited certifier in the same way that it applies to a council investigation officer.

#### **[3] Section 121ZC Powers of fire brigades**

Omit “section 118L” from section 121ZC (1). Insert instead “section 119T”.

#### **[4] Section 121ZD Inspection reports by fire brigades**

Omit “section 118L” from section 121ZD (1). Insert instead “section 119T”.

**[5] Section 121ZS**

Omit the section. Insert instead:

**121ZS Enforcement of orders by cessation of utilities**

- (1) This section applies in relation to a failure to comply with any of the following orders:
  - (a) a brothel closure order,
  - (b) an order to cease the use of premises for such classes of residential, tourist or other development as are prescribed by the regulations.
- (2) In this section, the **Court** means the Land and Environment Court and, in relation to a brothel closure order, includes the Local Court.
- (3) If a person fails to comply with an order to which this section applies, the Court may, on the application of the person who gave the order, make an order (a **utilities order**) directing that a provider of water, electricity or gas to the premises concerned cease to provide those services.
- (4) A utilities order is not to be made in respect of a failure to comply with an order (other than a brothel closure order) unless the Court is satisfied that the failure has caused or is likely to cause a significant adverse impact on health, safety or public amenity.
- (5) A utilities order may apply to the whole or part of the premises.
- (6) A utilities order ceases to have effect on the date specified in the utilities order, or 3 months after the order is made, whichever occurs first.
- (7) An application for a utilities order must not be made unless not less than 7 days notice of the proposed application is given to the following persons:
  - (a) any person to whom the brothel closure or other order was given,
  - (b) any provider of water, electricity or gas to the premises who is affected by the application,
  - (c) any owner or occupier of the premises.
- (8) An owner or occupier of premises, or a provider of water, electricity or gas to premises, who is affected by an application for a utilities order is entitled to be heard and represented in proceedings for the order.
- (9) In determining whether to make a utilities order, the Court is to take into consideration the following matters:

- (a) the effects of the failure to comply with the brothel closure or other order,
  - (b) the uses of the premises,
  - (c) the impact of the order on the owner, occupier or other users of the premises,
  - (d) whether health, safety or public amenity will be adversely affected by the order,
  - (e) any other matter the Court thinks appropriate.
- (10) A utilities order must not be made for premises, or any part of premises, used for residential purposes unless the regulations authorise the making of a utilities order.
- (11) A provider of water, electricity or gas must comply with a utilities order, despite any other law or agreement or arrangement applying to the provision of water, electricity or gas to the premises, or part of the premises, concerned.
- (12) No compensation is payable to any person for any damage or other loss suffered by that person because of the making or operation of a utilities order or this section.
- (13) A provider of water, electricity or gas must not, during a period that a utilities order is in force in relation to premises, or part of premises, require payment for the provision of water, electricity or gas services to the premises or part of the premises (other than services related to the implementation of the order).
- (14) The Court may make a utilities order when it determines an appeal against a brothel closure or other order, if subsections (7) and (8) have been complied with.

**[6] Section 122E Offences**

Omit “an authorised officer under Division 2C” from section 122E (3) (c).

Insert instead “a departmental investigation officer under Division 1C”.

**[7] Part 6, Division 2C Departmental enforcement powers**

Omit the Division.

**[8] Section 127 Proceedings for offences**

Omit section 127 (5A). Insert instead:

(5A) However, proceedings for any such offence may also be commenced within, but

not later than, 2 years after the date on which evidence of the alleged offence first came to the attention of:

- (a) in relation to proceedings for an offence instituted by or with the consent of the Secretary or a member of staff of the Department—any investigation officer who is a member of the staff of the Department, or
- (b) in relation to proceedings for an offence instituted by or with the consent of a council or a member of staff of a council—any investigation officer who is a member of the staff of that council, or
- (c) in relation to proceedings for an offence instituted by any other person—any investigation officer.

In this subsection, **investigation officer** means an investigation officer within the meaning of Division 1C, whether or not the person has the functions of an investigation officer in connection with the offence concerned.

**[9] Section 127 (5B)**

Omit “an authorised officer” wherever occurring.

Insert instead “any such investigation officer”.

**Schedule 3 Amendment of Environmental Planning and Assessment Act 1979 No 203—ePlanning**

**[1] Section 4 Definitions**

Insert in alphabetical order in section 4 (1):

**Ministerial planning order** means an order made by the Minister and published on the NSW planning portal.

**NSW planning portal** means the website with the URL of [www.planningportal.nsw.gov.au](http://www.planningportal.nsw.gov.au), or any other website, used by the Secretary to provide public access to documents or other information in the NSW planning database.

**[2] Section 4 (6)**

Omit “by order published in the Gazette”. Insert instead “by Ministerial planning order”.

**[3] Section 4 (15)**

Insert after section 4 (14):

(15) A reference in this Act to a map includes a reference to a spatial dataset.

**[4] Section 23 Delegation**

Omit “published in the Gazette” from section 23 (7).

Insert instead “published on the NSW planning portal”.

**[5] Section 54 Relevant planning authority**

Omit “by order published in the Gazette” from section 54 (6).

Insert instead “by Ministerial planning order”.

**[5A] Section 79 Public participation—designated development**

Omit “in a newspaper circulating in the locality” from section 79 (1) (d).

**[6] Section 82D Effect of review of decisions**

Omit section 82D (4).

**[7] Section 83 Date from which consent operates**

Omit section 83 (1). Insert instead:

- (1) Subject to subsections (2) and (3), if a determination is made by the granting of consent, consent becomes effective and operates on and from:
  - (a) the date the determination is registered on the NSW planning portal, or
  - (b) in the case of designated development to which an objection has been made in accordance with section 79 (5) (being consent that was not granted under section 80 (6) or (7) following the holding of a public hearing by the Planning Assessment Commission)—the end of 28 days after the date the determination is registered on the NSW planning portal.

**[8] Section 83 (2) (b)**

Omit “operates from the date of the determination of that appeal”.

Insert instead “operates (subject to any order of the court) on and from the date the decision is registered on the NSW planning portal after the determination of the appeal”.

**[9] Section 83 (4)**

Omit “operates from the date of that decision”.

Insert instead “operates (subject to any order of the court) on and from the date the decision is registered on the NSW planning portal”.

**[10] Section 89C Development that is State significant development**

Omit “by order published in the Gazette” from section 89C (3).

Insert instead “by Ministerial planning order”.

**[11] Section 110A Nomination of nominated determining authority**

Omit “by order published in the Gazette and in a newspaper circulating throughout the State” from section 110A (1).

Insert instead “by Ministerial planning order”.

**[12] Section 115P Approval of Minister administering this Act required for designated fishing activity where Fisheries Minister is or is declared to be proponent**

Omit “by order published in the Gazette” from section 115P (1) (b).

Insert instead “by Ministerial planning order”.

**[13] Section 117 Directions by the Minister**

Omit “publication in the Gazette or on a website maintained by the Department (or both)” from section 117 (2A).

Insert instead “publication on the NSW planning portal”.

**[14] Section 118 Appointment of planning administrator, planning assessment panel or regional panel**

Omit “published in the Gazette” from section 118 (7), (7A) and (9) wherever occurring.

Insert instead “published on the NSW planning portal”.

**[15] Section 158A Copyright in documents used for purposes of this Act**

Insert after section 158A (1):

(1A) The regulations may require a relevant person who is entitled to copyright in a document that is part of a planning matter to give (in the planning matter or otherwise) a licence to the State or a council to use the copyright material for the purposes of this Act. The regulations may also require a relevant person who is not so entitled to that copyright to give a warranty (in the planning matter or otherwise) that the relevant person has a licence to so use the copyright material from the person who is entitled to copyright in any such document.

**[16] Section 158A (4A)**

Insert after section 158A (4):

(4A) This section extends to planning matters in paper or electronic form.

**[17] Sections 158B-158E**

Insert after section 158A:

**158B Online planning services and information**

The Secretary is to establish and facilitate the online delivery of planning services and information (including the NSW planning portal).

**158C Establishment, content and maintenance of NSW planning database**

- (1) The NSW planning database is established for the purposes of this Act.
- (2) The NSW planning database is an electronic repository of:
  - (a) documents that are required by or under this Act to be published on the NSW planning portal, and
  - (b) environmental planning instruments, plans or other documents that are required by or under this Act to be published on the NSW legislation website, and
  - (c) spatial datasets or other maps that are adopted or incorporated by way of reference by those provisions or documents, and
  - (d) other documents or information relating to the administration of this Act required to be published on the NSW planning portal by the regulations or by the Secretary.
- (3) The NSW planning database is to maintain historical as well as current versions of documents and other material required to be published on the NSW planning portal.
- (4) The NSW planning database is to be compiled and maintained as determined by the Secretary.
- (5) The NSW planning database may comprise separate databases for different material. Any such separate databases may be compiled and maintained by other agencies, including the legislation database compiled and maintained by the Parliamentary Counsel for publication of environmental planning instruments or other material on the NSW legislation website.

**158D Public access to documents and information on the NSW planning**



**portal**

- (1) The Secretary is to make arrangements for documents or other information in the NSW planning database to be published on the NSW planning portal and such other websites as are determined by the Secretary.
- (2) The Secretary may certify the form of such documents or other information that is correct.
- (3) Environmental planning instruments, plans or other documents and information need not be published on the NSW planning portal if they are published on the NSW legislation website (or the website of another agency) and can be readily accessed from the NSW planning portal.
- (4) If the NSW planning portal is not available to publish a document or other information for technical or other reasons, the document or other information may be published on the NSW legislation website.

**Note—**

The NSW planning portal is defined by section 4 to mean the website with the URL of [www.planningportal.nsw.gov.au](http://www.planningportal.nsw.gov.au), or any other website, used by the Secretary to provide public access to documents or other information in the NSW planning database.

**158E Regulations and other provisions relating to online planning services and information**

- (1) The regulations may make provision for or with respect to the online delivery of planning services and information, including:
  - (a) the NSW planning portal and other specialised planning portals (including the status of services and information delivered online), and
  - (b) access to information (and the issue of certificates) about land use zoning and development standards relating to particular land, and
  - (c) the lodgment or submission of applications and other things under this Act, and
  - (d) the assessment of categories of development for which there are codified criteria or standards, and
  - (e) the registration of consents, approvals or certificates (or other documents) and their effect on registration, and
  - (f) the notification of the making or determination of applications for (or the issue or grant of) consents, approvals or certificates (or other documents) by means of the NSW planning portal.
- (2) The charges or fees that may be prescribed by the regulations under section

137 extend to charges or fees in relation to the online delivery of planning services and information (including the compilation and maintenance of the NSW planning database, the operation of the NSW planning portal and the enhancement of the NSW planning database and the NSW planning portal).

- (3) For the purpose of facilitating online delivery of planning services and information:
- (a) the Secretary may determine standard technical requirements with respect to:
    - (i) the preparation of environmental planning instruments, plans or other documents and of any spatial datasets or other maps that are referred to in (or adopted under) those instruments, plans or documents, and
    - (ii) the form of applications for consents, approvals or certificates (or other documents) under this Act and the form of any such consents, approvals or certificates (or other documents), and
  - (b) a council or other planning body is to provide the Secretary, when requested, with electronic files (in a specified format) of any such instruments, plans or other documents (or of any spatial datasets or other maps) prepared or held by it, and
  - (c) a council or other planning body is to implement any standard technical requirements determined by the Secretary to facilitate access to relevant data in the electronic systems maintained by the council or other body or to transfer that data to the NSW planning database.
- (4) The Secretary is to establish on a departmental website an alert facility to enable members of the public to register for the purposes of receiving electronic notification of selected new planning decisions and matters.

## **Schedule 4 Amendment of [Environmental Planning and Assessment Act 1979 No 203](#)—Miscellaneous**

### **[1]-[5] (Repealed)**

### **[6] Section 147 Disclosure of political donations and gifts**

Omit section 147 (8). Insert instead:

- (8) For the purposes of this section, persons are associated with each other if:
- (a) they carry on a business together in connection with the relevant planning application (in the case of the making of any such application) or they carry on a business together that may be affected by the granting of the application (in

the case of a relevant planning submission), or

- (b) they are related bodies corporate under the *Corporations Act 2001* of the Commonwealth, or
- (c) they are directors of the same body corporate, or they are directors of different bodies corporate that are related bodies corporate under the *Corporations Act 2001* of the Commonwealth, or
- (d) one is a director of a body corporate and the other is the body corporate or a related body corporate under the *Corporations Act 2001* of the Commonwealth, or
- (e) they have any other relationship prescribed by the regulations.

**[7] (Repealed)**

**Schedule 5 (Repealed)**

**Schedule 6 Amendment of *Environmental Planning and Assessment Regulation 2000*—Consequential**

**Clause 283 False and misleading statements**

Omit the clause.