

**ENVIRONMENTAL PLANNING AND ASSESSMENT  
(AMENDMENT) ACT 1994 No. 29**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Environmental Planning and Assessment Act 1979 No. 203

**SCHEDULE 1—AMENDMENTS**

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**ENVIRONMENTAL PLANNING AND ASSESSMENT  
(AMENDMENT) ACT 1994 No. 29**

**NEW SOUTH WALES**



**Act No. 29, 1994**

An Act to amend the Environmental Planning and Assessment Act 1979 to make further provision concerning the consideration and determination of development applications; and for other purposes. [Assented to 30 May 1994]

*Environmental Planning and Assessment (Amendment) Act 1994 No. 29*

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

**Short title**

1. This Act may be cited as the Environmental Planning and Assessment (Amendment) Act 1994.

**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.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

**(1) Section 45 (Consultation):**

- (a) Omit “ensure that consultations are held”, insert instead “consult, to the extent required by this section,”.
- (b) At the end of section 45, insert:

(2) For the purposes of the consultation, the Director must provide the following information to them:

- (a) the reasons for deciding to prepare the environmental study or the draft regional environmental plan;
- (b) the proposed aims, objectives, policies and strategies whereby the draft plan is designed to achieve any of the objects of this Act;
- (c) a description of the land to which the study or draft plan is intended to apply;
- (d) the types of matters to be dealt with in the study or draft plan.

(3) For the purposes of the consultation, the Director may provide any other information that, in the Director's opinion, would assist in understanding the environmental study or the draft regional environmental plan.

**SCHEDULE 1—AMENDMENTS—continued**

(4) A person to whom information is provided under this section may comment to the Director on the preparation of the environmental study or draft regional environmental plan within 40 days after the Director provides the information required to be provided under subsection (2).

(5) The consultation required by this section is completed when the Director has considered any comments so made.

(2) Section 91 (**Determination of development application**):

After section 91 (3A), insert:

(3B) A consent may be granted subject to a condition expressed in a manner that identifies both of the following:

- (a) one or more express outcomes or objectives that the development or a specified part or aspect of the development must achieve;
- (b) clear criteria against which achievement of the outcome or objective must be assessed.

The condition may specify the means by which the outcome or objective may be achieved.

(3) Section 91A:

Omit the section, insert instead:

**Determination of Crown development applications**

91A. (1) A consent authority, in respect of a development application made by or on behalf of the Crown or a prescribed person, must not:

- (a) refuse its consent to the application, except with the written approval of the Minister; or
- (b) impose a condition of its consent, except with the written approval of the Minister or the applicant.

(2) If the development application has not been determined by the consent authority within the period after which, under section 96, it is deemed to have been determined by refusing consent, or within a period of 60 days after lodgment of that development application with the consent authority, whichever is the longer period, the applicant or the consent authority may refer the application to the Minister.

SCHEDULE 1—AMENDMENTS—*continued*

(3) The party who refers the application to the Minister must notify the other party in writing that the application has been referred.

(4) When an application is referred to the Minister by either party, the consent authority must, as soon as practicable after the application is referred, submit to the Minister:

- (a) a copy of the development application; and
- (b) details of its proposed determination of the development application; and
- (c) the reasons for the proposed determination; and
- (d) any relevant reports of another public authority.

(5) The Minister is required to notify the Director in writing that the application has been referred.

(6) On being so notified, the Director must convene a meeting between the consent authority and the applicant for the purpose of negotiating, as far as possible, a determination of the development application that is acceptable to them and that is in accordance with this Act.

(7) If agreement is reached between the applicant and the consent authority that development consent be granted, unconditionally or subject to conditions, the Director must prepare a report of the agreement. The report:

- (a) may include any recommendations that may be necessary or desirable to ensure the implementation of the agreement; and
- (b) must specify the date by which consent is to be granted.

The Director must give a copy of the report to the consent authority and the applicant.

(8) After receiving the Director's report, the consent authority must determine the application by granting consent in accordance with the report and recommendations and on or before the date specified for the purpose in the report. Such a consent is taken to have been granted in accordance with the written approval of the Minister.

SCHEDULE 1—AMENDMENTS—*continued*

(9) If agreement is not reached between the applicant and the consent authority that development consent be granted, unconditionally or subject to conditions, the Minister must notify the consent authority and the applicant in writing of:

- (a) the Minister's approval to the refusal of consent; or
- (b) the Minister's approval to the imposition of the consent authority's proposed conditions and the date on or before which the development application must be determined; or
- (c) the Minister's intention not to agree with the consent authority's proposed refusal and that the consent authority may submit any conditions it wishes to impose as conditions of consent to the Minister within 40 days after the date of the Minister's notification; or
- (d) the Minister's refusal to agree with the consent authority's proposed conditions, any conditions that may be imposed with the Minister's approval and the date on or before which the development application must be determined.

(10) At the end of the 40-day period specified in subsection (9) (c), the Minister must notify the consent authority and the applicant in writing:

- (a) whether the Minister approves of the imposition of any of the conditions submitted by the consent authority during that period and, if so, which conditions; or
- (b) of the conditions that may be imposed with the Minister's approval,

or both, and that the consent authority must determine the application in accordance with the Minister's notification on or before the date notified by the Minister for the purpose.

(11) The Minister must notify the consent authority and the applicant in writing of the reasons for a decision under subsection (9) or (10).

(12) If the consent authority does not determine the application on or before the date specified in the Director's report under subsection (7), or on or before the date notified for the purpose by the Minister under subsection (9) (b) or

**SCHEDULE 1—AMENDMENTS—*continued***

(d) or subsection (10), the consent authority is taken, on the date so specified or notified, to have determined the application:

- (a) in the case of a report under subsection (7)—by granting consent in accordance with the report and recommendations; or
- (b) in the case of a notification under subsection (9) (b) or (d)—by granting consent subject to the conditions that may be imposed with the Minister's approval; or
- (c) in the case of a notification under subsection (10)—in accordance with the Minister's approval as notified to it.

(13) This section applies to an application by or on behalf of the Crown or a prescribed person under section 102 (modification of consents) in the same way as it applies to an application for development consent.

(14) This section does not affect the right of an applicant to appeal under section 97 or 102 (5).

(4) Section 159:

After section 158, insert:

**Savings, transitional and other provisions**

159. Schedule 6 has effect.

(5) Schedule 6:

After Schedule 5, insert:

**SCHEDULE 6—SAVINGS, TRANSITIONAL AND  
OTHER PROVISIONS**

(Sec. 159)

**Part 1—Preliminary**

**Savings and transitional regulations**

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Environmental Planning and Assessment (Part 5)  
Amendment Act 1993

*Environmental Planning and Assessment (Amendment) Act 1994 No. 29*

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**SCHEDULE 1—AMENDMENTS—*continued***

**Environmental Planning and Assessment (Amendment)  
Act 1994**

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**Part 2—Environmental Planning and Assessment  
(Amendment) Act 1994**

**Performance-based conditions of consent**

2. Section 91 (3B) extends to a condition imposed in the determination of a development application before the commencement of that subsection.

**Determination of Crown development applications**

3. Section 91A, as substituted by the Environmental Planning and Assessment (Amendment) Act 1994, applies to a development application made but not determined as at the date of commencement of Schedule 1 (3) to that Act.

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[Minister's second reading speech made in—  
Legislative Council on 21 April 1994  
Legislative Assembly on 5 May 1994]



FIRST PRINT

**ENVIRONMENTAL PLANNING AND ASSESSMENT  
(AMENDMENT) BILL 1994**

NEW SOUTH WALES



**EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to amend the Environmental Planning and Assessment Act 1979:

- (a) to define the extent to which the Director of Planning is obliged to consult with councils and others in the preparation of a draft regional environmental plan; and
- (b) to make it clear that a consent authority may contemporaneously consider a development application and a proposed amendment to an environmental planning instrument; and
- (c) to limit the discretion of a consent authority in determining a development application in so far as the proposed development complies with development standards that are identified in the relevant environmental planning instrument as being non-discretionary development standards; and
- (d) to enable a consent authority to impose performance-based conditions of a development consent; and
- (e) to make further provision for the determination of development applications made by or on behalf of the Crown; and
- (f) to enable the making of regulations under that Act of a savings or transitional nature consequent on its amendment.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be proclaimed.

**Clause 3** gives effect to the Schedule of amendments to the Principal Act.

*Environmental Planning and Assessment (Amendment) 1994*

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**SCHEDULE 1—AMENDMENTS**

**Consultation concerning draft regional environmental plans**

Schedule 1 (1) amends section 45 to specify the extent to which the Director of Planning is obliged to consult with councils and others in the preparation of a draft regional environmental plan. The Director will be required to provide specified information to them, they will have the opportunity to comment to the Director on the preparation of the environmental study or draft regional plan within 40 days after the information is provided to them and the Director will be required to consider any comments so made.

**Instrument amendments and development applications**

Schedule 1 (2) inserts proposed Division 4B (sections 72I–72M) into Part 3 of the Principal Act. The purpose of the proposed Division is to make it clear that a consent authority may contemporaneously consider a development application and a proposed amendment to an environmental planning instrument.

The proposed Division contains the following provisions:

Proposed section 72I provides for the application of the proposed Division.

Proposed section 72J makes it clear that a consent authority is not precluded from dealing with a development application pending the amendment of an environmental planning instrument which, when amended, would enable the development to be carried out.

Proposed section 72K requires the development application and the proposed environmental planning instrument to both be publicised in the one notice.

Proposed section 72L will enable an environmental impact statement prepared for a development application to serve, if appropriate, as an environmental study for the proposed environmental planning instrument.

Proposed section 72M will enable the same Commission of Inquiry to inquire into the development and the amendment of the environmental planning instrument.

**Non-discretionary development standards**

Schedule 1 (3) inserts proposed section 90A into the Principal Act. The proposed section will enable development standards in an environmental planning instrument to be identified in the instrument as non-discretionary development standards. If development the subject of a development application complies with a development standard so identified, the consent authority has no discretion under sections 90 and 91 of the Principal Act to give further consideration to the development standard, to refuse the application on the ground of non-compliance with the development standard or to impose conditions more onerous than the development standard.

**Performance-based conditions of consent**

Schedule 1 (4) amends section 91 to enable a condition subject to which a development consent is granted to be expressed in terms of the outcome or objective to be achieved without specifying any particular means by which the outcome or objective is to be achieved.

*Environmental Planning and Assessment (Amendment) 1994*

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**Development applications by or on behalf of the Crown**

Schedule 1 (5) substitutes section 91A to clarify the procedure by which development applications made by or on behalf of the Crown are to be determined if the consent authority wishes to impose conditions of consent or to refuse consent to the application.

**Savings and transitional provisions**

Schedule 1 (6) and (7) contain savings and transitional provisions consequent on the enactment of the proposed Act and make amendments to the Principal Act that will facilitate the making of provisions of that kind as a consequence of future amendments to the Principal Act.

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FIRST PRINT

**ENVIRONMENTAL PLANNING AND ASSESSMENT  
(AMENDMENT) BILL 1994**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Environmental Planning and Assessment Act 1979 No. 203

SCHEDULE 1—AMENDMENTS

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**ENVIRONMENTAL PLANNING AND ASSESSMENT  
(AMENDMENT) BILL 1994**

**NEW SOUTH WALES**



No.      , 1994

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**A BILL FOR**

**An Act to amend the Environmental Planning and Assessment Act 1979  
to make further provision concerning the consideration and determination  
of development applications; and for other purposes.**

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*Environmental Planning and Assessment (Amendment) 1994*

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

**Short title**

1. This Act may be cited as the Environmental Planning and Assessment (Amendment) Act 1994.

**5 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**

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

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 45 (**Consultation**):

15 (a) Omit "ensure that consultations are held", insert instead "consult, to the extent required by this section,".

(b) At the end of section 45, insert:

(2) For the purposes of the consultation, the Director must provide the following information to them:

20 (a) the reasons for deciding to prepare the environmental study or the draft regional environmental plan;

(b) the proposed aims, objectives, policies and strategies whereby the draft plan is designed to achieve any of the objects of this Act;

25 (c) a description of the land to which the study or draft plan is intended to apply;

(d) the types of matters to be dealt with in the study or draft plan.

30 (3) For the purposes of the consultation, the Director may provide any other information that, in the Director's opinion, would assist in understanding the environmental study or the draft regional environmental plan.

*Environmental Planning and Assessment (Amendment) 1994*

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**SCHEDULE 1—AMENDMENTS—*continued***

(4) A person to whom information is provided under this section may comment to the Director on the preparation of the environmental study or draft regional environmental plan within 40 days after the Director provides the information required to be provided under subsection (2). 5

(5) The consultation required by this section is completed when the Director has considered any comments so made.

(2) Part 3, Division 4B:

After Division 4A, insert: 10

**Division 4B—Instrument amendments and development applications**

**Application of Division**

72I. This Division applies if a development application is made to a consent authority for consent to carry out development that may only be carried out if an environmental planning instrument applying to the land on which the development is proposed to be carried out is appropriately amended. 15

**Making and consideration of certain development applications** 20

72J. Nothing in this Act prevents:

(a) the making of a development application to a consent authority for consent to carry out development that may only be carried out if an environmental planning instrument applying to the land on which the development is proposed to be carried out is appropriately amended; or 25

(b) the consideration by a consent authority of such a development application. 30

**Joint exhibition of instrument and advertising of application**

72K. (1) Public notice that is given under this Act in connection with the preparation and making of a draft environmental planning instrument and notice that is given under this Act of a development application in circumstances where this Division applies are to be given by the same notice. 35

*Environmental Planning and Assessment (Amendment) 1994*

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**SCHEDULE 1—AMENDMENTS—*continued***

5 (2) The period during which the public may inspect the draft environmental planning instrument and the development application, if those periods are different, is to be the longer of them.

10 (3) If the draft environmental planning instrument proposes to make the development the subject of the development application designated development, the period for public inspection of the development application that is to be relevant in determining the period for public inspection under subsection (2) is the period relevant to the inspection of a development application for designated development.

**Acceptance of environmental impact statement as environmental study**

15 72L. An environmental impact statement that accompanies a development application to which this Division applies may, if it complies with the requirements under this Act for an environmental study, be taken by the person who prepares a draft environmental planning instrument applying to the same land as the development application to constitute the environmental study (if any) required for that land and, if so taken, is taken to have been prepared in accordance with this Act.

**Commission of Inquiry**

25 72M. Nothing in this Act prevents the Minister from directing that a single inquiry be held, in accordance with section 119, by a Commission of Inquiry into both a draft environmental planning instrument and a development application that are being dealt with under this Division.

30 (3) Section 90A:

After section 90, insert:

**Compliance with non-discretionary development standards**

35 90A. (1) If an environmental planning instrument contains development standards applicable to development, being development standards that are identified in the instrument as non-discretionary standards, and development the subject of a development application complies with those standards, the consent authority:

*Environmental Planning and Assessment (Amendment) 1994*

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**SCHEDULE 1—AMENDMENTS—*continued***

- (a) is not entitled to take those standards into further consideration in determining the development application; and
  - (b) must not refuse the application on the ground that the development does not comply with those standards; and
  - (c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards, and the discretion of the consent authority under sections 90 and 91 is limited accordingly.
- (2) A provision of an environmental planning instrument that allows flexibility in the application of a development standard has no application to a development standard that is identified in an environmental planning instrument as a non-discretionary development standard if development the subject of a development application complies with the non-discretionary development standard. However, if development the subject of a development application does not comply with a non-discretionary development standard, the provision of the environmental planning instrument that allows flexibility applies to the application of that standard.
- (4) **Section 91 (Determination of development application):**
  - After section 91 (3A), insert:
    - (3B) A consent may be granted subject to a condition expressed in a manner that identifies both of the following:
      - (a) one or more express outcomes or objectives that the development or a specified part or aspect of the development must achieve;
      - (b) clear criteria against which achievement of the outcome or objective may be assessed.
  - The condition may specify more than one means by which the outcome or objective may be achieved or may not specify any means by which the outcome or objective is to be achieved.

*Environmental Planning and Assessment (Amendment) 1994*

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**SCHEDULE 1—AMENDMENTS—*continued***

(5) Section 91A:

Omit the section, insert instead:

**Determination of Crown development applications**

5        91A. (1) A consent authority, in respect of a development application made by or on behalf of the Crown or a prescribed person, must not:

- (a) refuse its consent to the application, except with the written approval of the Minister; or
- 10        (b) impose a condition of its consent, except with the written approval of the Minister or the applicant.

15        (2) If the development application has not been determined by the consent authority within the period after which, under section 96, it is deemed to have been determined by refusing consent, the applicant or the consent authority may refer the application to the Minister.

20        (3) The party who refers the application to the Minister must notify the other party in writing that the application has been referred.

25        (4) When an application is referred to the Minister by either party, the consent authority must, as soon as practicable after the application is referred, submit to the Minister:

- (a) a copy of the development application; and
- 25        (b) details of its proposed determination of the development application; and
- (c) the reasons for the proposed determination; and
- (d) any relevant reports of another public authority.

30        (5) The Minister is required to notify the Director in writing that the application has been referred.

35        (6) On being so notified, the Director must convene a meeting between the consent authority and the applicant for the purpose of negotiating, as far as possible, a determination of the development application that is acceptable to them and that is in accordance with this Act.

(7) If agreement is reached between the applicant and the consent authority that development consent be granted,

*Environmental Planning and Assessment (Amendment) 1994*

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**SCHEDULE 1—AMENDMENTS—*continued***

unconditionally or subject to conditions, the Director must prepare a report of the agreement. The report:

- (a) may include any recommendations that may be necessary or desirable to ensure the implementation of the agreement; and 5
- (b) must specify the date by which consent is to be granted.

The Director must give a copy of the report to the consent authority and the applicant. 10

(8) After receiving the Director's report, the consent authority must determine the application by granting consent in accordance with the report and recommendations and on or before the date specified for the purpose in the report. Such a consent is taken to have been granted in accordance with the written approval of the Minister. 15

(9) If agreement is not reached between the applicant and the consent authority that development consent be granted, unconditionally or subject to conditions, the Minister must notify the consent authority and the applicant in writing of: 20

- (a) the Minister's approval to the refusal of consent; or
- (b) the Minister's approval to the imposition of the consent authority's proposed conditions and the date on or before which the development application must be determined; or 25
- (c) the Minister's intention not to agree with the consent authority's proposed refusal and that the consent authority may submit any conditions it wishes to impose as conditions of consent to the Minister within 40 days after the date of the Minister's notification; or 30
- (d) the Minister's refusal to agree with the consent authority's proposed conditions, any conditions that may be imposed with the Minister's approval and the date on or before which the development application must be determined. 35

*Environmental Planning and Assessment (Amendment) 1994*

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SCHEDULE 1—AMENDMENTS—*continued*

(10) At the end of the 40-day period specified in subsection (9) (c), the Minister must notify the consent authority and the applicant in writing:

- 5           (a) whether the Minister approves of the imposition of any of the conditions submitted by the consent authority during that period and, if so, which conditions; or
- (b) of the conditions that may be imposed with the Minister's approval,

10           or both, and that the consent authority must determine the application in accordance with the Minister's notification on or before the date notified by the Minister for the purpose.

15           (11) The Minister must notify the consent authority and the applicant in writing of the reasons for a decision under subsection (9) or (10).

             (12) If the consent authority does not determine the application on or before the date specified in the Director's report under subsection (7), or on or before the date notified for the purpose by the Minister under subsection (9) (b) or

20           (d) or subsection (10), the consent authority is taken, on the date so specified or notified, to have determined the application:

- (a) in the case of a report under subsection (7)—by granting consent in accordance with the report and
- 25           recommendations; or
- (b) in the case of a notification under subsection (9) (b) or (d)—by granting consent subject to the conditions that may be imposed with the Minister's approval; or
- 30           (c) in the case of a notification under subsection (10)—in accordance with the Minister's approval as notified to it.

35           (13) This section applies to an application by or on behalf of the Crown or a prescribed person under section 102 (modification of consents) in the same way as it applies to an application for development consent.

             (14) This section does not affect the right of an applicant to appeal under section 97 or 102 (5).

*Environmental Planning and Assessment (Amendment) 1994*

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**SCHEDULE 1—AMENDMENTS—*continued***

(6) Section 159:

After section 158, insert:

**Savings, transitional and other provisions**

159. Schedule 6 has effect.

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(7) Schedule 6:

After Schedule 5, insert:

**SCHEDULE 6—SAVINGS, TRANSITIONAL AND  
OTHER PROVISIONS**

(Sec. 159)

10

**Part 1—Preliminary**

**Savings and transitional regulations**

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

15

Environmental Planning and Assessment (Part 5)  
Amendment Act 1993

Environmental Planning and Assessment (Amendment)  
Act 1994

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.

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(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

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(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication;  
or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

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*Environmental Planning and Assessment (Amendment) 1994*

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**SCHEDULE 1—AMENDMENTS—*continued***

**Part 2—Environmental Planning and Assessment  
(Amendment) Act 1994**

**Performance-based conditions of consent**

- 5        2. Section 91 (3B) extends to a condition imposed in the  
determination of a development application before the  
commencement of that subsection.

**Determination of Crown development applications**

- 10       3. Section 91A, as substituted by the Environmental  
Planning and Assessment (Amendment) Act 1994, applies to  
a development application made but not determined as at the  
date of commencement of Schedule 1 (5) to that Act.
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