

FIRST PRINT

**PROTECTION OF THE ENVIRONMENT ADMINISTRATION
(AMENDMENT) BILL 1993**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to provide that, in those cases in which they would otherwise apply, the environmental assessment provisions in Part 5 of the Environmental Planning and Assessment Act 1979 are not to apply to the granting by the Environment Protection Authority of a licence, approval or certificate of registration under the environment protection legislation administered by the Authority.

The Bill does not affect the application of the environmental assessment provisions of Part 4 of the Environmental Planning and Assessment Act 1979.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on the date of assent.

Clause 3 amends the Principal Act to insert proposed section 12A which gives effect to the object of this Bill. The environment protection legislation administered by the Environment Protection Authority comprises the following Acts (and the regulations and other instruments made under those Acts):

- Protection of the Environment Administration Act 1991
- Clean Air Act 1961
- Clean Waters Act 1970
- Dangerous Goods Act 1975 (Division 2 of Part 3)
- Environmental Education Trust Act 1990
- Environmental Offences and Penalties Act 1989
- Environmental Research Trust Act 1990
- Environmental Restoration and Rehabilitation Trust Act 1990
- Environmentally Hazardous Chemicals Act 1985
- Noise Control Act 1975

Protection of the Environment Administration (Amendment) 1993

Ozone Protection Act 1989

Pollution Control Act 1970

Radiation Control Act 1990

Recreation Vehicles Act 1983

Unhealthy Building Land Act 1990

Waste Disposal Act 1970

The proposed section removes the requirements of Part 5 of the Environmental Planning and Assessment Act 1979 only in relation to future licences, approvals and certificates of registration granted (or renewed) by the Environment Protection Authority.

FIRST PRINT

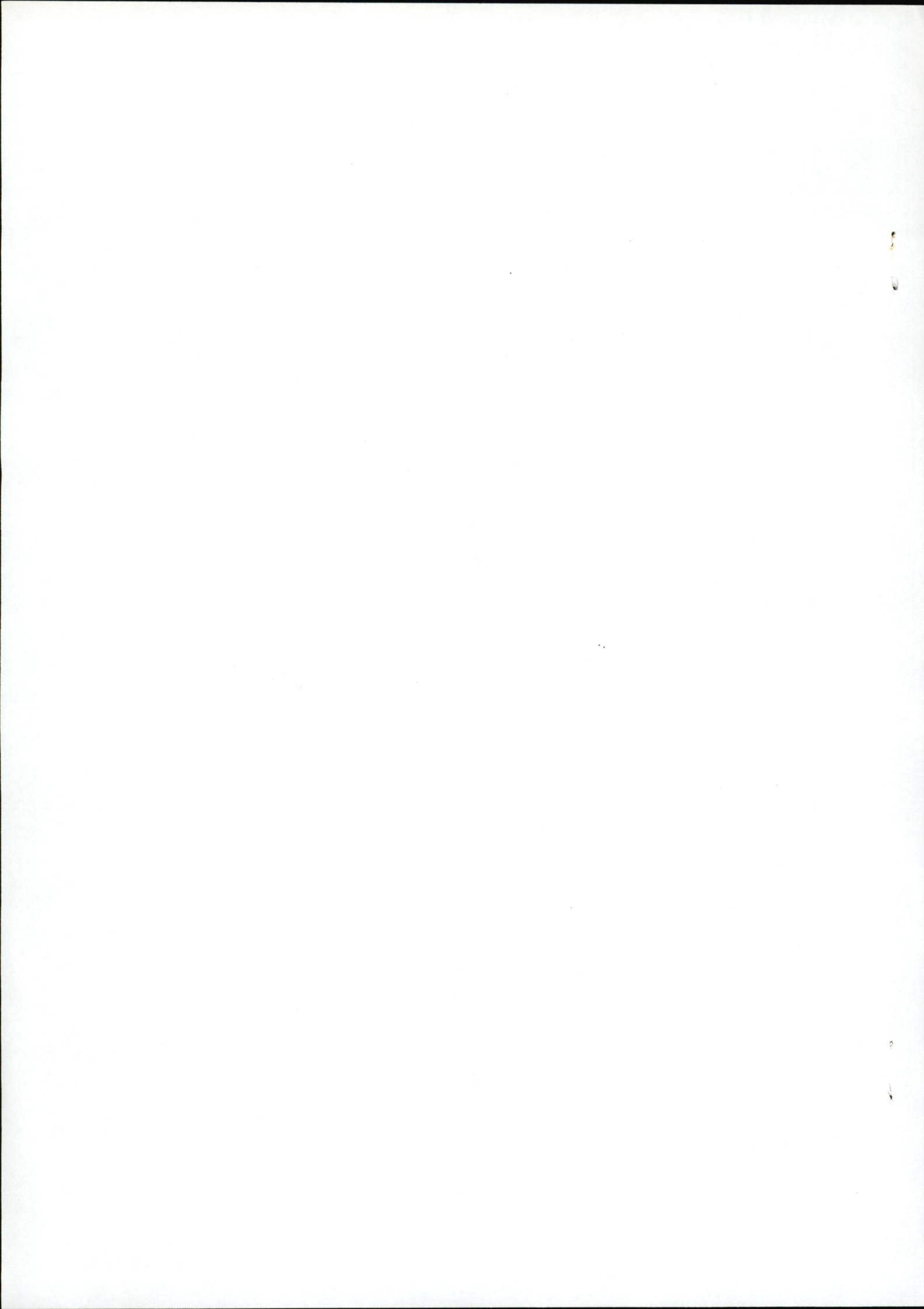
**PROTECTION OF THE ENVIRONMENT ADMINISTRATION
(AMENDMENT) BILL 1993**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Amendment of Protection of the Environment Administration Act 1991 No. 60
-



**PROTECTION OF THE ENVIRONMENT ADMINISTRATION
(AMENDMENT) BILL 1993**

NEW SOUTH WALES



No. , 1993

A BILL FOR

An Act to amend the Protection of the Environment Administration Act 1991 with respect to the environmental assessment of the granting of certain licences, approvals and certificates of registration by the Environment Protection Authority.

Protection of the Environment Administration (Amendment) 1993

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Protection of the Environment Administration (Amendment) Act 1993.

5 Commencement

2. This Act commences on the date of assent.

Amendment of Protection of the Environment Administration Act 1991 No. 60

10 3. The Protection of the Environment Administration Act 1991 is amended by inserting after section 12 the following section:

Environmental assessment

15 12A. (1) The Authority is not a determining authority within the meaning of Part 5 of the Environmental Planning and Assessment Act 1979 in respect of an approval (within the meaning of that Part) under the environment protection legislation.

(2) This section applies in respect of such an approval granted after the commencement of this section (including an approval granted by way of renewal).

PROTECTION OF THE ENVIRONMENT ADMINISTRATION
(AMENDMENT) BILL 1993

MR PRESIDENT,

THE BILL BEFORE THE HOUSE PROPOSES AN AMENDMENT TO THE PROTECTION OF THE ENVIRONMENT (ADMINISTRATION) ACT 1991 TO CLARIFY THE RELATIONSHIP BETWEEN THE PROVISIONS OF PART 5 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (PLANNING ACT) AND THE POLLUTION CONTROL LEGISLATION ADMINISTERED BY THE EPA.

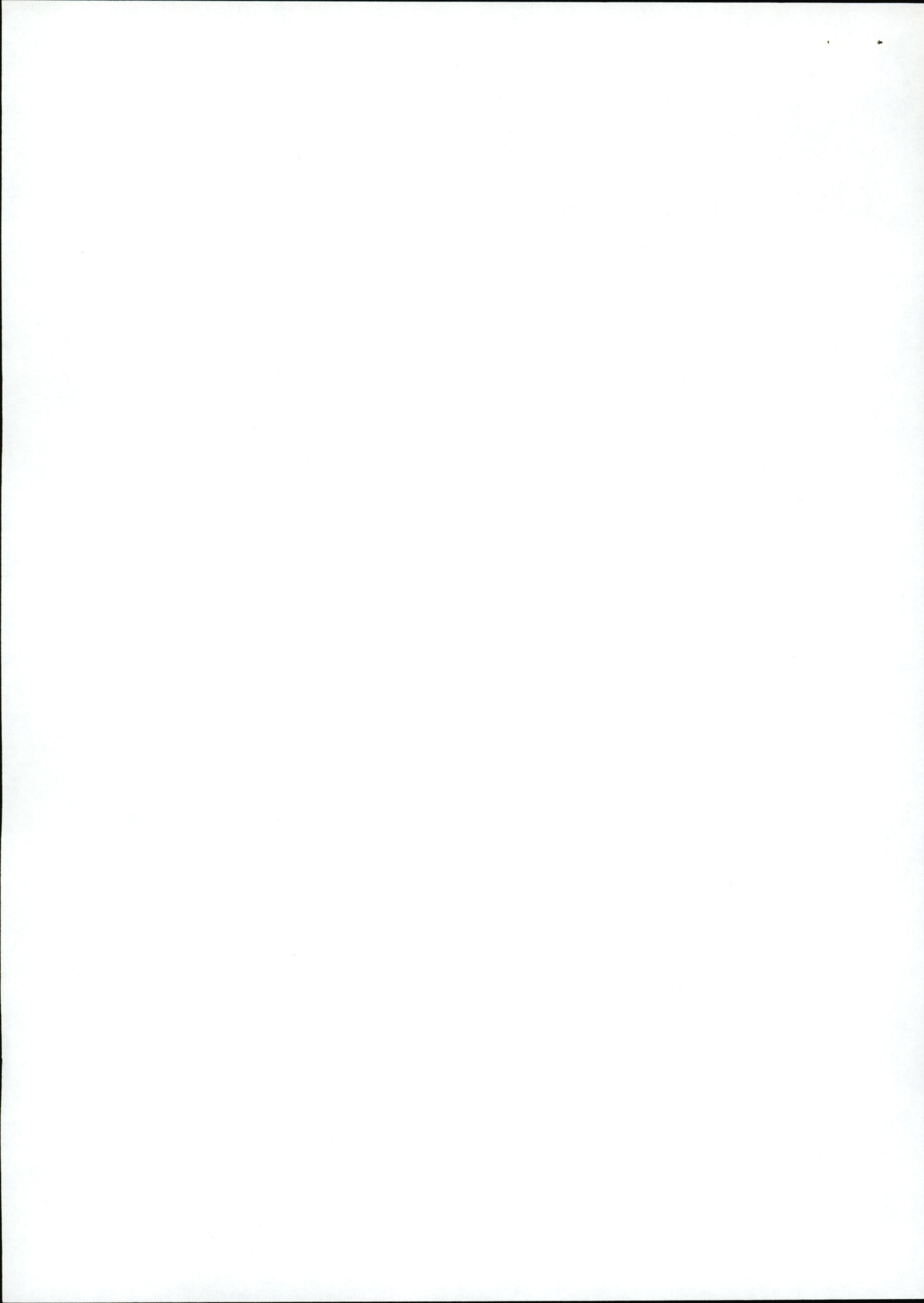
THE PROPOSED BILL REFLECTS THE POSITION WHICH HAS BEEN TAKEN FOR GRANTED OVER THE PAST 13 YEARS IN THE ADMINISTRATION OF THE POLLUTION CONTROL LEGISLATION, THAT THE EPA DOES NOT HAVE TO COMPLY WITH PART 5 OF THE PLANNING ACT EVERY TIME IT ISSUES A RENEWAL OF LICENCE.

LAST YEAR, MR ALEXANDER BROWN, A UNIVERSITY STUDENT, BROUGHT PROCEEDINGS IN THE LAND AND ENVIRONMENT COURT AGAINST THE EPA AND AUSTRALIAN PULP AND PAPER MILLS (APPM). MR BROWN ALLEGED THAT THE GRANT BY THE EPA OF A RENEWAL OF AN ANNUAL LICENCE TO APPM TO DISCHARGE INTO THE SHOALHAVEN RIVER BREACHED PART 5 OF THE PLANNING ACT.

HE SOUGHT A DECLARATION THAT THE LICENCE WAS THEREFORE INVALID ON THIS GROUND (AND ON A NUMBER OF OTHER GROUNDS).

THE LAND AND ENVIRONMENT COURT HELD IN THE APPM CASE THAT PART 5 OF THE PLANNING ACT APPLIES TO THE EPA WHEN IT GRANTS A RENEWAL OF AN ANNUAL LICENCE UNDER THE POLLUTION CONTROL ACT 1970.

HOWEVER, THE COURT HELD IN THE APPM CASE THAT THE GRANTING OF A LICENCE TO DISCHARGE INTO THE SHOALHAVEN RIVER WAS NOT AN "ACTIVITY" AS DEFINED IN PART 5.

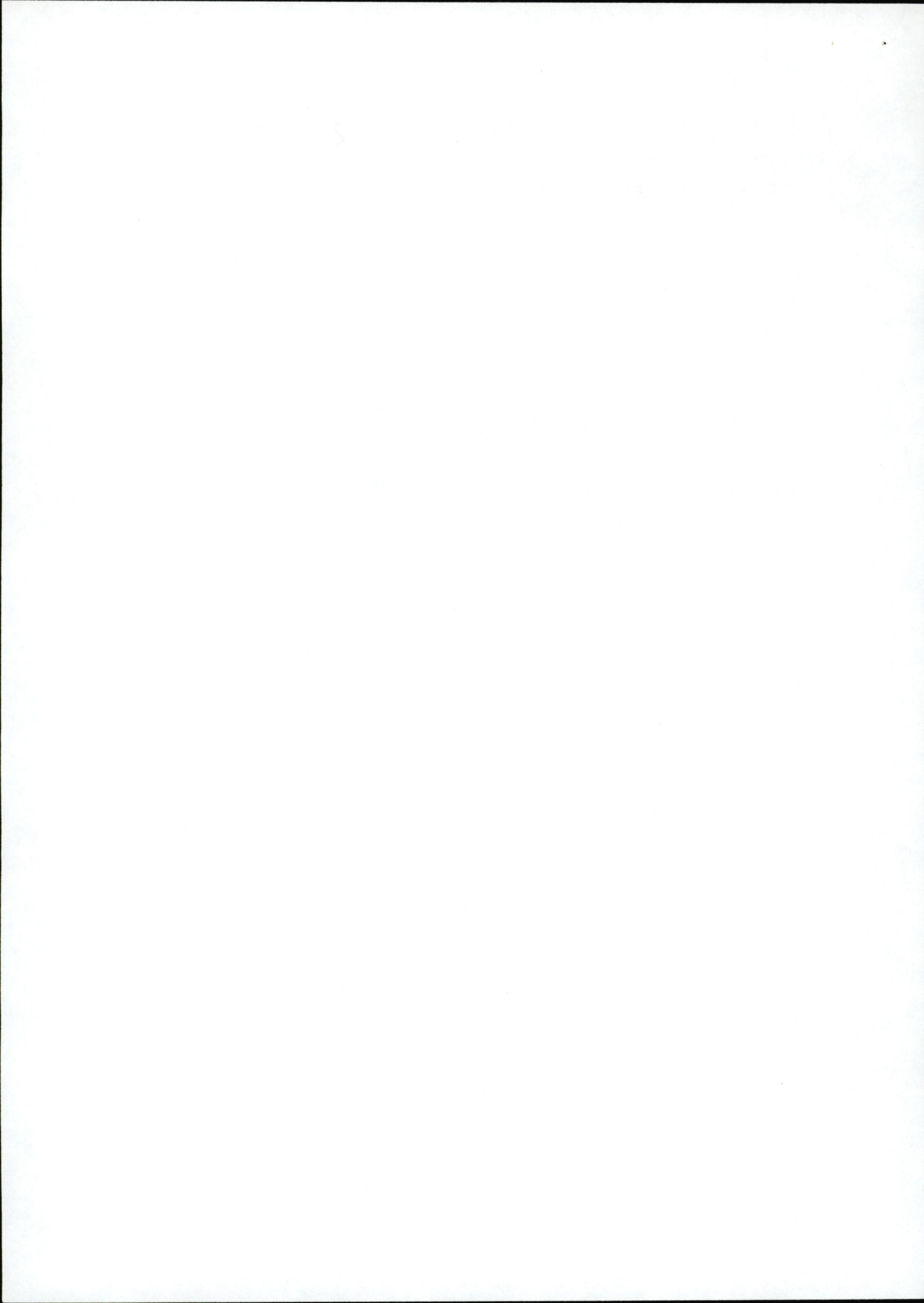


AS A RESULT, THE COURT FOUND THAT THE EPA HAD NOT CONTRAVENED PART 5 OF THE PLANNING ACT WHEN ISSUING THE LICENCE AND THE LICENCE WAS VALIDLY ISSUED. OTHER ISSUES WERE INVOLVED IN THE CASE BUT THEY ARE NOT RELEVANT HERE.

MR BROWN HAS ASKED THE COURT OF APPEAL TO OVERTURN THAT PART OF THE ORIGINAL DECISION WHICH FOUND THAT THE GRANTING OF THE ANNUAL LICENCE WAS NOT AN "ACTIVITY" AS DEFINED. CROSS APPEALS HAVE BEEN LODGED BY APPM AND THE EPA. THE APPEAL IS DUE TO BE HEARD ON 17 AND 18 JUNE 1993.

THE APPM CASE HIGHLIGHTS AN IMPRACTICAL SITUATION. IF PART 5 APPLIES WHEN THE EPA ISSUES A RENEWAL OF AN ANNUAL LICENCE, THERE IS A POTENTIAL REQUIREMENT FOR AN EIS TO BE OBTAINED FOR LICENCES AS THEY ARE RENEWED EACH YEAR. THE EPA CURRENTLY RENEWS A TOTAL OF APPROXIMATELY 7000 LICENCES EACH YEAR. EVEN MR BROWN'S COUNSEL IN THE APPM CASE AGREED THAT AN EIS FOR ALL LICENCE RENEWALS WAS IMPRACTICAL. I QUOTE FROM THE JUDGEMENT OF PEARLMAN J IN THE APPM CASE:

"IF PART V WERE TO APPLY TO THE GRANTING OF LICENCES UNDER PART 3A [OF THE POLLUTION CONTROL ACT], IT WOULD REQUIRE THE FURNISHING OF AN EIS AT LEAST ANNUALLY FOR EACH LICENCE (S 17E) OR MORE FREQUENTLY IF A SHORT TERM LICENCE IS GRANTED (S 17C) AND PERHAPS ALSO WHEN CONDITIONS OF LICENCES ARE VARIED (UNDER S 17D(3)). (A REVOCATION OR SUSPENSION OF A LICENCE WOULD NOT, IN MY OPINION BE AN "APPROVAL" WITHIN THE DEFINITION OF S 100). MR SIMPKINS, ON BEHALF OF THE APPLICANT, CONTENDED THAT AN EIS WOULD NOT BE REQUIRED IN ALL THOSE CIRCUMSTANCES. HE CLAIMED THAT THE EIS WOULD ONLY BE REQUIRED IN ALL THOSE CIRCUMSTANCES. HE CLAIMED THAT THE EIS WOULD ONLY BE REQUIRED UPON A GRANT OF THE INITIAL LICENCE AND WHEN IT CAME TO RENEWAL OR VARIATION, A FURTHER EIS WOULD ONLY BE REQUIRED IF THERE HAD BEEN A SIGNIFICANT CHANGE IN ENVIRONMENTAL EFFECT.

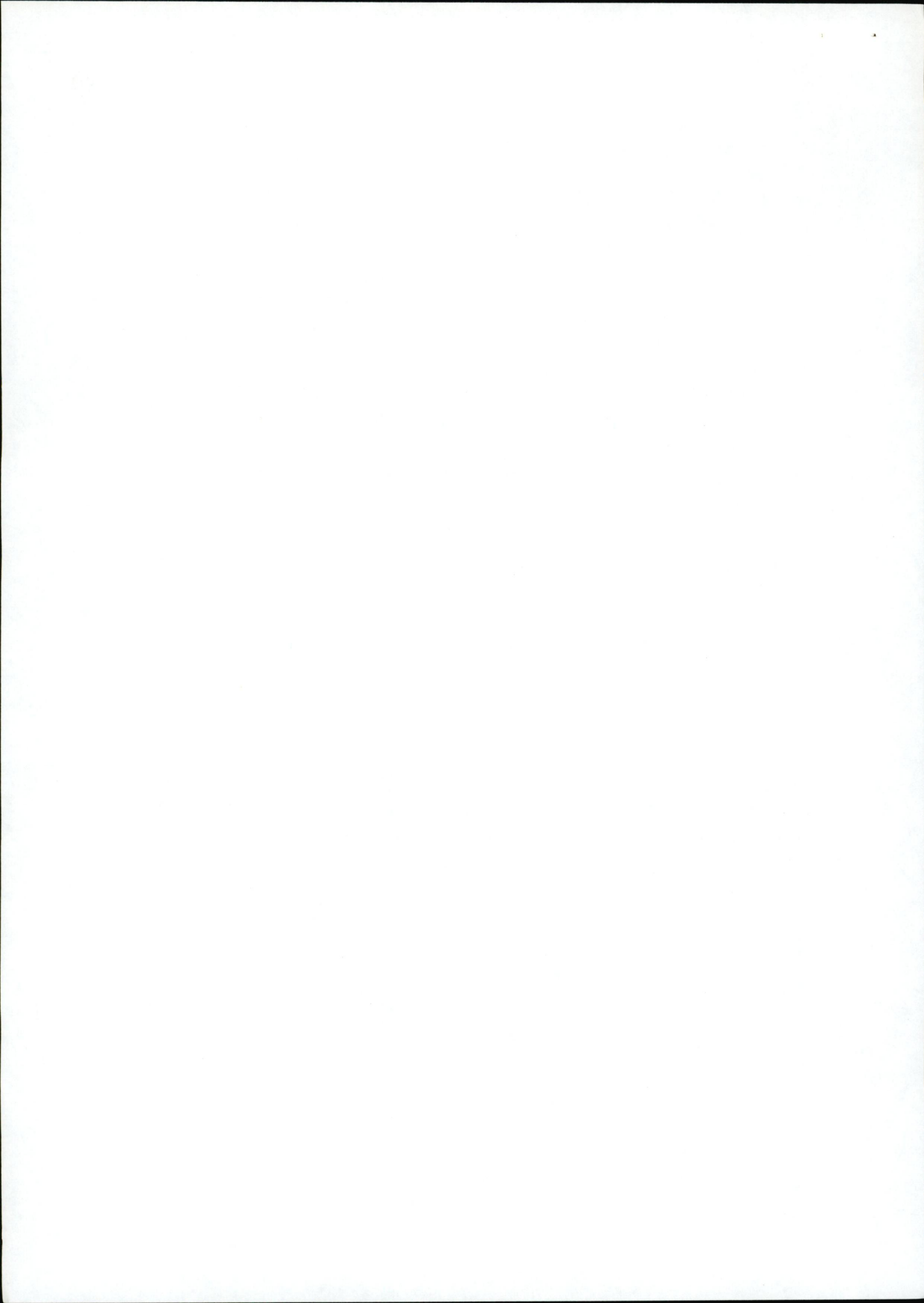


I REJECT THIS CONTENTION.

"IF S 112 [THAT IS, PART 5] WERE APPLICABLE TO THE GRANTING OF LICENCES UNDER PART 3A OF THE POLLUTION CONTROL ACT, THEN S. 112 COULD ONLY BE APPLICABLE IN ITS TERMS, AND THERE IS NOTHING IN THAT SECTION WHICH SUGGESTS THAT THE FURNISHING OF AN EIS DEPENDS ON THE CHANGE IN ENVIRONMENTAL EFFECT. S 112 REQUIRES THE DETERMINING AUTHORITY TO HAVE REGARD TO THE QUESTION OF SIGNIFICANT EFFECT EACH TIME IT GRANTS THE APPROVAL. IF THE LICENCE IS TO BE GRANTED OR RENEWED, THEN BY DEFINITION, THERE IS SIGNIFICANT EFFECT ON THE ENVIRONMENT, AND IN EACH CASE, AN EIS MUST BE OBTAINED AND FURNISHED. IT MAY BE THAT A MYRIAD OF EIS'S WOULD BE REQUIRED, IF PART V APPLIED TO THE GRANT OF LICENCES UNDER PART 3A. BUT THAT ALONE WOULD NOT BE A REASON TO HOLD THAT PART V WAS INAPPLICABLE. IT MAY BE A COSTLY CONSEQUENCE, BUT THAT DOES NOT MAKE IT AN INDICATION OF THE INTENTION THAT PART V DOES NOT APPLY."

THE PROVISION OF ANNUAL EIS'S FOR LICENCE APPLICATIONS IS NOT ONLY IMPRACTICAL, IT IS UNNECESSARY. THE ENVIRONMENT PROTECTION LEGISLATION ADMINISTERED BY THE EPA ESTABLISHES A CODE FOR PREVENTION AND CONTROL OF POLLUTION AND CONTAINS SPECIFIC STATUTORY PROVISIONS RELATING TO ENVIRONMENT PROTECTION. IN PARTICULAR, I REFER TO SECTION 17D(4) OF THE POLLUTION CONTROL ACT WHICH DIRECTS THE EPA TO HAVE REGARD TO THE PRACTICAL MEASURES WHICH MAY BE TAKEN TO PROTECT THE ENVIRONMENT FROM DEFACEMENT, DEFILEMENT OR DETERIORATION.

AS PART OF ITS RESPONSIBILITIES, THE EPA REGULARLY REVIEWS LICENCE CONDITIONS. EACH YEAR WHEN A RENEWAL OF A LICENCE IS SOUGHT, THE EPA TAKE THE OPPORTUNITY TO CONSIDER THE NEED TO ATTACH MORE STRINGENT CONDITIONS AS PART OF ITS POLLUTION REDUCTION PROGRAMME. THE BILL WILL NOT AFFECT THIS PROGRAMME.



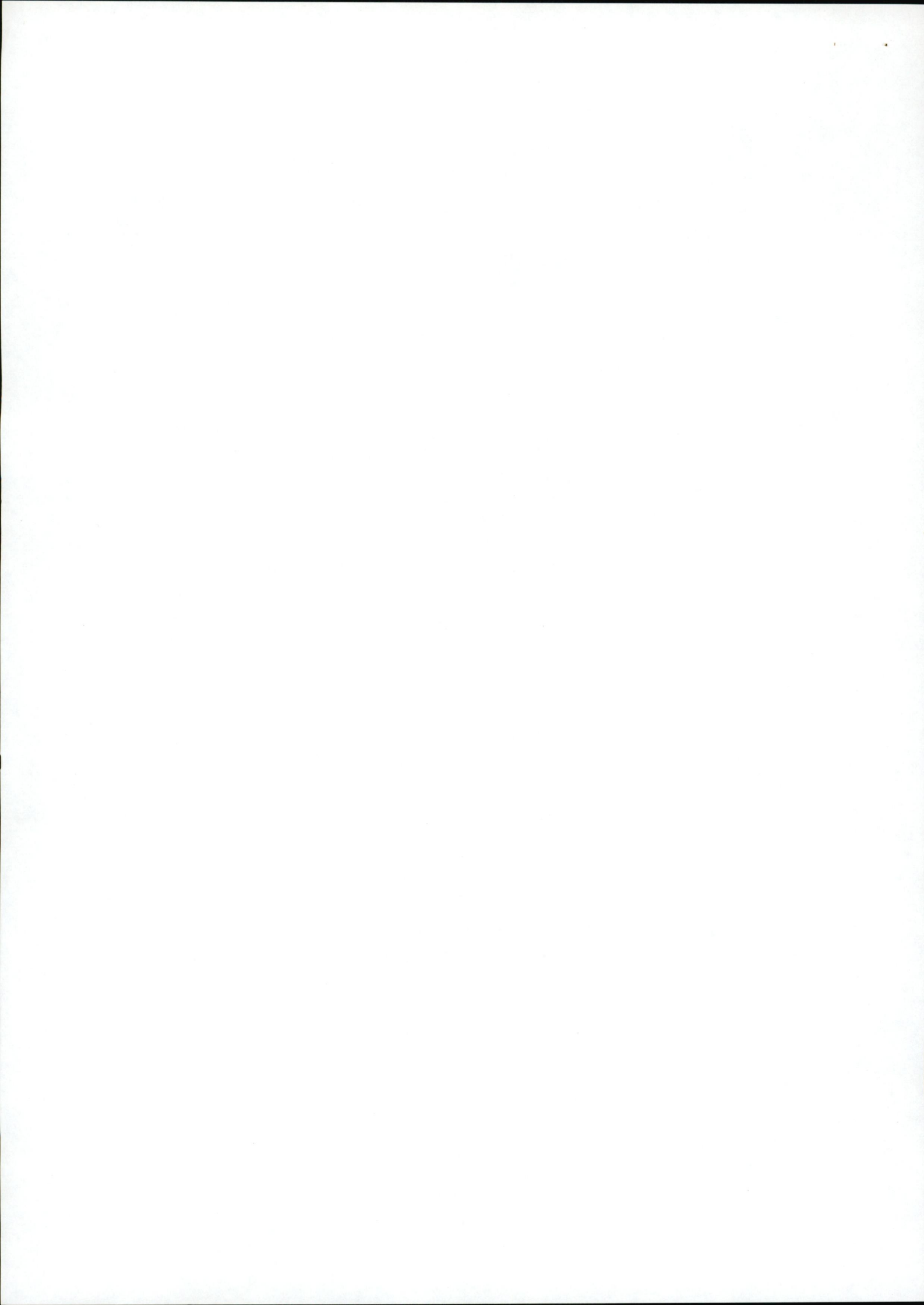
OF COURSE, ANY SIGNIFICANT ENLARGEMENT OR VARIATION MAY REQUIRE ADDITIONAL APPROVAL. WHILE THE DEVELOPMENT CONTINUES IN ACCORDANCE WITH THE ORIGINAL APPROVAL, LICENCE RENEWALS ISSUED EACH YEAR BY THE EPA UNDER THE POLLUTION CONTROL ACT WILL NOT REQUIRE ANY FURTHER PLANNING ASSESSMENT.

LET ME ASSURE THE HONOURABLE MEMBERS THAT THE PROPOSED BILL WILL NOT DIMINISH IN ANY WAY THE DEGREE AND RANGE OF ENVIRONMENTAL OR PLANNING ASSESSMENT OF NEW PROJECTS. NEW DEVELOPMENTS WHICH ARE THE SUBJECT OF FIRST TIME LICENCES AND APPROVALS UNDER THE ENVIRONMENT PROTECTION LEGISLATION WILL CONTINUE TO BE THE SUBJECT OF PLANNING ASSESSMENT OR ENVIRONMENTAL ASSESSMENT UNDER THE PLANNING ACT.

THE BILL SIMPLY RECTIFIES AN ANOMALOUS SITUATION. THE ANOMALY IS THIS. IF A DEVELOPMENT HAS RECEIVED A DEVELOPMENT APPROVAL UNDER PART 4 OF THE PLANNING ACT, NO FURTHER PLANNING ASSESSMENT IS REQUIRED. THE APPROVAL IS FOR ONCE AND FOR ALL.

THIS MAY BE CONTRASTED WITH THE PART 5 SITUATION WHERE, AS THE LAW PRESENTLY STANDS, A PLANNING ASSESSMENT (INCLUDING AN EIS) COULD BE REQUIRED EACH TIME A LICENCE IS RENEWED, THAT IS, EACH YEAR.

THE GOVERNMENT BELIEVES THAT THIS ANOMALY SHOULD BE REMOVED. AND THAT THE RESPONSIBLE THING TO DO IS TO CLARIFY THE UNCERTAINTY OF THE LAW HIGHLIGHTED BY THE APPM CASE WITHOUT WAITING FOR THE COURT OF APPEAL TO HAND DOWN ITS DECISION.



A FINDING BY THE COURT OF APPEAL WHICH SUPPORTS THE CONCEPT THAT PART 5 APPLIES BUT WHICH RULES THAT THE GRANTING OF A LICENCE IS AN "ACTIVITY" WILL REQUIRE THE OBTAINING OF EIS'S FOR LICENCE RENEWALS. THIS IS A POTENTIALLY UNWORKABLE SITUATION IN THAT IT HAS THE POTENTIAL IN PRACTICE TO INVALIDATE THE LICENSING SYSTEM, LEAVING NOTHING IN ITS PLACE. IT IS A SITUATION THAT CALLS FOR THE ACTION PROPOSED IN THIS BILL.

THE PROPOSED BILL CONFIRMS IN LAW THE PRACTICE OF THE LAST 13 YEARS WITHOUT THE LESSENING ENVIRONMENTAL ASSESSMENT AND WITHOUT DIMINISHING THE PRESENT SIGNIFICANT SCRUTINY GIVEN TO PROJECTS BY THE EPA UNDER ITS LEGISLATION. IT WILL ENSURE THAT PERFECTLY VALID LICENCES ISSUED BY THE EPA ARE NOT OVERTURNED BY PERCEIVED TECHNICAL FAULTS. IT WILL REMOVE UNCERTANTLY AND REDUCE COST AND DELAY.

I COMMEND THE BILL TO THE HOUSE.

This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Legislative Assembly

Clerk of the Legislative Assembly.

NEW SOUTH WALES



Act No. , 1993

An Act to amend the Protection of the Environment Administration Act 1991 with respect to the environmental assessment of the granting of certain licences and certificates of registration by the Environment Protection Authority.

Protection of the Environment Administration (Amendment) 1993

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Protection of the Environment Administration (Amendment) Act 1993.

5 Commencement

2. This Act commences on the date of assent.

Amendment of Protection of the Environment Administration Act 1991 No. 60

10 3. The Protection of the Environment Administration Act 1991 is amended by inserting after section 12 the following section:

Environmental assessment

15 12A. (1) The Authority is not a determining authority within the meaning of Part 5 of the Environmental Planning and Assessment Act 1979 in respect of an approval (within the meaning of that Part) under the environment protection legislation that consists of the renewal of a licence or the renewal of a certificate of registration.

(2) This section applies in respect of such an approval in force (or purporting to be in force) at the commencement of this section or granted after the commencement of this section.

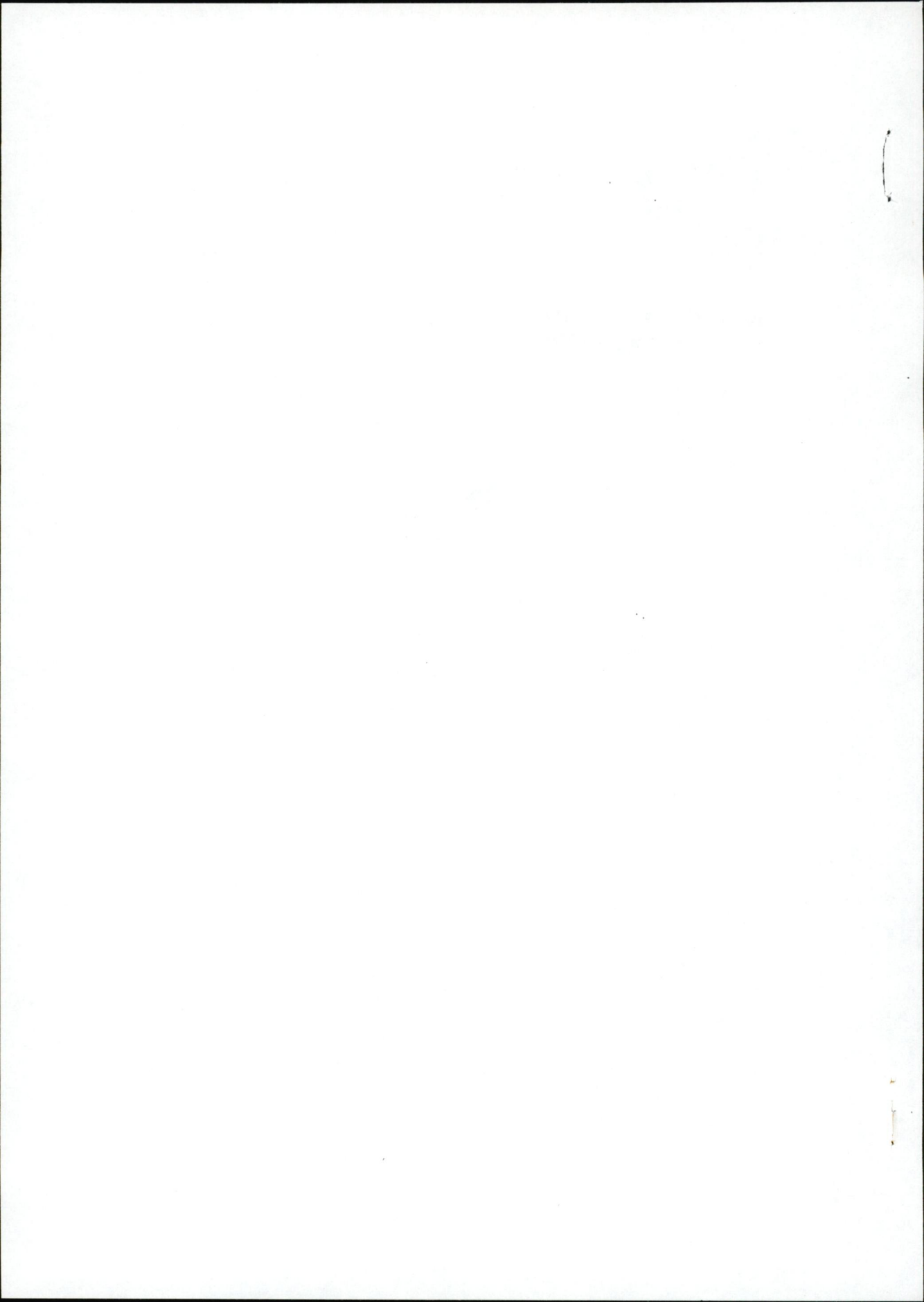
**PROTECTION OF THE ENVIRONMENT ADMINISTRATION
(AMENDMENT) ACT 1993 No. 40**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Amendment of Protection of the Environment Administration Act 1991 No. 60
-



**PROTECTION OF THE ENVIRONMENT ADMINISTRATION
(AMENDMENT) ACT 1993 No. 40**

NEW SOUTH WALES



Act No. 40, 1993

An Act to amend the Protection of the Environment Administration Act 1991 with respect to the environmental assessment of the granting of certain licences and certificates of registration by the Environment Protection Authority. [Assented to 8 June 1993]

Protection of the Environment Administration (Amendment) Act 1993 No. 40

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Protection of the Environment Administration (Amendment) Act 1993.

Commencement

2. This Act commences on the date of assent.

Amendment of Protection of the Environment Administration Act 1991 No. 60

3. The Protection of the Environment Administration Act 1991 is amended by inserting after section 12 the following section:

Environmental assessment

12A. (1) The Authority is not a determining authority within the meaning of Part 5 of the Environmental Planning and Assessment Act 1979 in respect of an approval (within the meaning of that Part) under the environment protection legislation that consists of the renewal of a licence or the renewal of a certificate of registration.

(2) This section applies in respect of such an approval in force (or purporting to be in force) at the commencement of this section or granted after the commencement of this section.

[Minister's second reading speech made in—
Legislative Assembly on 19 May 1993
Legislative Council on 21 May 1993]