

First print



New South Wales

Environmental Planning and Water Legislation Amendment Bill 1996

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Environmental Planning and Assessment Act 1979* and the *Water Act 1912* to enable a Commission of Inquiry under the former Act to consider an application for a water licence made under the latter Act, and so to co-ordinate consideration of the application for the water licence and consideration of the proposed development or activity in respect of which the application for the water licence is made.

Outline of provisions

Clause 1 provides for the name (also called the short title) of the proposed Act.

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

Clause 3 is a formal provision that gives effect to the amendments to the *Environmental Planning and Assessment Act 1979* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Water Act 1912* set out in Schedule 2.

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979

Schedule 1 [2] inserts a new section 120A. The new section requires a Commission of Inquiry that is investigating a development application under Part 4, or an activity the subject of environmental assessment under Part 5, to notify the Water Administration Ministerial Corporation if it becomes aware that the development or activity involves a work that may require a licence under Division 3 of Part 2 of the *Water Act 1912* (a *water licence*). The new section also requires the Commission of Inquiry to advise the applicant or proponent to make prompt application for a water licence, and to defer concluding its inquiry for so long as is necessary to enable the applicant or proponent to make such an application. As soon as practicable after an application for a water licence is referred to it under proposed section 11A of the *Water Act 1912*, the Commission of Inquiry must hold a public hearing into the application before making its report on the development or activity. To the extent to which the report relates to the application for a water licence, a copy of the report must be given to the Water Administration Ministerial Corporation. The new section is expressed to extend to inquiries begun, but not concluded, before its commencement.

Schedule 1 [1] is a consequential amendment that ensures that the provisions of section 120 are construed subject to the provisions of the proposed section 120A.

Schedule 2 Amendment of Water Act 1912

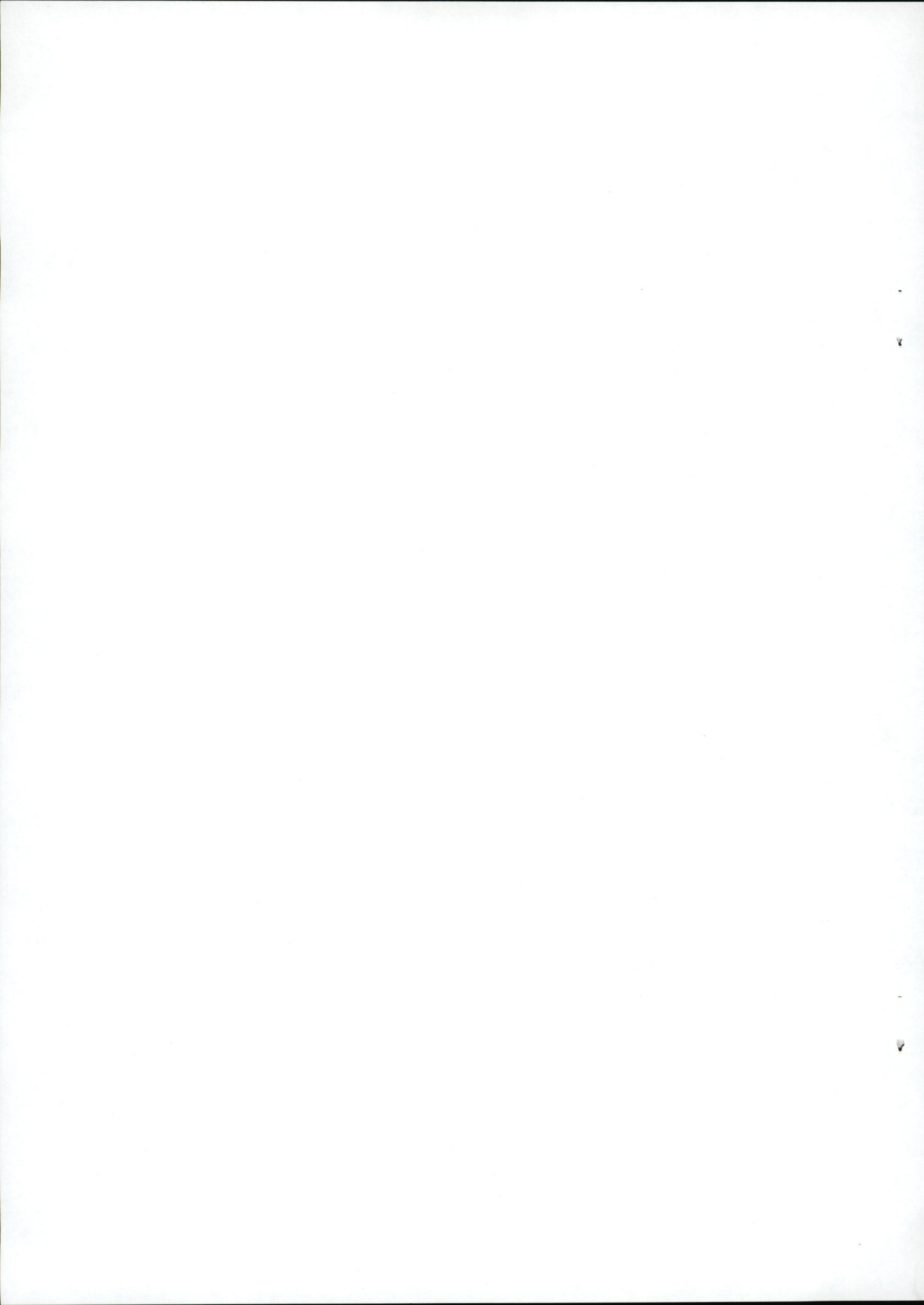
Schedule 2 [2] inserts a new section 11A. The new section applies to applications under section 10 that relate to a work in respect of which the Ministerial Corporation receives a notice under proposed section 120A of the *Environmental Planning and Assessment Act 1979*. The new section requires

Environmental Planning and Water Legislation Amendment Bill 1996

Explanatory note

the Ministerial Corporation to refer any such application, and any objections relating to the application, to the Commission of Inquiry by which the notice was given, and to defer making a decision on the application until it receives the Commission of Inquiry's report on the application. The Ministerial Corporation will be required to have regard to the Commission of Inquiry's report in making its decision on the application. The provisions of section 11 (4), (5) and (6) (which provide for public inquiries by a local land board or Magistrate and for appeals to the Land and Environment Court) will not apply to decisions made by the Ministerial Corporation on an application to which the proposed section applies. The new section is expressed to extend to applications made before its commencement.

Schedule 2 [1] is a consequential amendment that ensures that the provisions of section 11 are construed subject to the provisions of the proposed section 11A.



First print



New South Wales

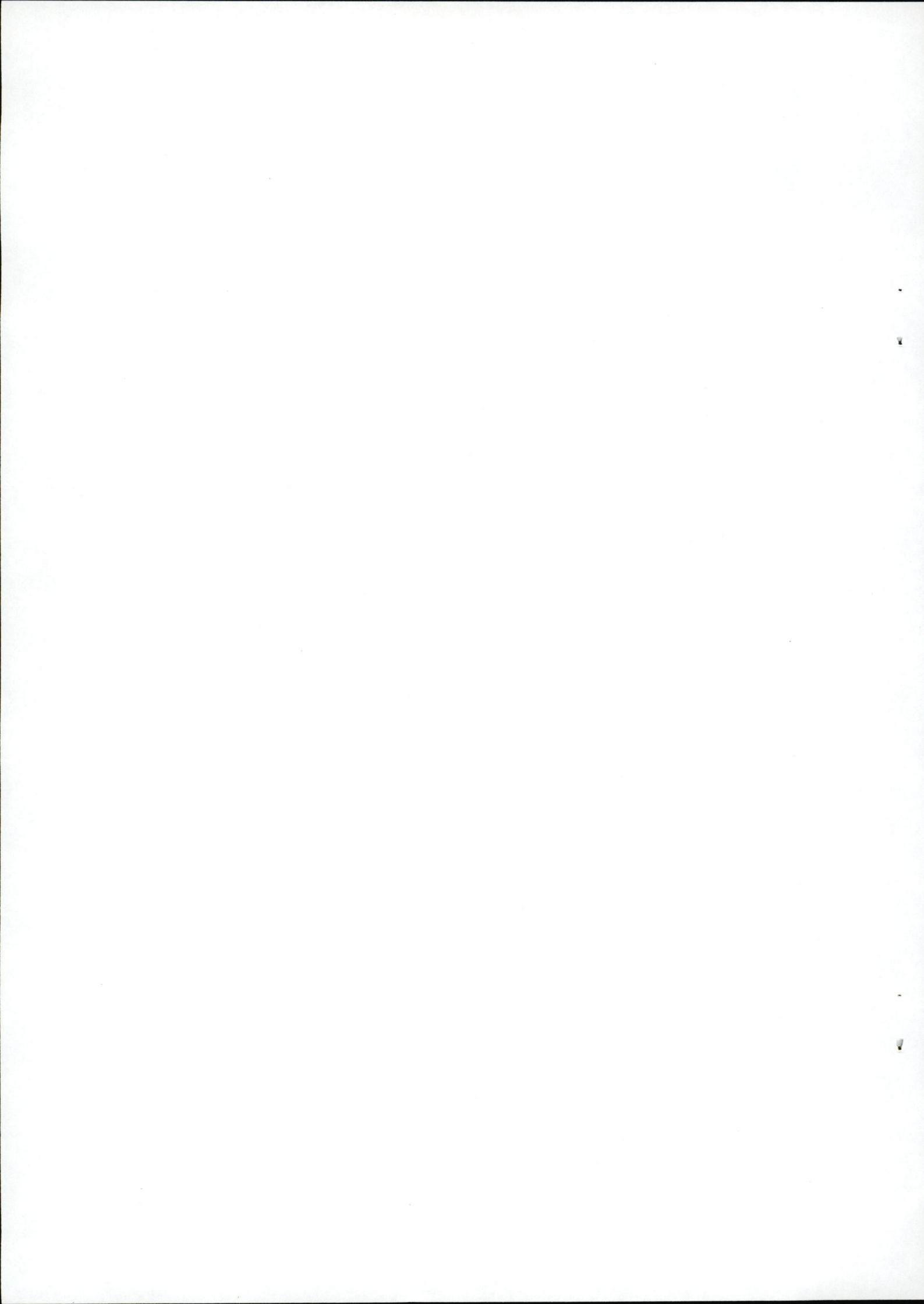
Environmental Planning and Water Legislation Amendment Bill 1996

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Environmental Planning and Assessment Act 1979 No 203	2
4 Amendment of Water Act 1912 No 44	2

Schedules

1 Amendment of Environmental Planning and Assessment Act 1979	3
2 Amendment of Water Act 1912	6





New South Wales

Environmental Planning and Water Legislation Amendment Bill 1996

No. , 1996

A Bill for

An Act to amend the *Environmental Planning and Assessment Act 1979* and the *Water Act 1912* with respect to the joint consideration of matters arising under those Acts.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Environmental Planning and Water Legislation Amendment Act 1996*.

2 Commencement

5

This Act commences on the date of assent.

3 Amendment of Environmental Planning and Assessment Act 1979 No 203

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

10

4 Amendment of Water Act 1912 No 44

The *Water Act 1912* is amended as set out in Schedule 2.

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979

(Section 3)

[1] Section 120 Procedure at inquiries

Insert after section 120 (11):

5

(12) This section is subject to section 120A.

[2] Section 120A

Insert after section 120:

120A Additional procedural requirements where water licence is involved

10

(1) A Commission of Inquiry must cause notice to be given to the Water Administration Ministerial Corporation if, before or at any time up to the conclusion of an inquiry held by it into:

(a) the environmental aspects of any proposed development the subject of a development application, whether or not it is designated development, or

15

(b) the environmental aspects of any activity referred to in section 112 (1),

20

it is of the opinion that the development or activity involves a work that may require a water licence.

(2) For the purposes of subsection (1), an inquiry concludes when the Commission of Inquiry provides its report on the inquiry to the Minister under section 119 (6), regardless of when any public hearings conducted in connection with the inquiry are concluded.

25

(3) The Commission of Inquiry must also cause notice to be given to the applicant for the development, or the proponent of the activity, advising that an application for a water licence should be made promptly if it has not already been made.

30

- (4) The Commission of Inquiry must defer concluding its inquiry for sufficient time to enable the applicant or proponent to make an application for a water licence under section 10, and for objectors to lodge objections in accordance with section 11, of the *Water Act 1912*. 5
- (5) As soon as practicable after the applicant's or proponent's application for a water licence is referred to it by the Water Administration Ministerial Corporation under section 11A of the *Water Act 1912*, the Commission of Inquiry must give at least 14 days' notice, by advertisement published in the *Gazette* and in such newspapers as it thinks necessary, of its intention to hold a public hearing in connection with the application and of the time and place at which that hearing is to be held. 10
15
- (6) The advertisement under subsection (5) may, but need not, form part of the advertisement referred to in section 120 (2).
- (7) In addition to considering any submissions that are made to it in the course of its inquiry, the Commission of Inquiry must consider: 20
- (a) the application for a water licence, and
 - (b) any objection to the granting of a water licence that has been referred to it under section 11A of the *Water Act 1912*. 25
- (8) In any report prepared by it under section 119 (6), the Commission of Inquiry must include findings and recommendations with respect to: 30
- (a) the question of whether or not a water licence should be granted, and
 - (b) the period, term, limitations and conditions of any such licence.
- (9) The Commission of Inquiry must cause a copy of any such report to be given to the Water Administration Ministerial Corporation. 35

- (10) This section extends to any inquiry that had been begun by a Commission of Inquiry, but in respect of which a report had yet to be made under section 119 (6), as at the commencement of this section.
- (11) The regulations may make further provision for or with respect to the procedure of a Commission of Inquiry in relation to those aspects of its inquiry that relate to the granting of a water licence. 5
- (12) In this section, *water licence* means a licence under Division 3 of Part 2 of the *Water Act 1912*. 10

Schedule 2 Amendment of Water Act 1912

(Section 4)

[1] Section 11 Notification of application for licence

Insert after section 11 (6):

- (7) This section is subject to section 11A. 5

[2] Section 11A

Insert after section 11:

11A Determination of applications affected by public inquiries under the Environmental Planning and Assessment Act 1979 10

- (1) This section applies to any application under section 10 that concerns a work in respect of which a Commission of Inquiry has given a section 120A notice to the Ministerial Corporation before the Ministerial Corporation makes its decision on the application under section 11 (3). 15

- (2) The Ministerial Corporation:

(a) must refer to the Commission of Inquiry:

- (i) the application (including any accompanying particulars referred to in section 10 (3)), and 20

- (ii) any objection to the granting of a licence that is duly lodged in connection with the application,

whether the application or objection is made or lodged before or after the section 120A notice is received, and 25

- (b) must defer making any decision on the application under section 11 (3) until it receives the Commission of Inquiry's section 119 report. 30

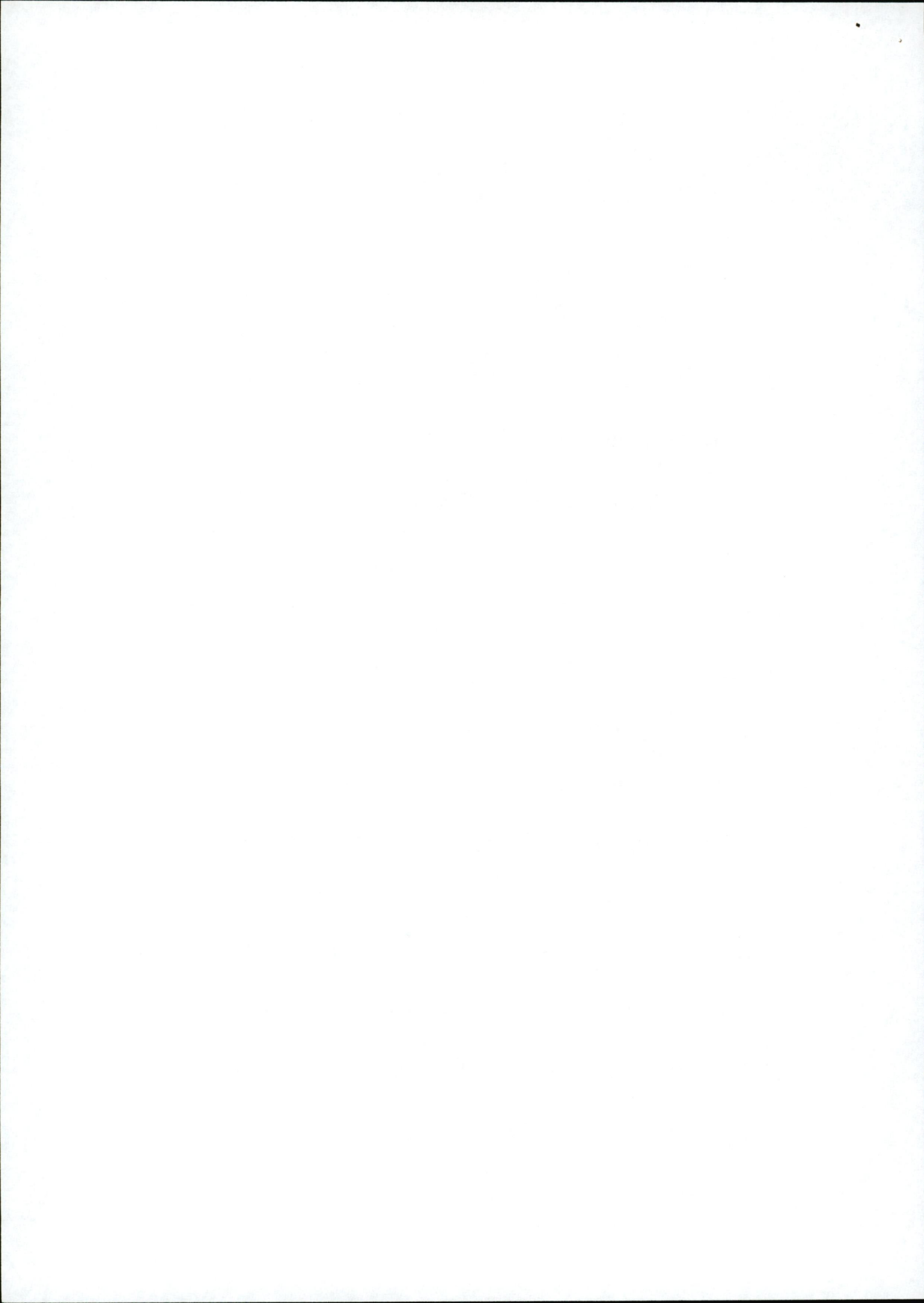
-
- (3) In making its decision on the application under section 11 (3), the Ministerial Corporation must have regard to the findings and recommendations contained in the Commission of Inquiry's section 119 report.
- (4) The Ministerial Corporation's decision under section 11 (3) on the application is final, and the provisions of section 11 (4), (5) and (6) do not have effect in relation to that decision. 5
- (5) This section extends to applications made before the commencement of this section. 10
- (6) In this section:
- Commission of Inquiry* means a Commission of Inquiry constituted under section 119 of the *Environmental Planning and Assessment Act 1979*.
- section 119 report* means a report referred to in section 119 (6) of the *Environmental Planning and Assessment Act 1979*. 15
- section 120A notice* means a notice referred to in section 120A (1) of the *Environmental Planning and Assessment Act 1979*. 20

MR PRESIDENT,

I WISH TO INFORM THE HOUSE OF THE CONTENTS OF THE WATER AMENDMENT (ENVIRONMENTAL PLANNING) BILL 1996 AND THE BACKGROUND TO ITS INTRODUCTION.

THIS BILL ADDRESSES INCONSISTENCIES IN THE CURRENT LEGISLATION REGARDING THE HOLDING OF LOCAL LAND BOARD INQUIRIES AND APPEALS FROM THE DECISIONS OF THOSE BOARDS WHERE A COMMISSION OF INQUIRY MAY ALREADY BE EXAMINING THE PROPOSAL OR WILL BE EXAMINING THE PROPOSAL.

BRIEFLY, IT IS PROPOSED THAT WHERE A COMMISSION OF INQUIRY HAS BEEN DIRECTED TO HOLD AN INQUIRY INTO A PROPOSED DEVELOPMENT BY THE MINISTER FOR URBAN AFFAIRS AND PLANNING AND A LICENSE UNDER PART 2 OF THE WATER



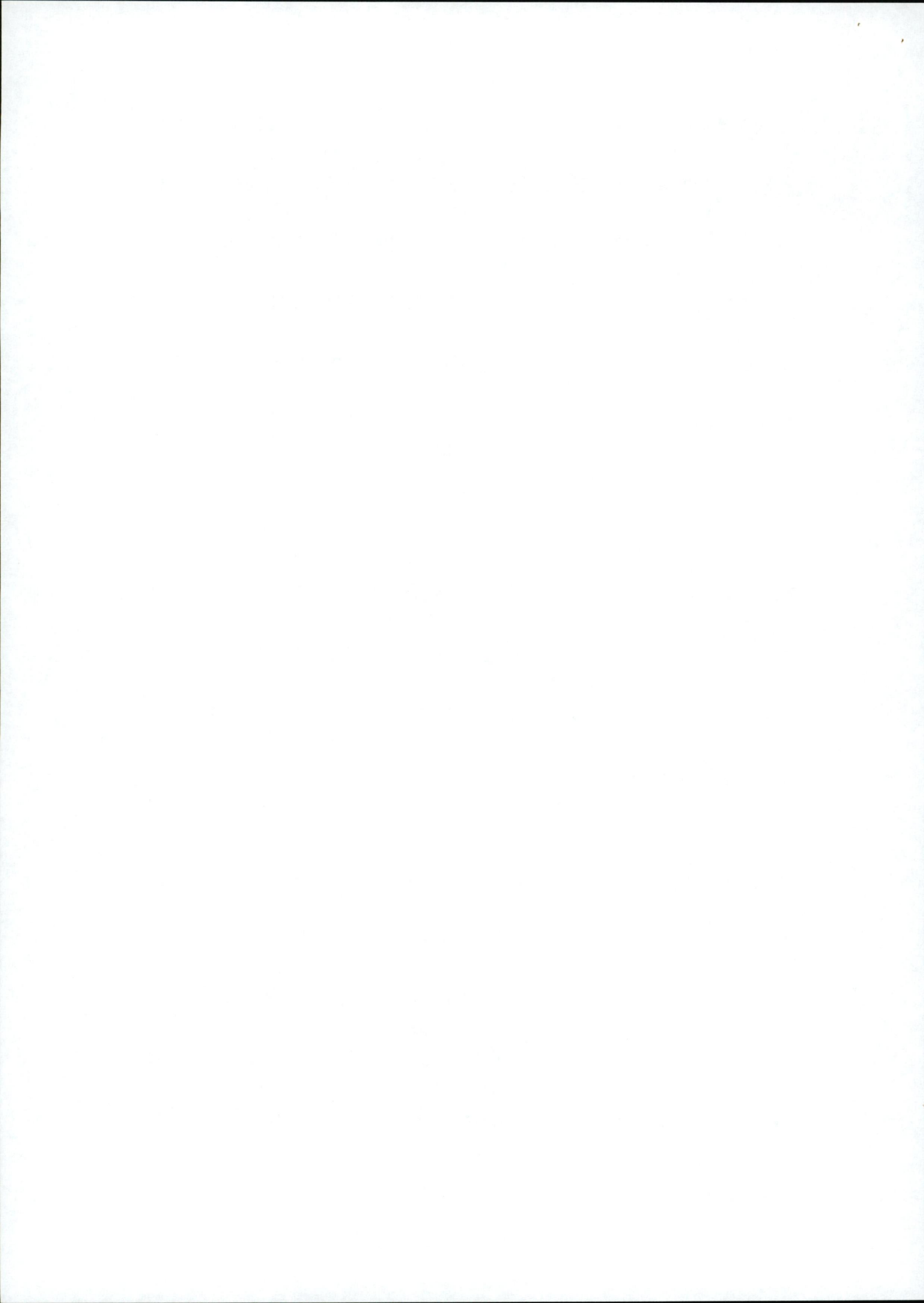
ACT (1912) IS REQUIRED BY THE PROPONENT, THE COMMISSION OF INQUIRY IS TO REPORT TO THE WATER ADMINISTRATION MINISTERIAL CORPORATION ON THE LICENSING ASPECTS. THE LAND BOARD PROCESS AND APPEAL PROCESS WILL BE MODIFIED IN CERTAIN SITUATIONS WHICH I WILL REFER TO AFTER EXPLAINING THE CURRENT STATUTORY PROVISIONS.

UNDER THE EXISTING PROVISIONS, LICENSES UNDER PART 2 OF THE WATER ACT ARE REQUIRED WHERE WORKS SUCH AS DAMS ARE PLACED ON RIVERS AND WATERCOURSES OR WATER IS TO BE TAKEN FROM RIVERS OR WATERCOURSES. THE WATER ADMINISTRATION MINISTERIAL CORPORATION REFERRED TO IN THE BILL ADMINISTERS THE LICENSING SYSTEM. BY WAY OF EXPLANATION, THE MINISTERIAL CORPORATION IS CONSTITUTED UNDER THE WATER ADMINISTRATION ACT, 1987 AND THE DEPARTMENT OF LAND AND WATER CONSERVATION IS THE ADMINISTRATIVE ARM OF THE MINISTERIAL CORPORATION.

LAND BOARDS ARE CONSTITUTED UNDER THE CROWN LANDS ACT (1989) AND IN GENERAL TERMS HEAR MATTERS REFERRED TO THEM UNDER THAT ACT AND THE WATER ACT. THEY ARE CHAIRED BY ONE PERSON THROUGHOUT THE STATE AND HAVE TWO LOCAL MEMBERS. THE PROCEDURES FOR APPOINTMENT OF THE LOCAL MEMBERS AND FOR THE CONDUCT OF THE BOARDS ARE SET OUT IN THE CROWN LANDS ACT.

COIS ON THE OTHER HAND ARE APPOINTED UNDER THE E P & A ACT. THEY HOLD INQUIRIES TO EXAMINE THE ENVIRONMENTAL ASPECTS OF A PROPOSED DEVELOPMENT OR ACTIVITY, AS DEFINED IN THAT ACT.

THIS LEADS ME TO EXPLAIN THE ROLES OF COIS AND LAND BOARDS. COI'S ALREADY HAVE THE ROLE OF LOOKING AT WATER-RELATED ISSUES WHEN CARRYING OUT INQUIRIES. WATER IS AN INTEGRAL PART OF THE ENVIRONMENT AND IS INCLUDED IN THE DEFINITION OF THAT TERM IN THE E P & A ACT. WHERE WATER



RELATED ISSUES ARE INVOLVED A COI IS REQUIRED TO LOOK INTO THEM AS PART OF ITS CHARTER TO LOOK AT THE POSSIBLE EFFECTS ON THE ENVIRONMENT OF THE PROJECT UNDER SCRUTINY.

THE ROLE OF LAND BOARDS, WHERE THEY ARE REQUIRED TO BE CALLED UNDER THE WATER ACT FOLLOWING LODGEMENT OF OBJECTIONS, IS TO EXAMINE THE DESIRABILITY OF GRANTING A LICENSE APPLICATION.

ANY PERSON WHOSE INTERESTS MAY BE AFFECTED BY THE GRANTING OF THE APPLICATION MAY OBJECT. ALTHOUGH IN THEORY THE LAND BOARD HAD A BROAD CHARTER, FOR PRACTICAL REASONS THE LAND BOARDS FOCUS ON WATER ISSUES.

WHEN CONSIDERING THE BROADER ISSUES OF THE EFFECTS OF A PROPOSED PROJECT THE COIs ARE ASSISTED CONSIDERABLY BY THE PREPARATION BY THE PROPONENTS OF AN ENVIRONMENTAL IMPACT STUDY WHICH IS REQUIRED IN SOME CASES. FOR INSTANCE, WHERE THE PROPOSAL FALLS WITHIN THE CATEGORY OF DESIGNATED DEVELOPMENT AS SPECIFIED IN THE REGULATIONS MADE UNDER THE EP&A ACT THE PREPARATION OF AN EIS IS COMPULSORY.

AN EIS IS ALSO REQUIRED WHERE A PROPOSED ACTIVITY FALLING WITHIN PART 5 OF THE EP&A ACT WILL SIGNIFICANTLY AFFECT THE ENVIRONMENT.

MEMBERS WILL BE AWARE THAT THE EIS PROCESS HAS BEEN IN PLACE FOR OVER 15 YEARS AND HAS PROVED TO BE SUCCESSFUL. THE REGULATIONS UNDER THE EP&A ACT SET OUT WHAT THEY SHOULD CONTAIN. THE REQUIREMENTS COVER THE FULL GAMUT OF POTENTIAL ENVIRONMENTAL CONCERNS.

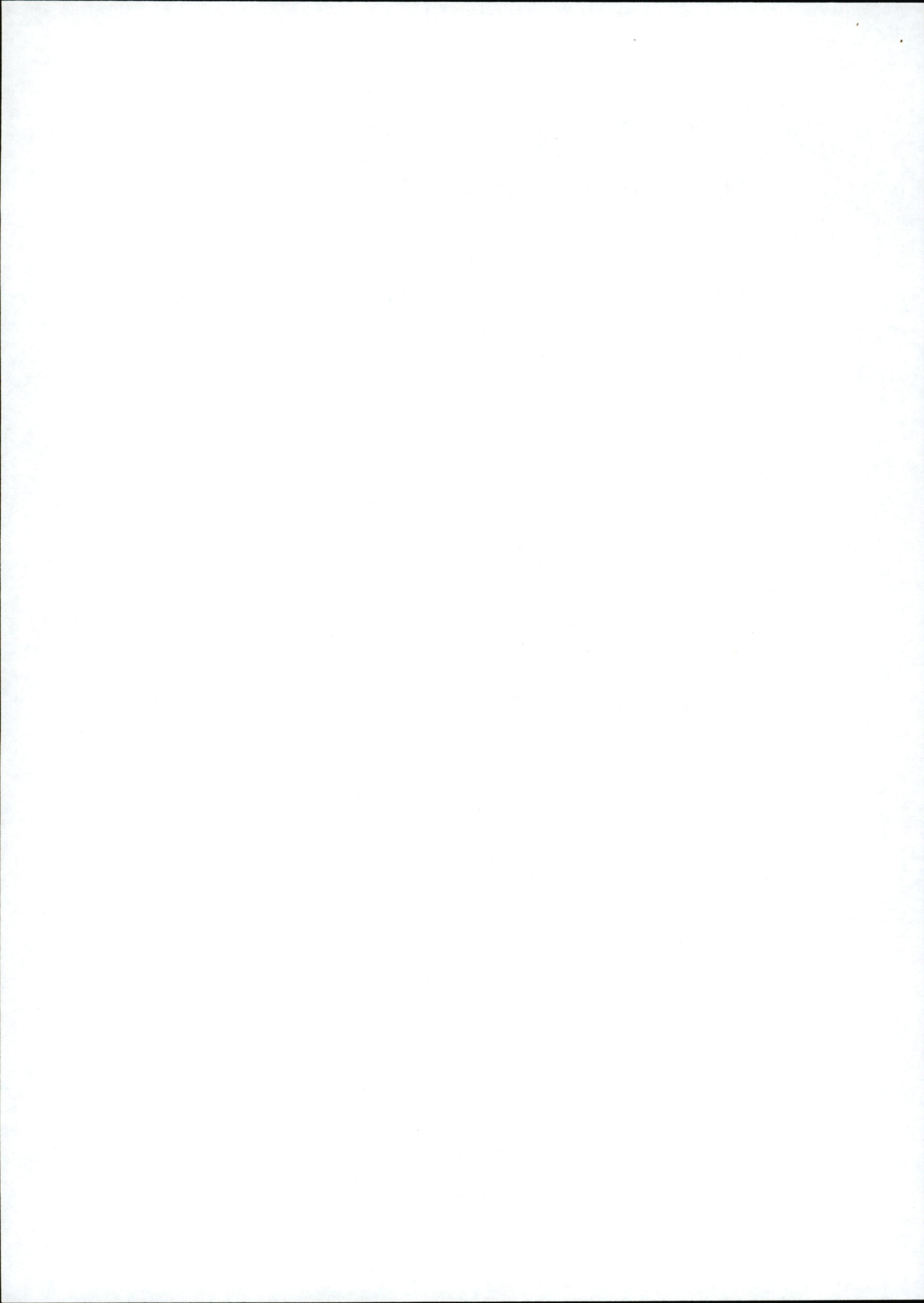
BY HAVING ACCESS TO AN EIS A COI IS WELL PLACED TO TEST THE EIS ON A WIDE RANGE OF ISSUES.

IF WATER RELATED ISSUES ARE INVOLVED IN THE PROJECT THE COI IS ABLE TO EXAMINE THESE ISSUES IN DETAIL IN THEIR OWN RIGHT AND ALSO IN THE BROADER CONTEXT OF THE OTHER ENVIRONMENTAL ELEMENTS OF THE PROJECT.

WHERE BROAD ENVIRONMENTAL ISSUES ARE INVOLVED IT COULD THEREFORE BE SAID THAT A COI IS EQUALLY OR EVEN BETTER PLACED THAN A LAND BOARD TO INVESTIGATE THE WATER ISSUES.

THE ADVERSE EFFECTS OF HAVING TWO FORUMS CONSIDERING OVERLAPPING ISSUES ARE CLEAR.

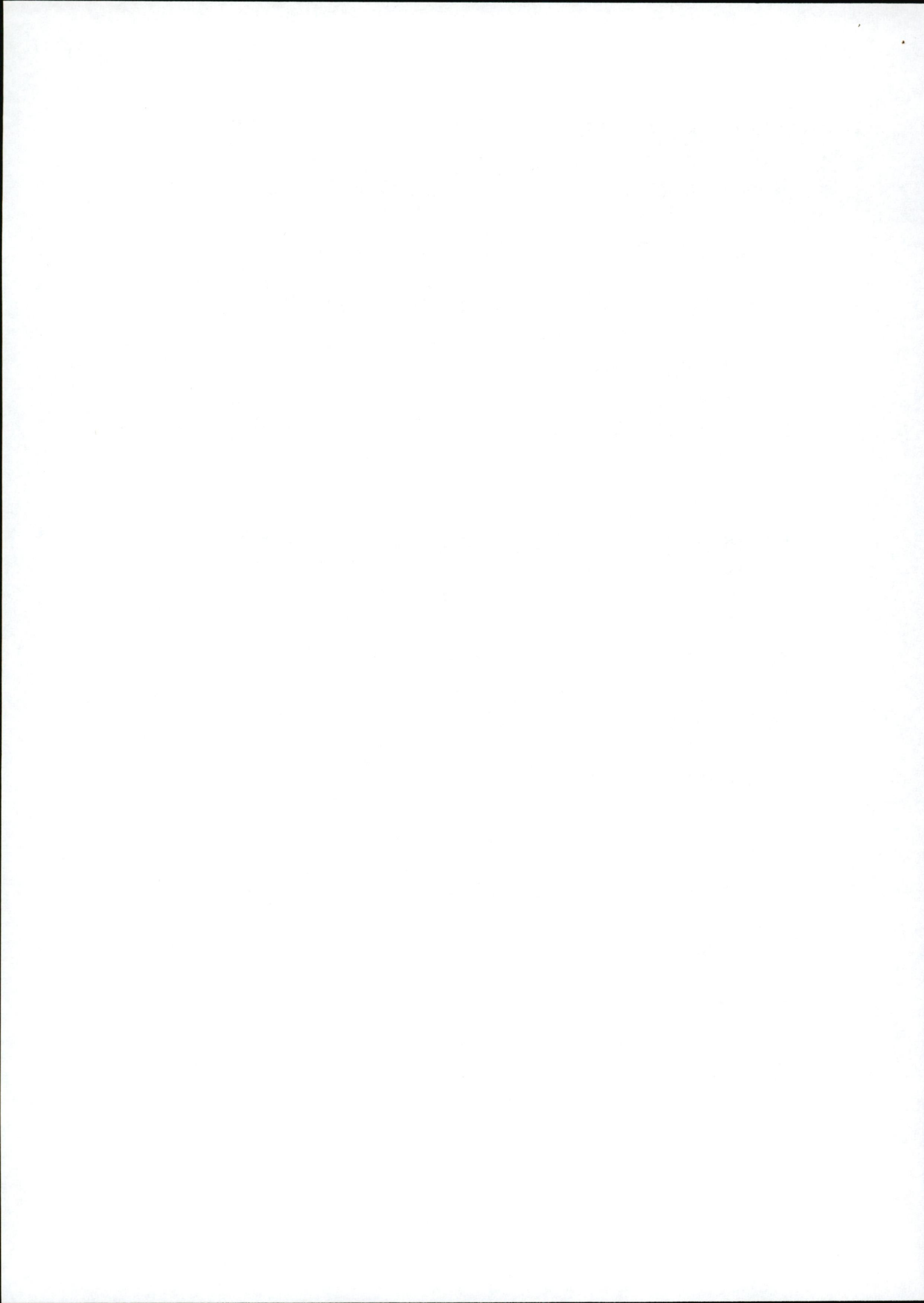
THE PROPONENTS OF A PROJECT ARE FORCED TO GO TO BOTH A COI FOR CONSIDERATION OF ENVIRONMENTAL ISSUES, AND AS APPLICANTS FOR WATER ACT LICENSES TO GO TO A LAND BOARD AS WELL. IN ALL PROBABILITY MANY OF THE MEMBERS OF THE



PUBLIC WHO ATTENDED THE COI WILL ALSO BE WATER ACT OBJECTORS BECAUSE THEY WISH TO ENSURE THAT BOTH THEIR BROAD ENVIRONMENTAL CONCERNS AND THEIR NARROWER WATER ACT CONCERNS ARE ADDRESSED. THEY MAY NOT WISH TO RISK ATTENDING ONE FORUM ONLY AND TO PROTECT THEIR INTERESTS, MAY BE OBLIGED TO ATTEND BOTH INQUIRIES ALSO.

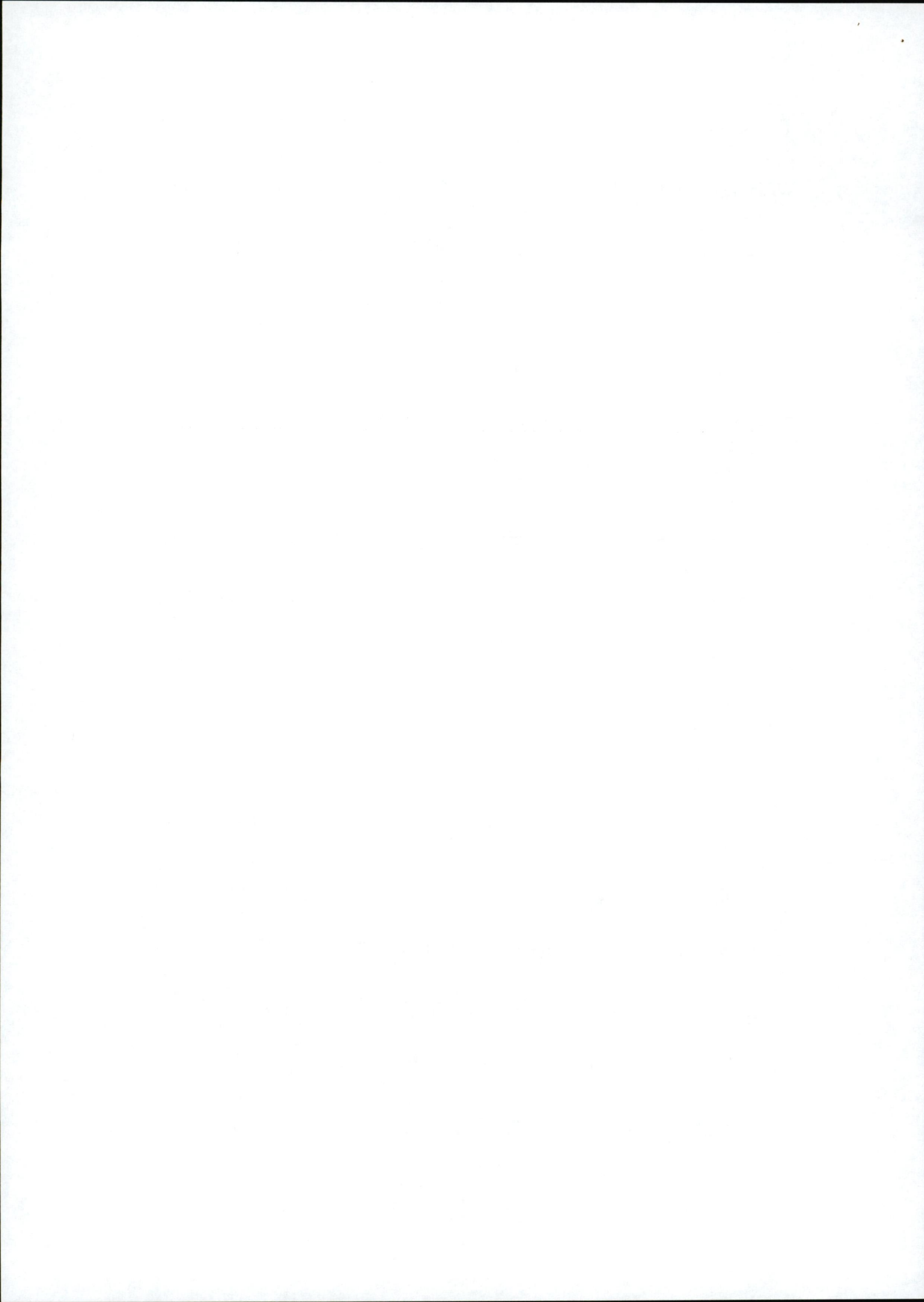
THE RESULT IS THAT ALL PARTIES ARE PUT TO THE TIME AND EXPENSE OF ATTENDING BOTH INQUIRIES. THE TIME AND EXPENSE OF PREPARING FOR AND ATTENDING BOTH FORUMS MAY BE CONSIDERABLE. A COI MAY SIT OVER A PERIOD OF SEVERAL MONTHS; A LAND BOARD MAY SIT FOR A WEEK.

A FURTHER ADVERSE EFFECT IS THE ATTENUATION OF THE APPROVAL PROCESS. THE DEPARTMENT OF LAND AND WATER CONSERVATION IS REQUIRED TO APPROVE AN APPLICATION BEFORE IT REFERS THE APPLICATION TO THE LAND BOARD FOR INQUIRY.



TO ENSURE THAT THERE IS A CONSISTENCY OF APPROACH IT WAITS IN PRACTICE FOR THE COI TO ISSUE ITS FINDINGS BEFORE IT CONSIDERS WHETHER TO APPROVE OR REFUSE THE APPLICATION. IF FOLLOWING CONSIDERATION OF THE COI'S FINDINGS THE DEPARTMENT OF LAND AND WATER CONSERVATION APPROVES THE APPLICATION AND PRIOR OBJECTIONS HAVE BEEN LODGED, IT IS AT THIS JUNCTURE THAT IT REQUESTS THE LAND BOARD TO SET THE MATTER DOWN FOR HEARING ON THE NEXT AVAILABLE DATE. THIS MAY BE SEVERAL MONTHS AWAY. IF THERE IS AN APPEAL FROM THE LAND BOARD A FURTHER PERIOD OF DELAY OCCURS.

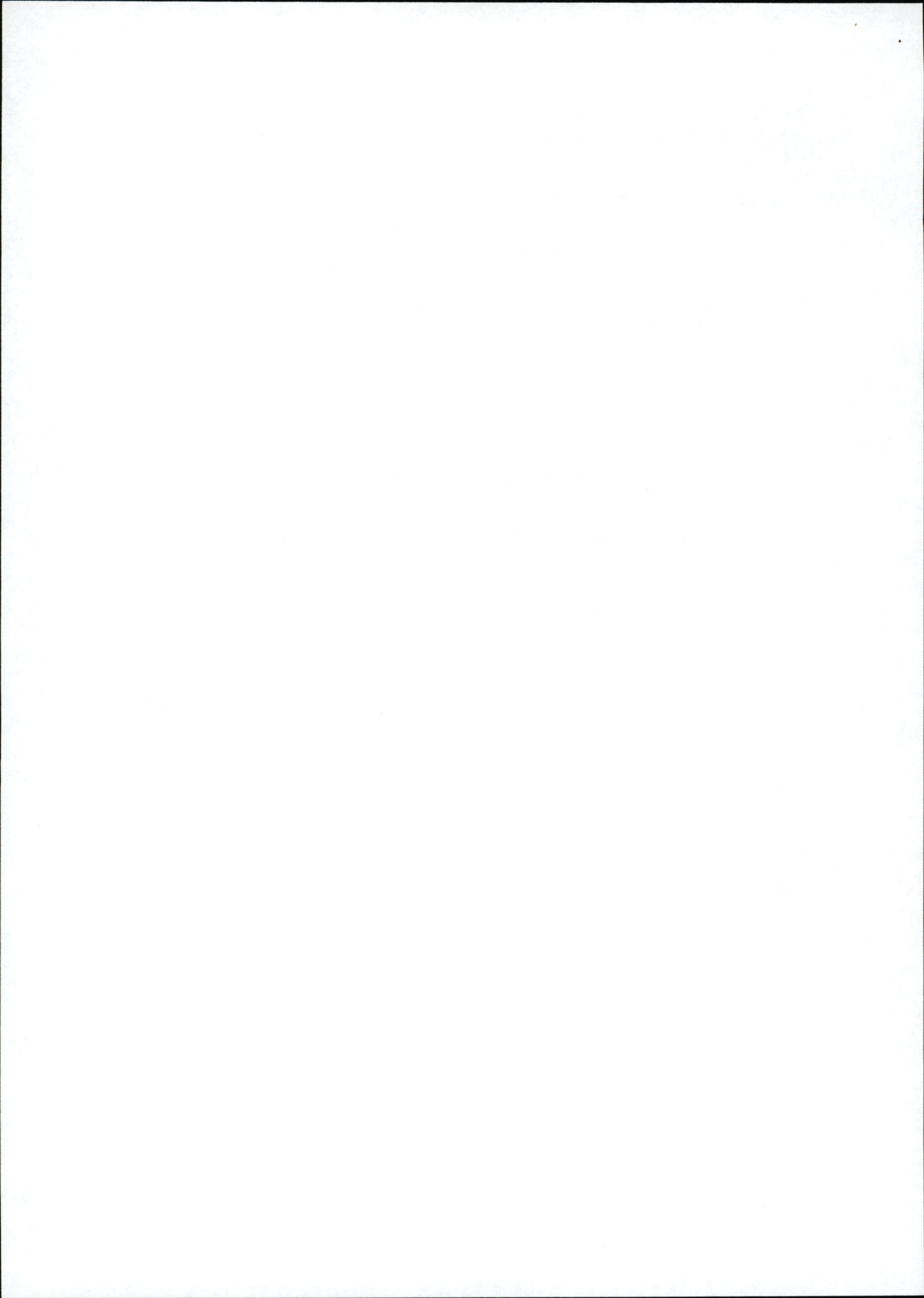
TURNING TO THE ANTECEDENTS OF THE WATER ACT'S PROCEDURES, THE RIGHTS OF OBJECTION UNDER THE WATER ACT PRE-DATE THE INTRODUCTION OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT. IT IS CLEAR THAT THERE IS UNNECESSARY DUPLICATION BETWEEN THE PROVISIONS OF THAT ACT AND THE WATER ACT. THE WATER ACT PROVIDES WHAT



MIGHT BE DESCRIBED AS THE DOUBLE JEOPARDY OF REQUIRING A PROJECT ASSESSED BY A COMMISSION OF INQUIRY UNDER THE E P & A ACT, TO BE ASSESSED BY A LOCAL LAND BOARD AND ON APPEAL BY THE LAND AND ENVIRONMENT COURT.

IT IS INTENDED UNDER THE PROPOSED AMENDMENTS THAT A COMMISSION OF INQUIRY WILL REPORT TO THE MINISTERIAL CORPORATION ON THE LICENSING ASPECTS AND THE CORPORATION WILL TAKE INTO ACCOUNT THE COMMISSION'S REPORT IN MAKING ITS FINAL DECISION. AT THE SAME TIME A COI WILL CONTINUE ITS CURRENT ROLE OF FURNISHING A REPORT ON ITS GENERAL FINDINGS AND RECOMMENDATIONS ON ENVIRONMENTAL MATTERS TO THE MINISTER FOR URBAN AFFAIRS AND PLANNING.

THE DECISION OF THE MINISTERIAL CORPORATION WILL BE FINAL, CONTINUING THE CURRENT SCHEME OF THE E P & A ACT AS REGARDS THE FINALITY OF THE DECISION OF THE MINISTER FOR



URBAN AFFAIRS AND PLANNING IN RESPECT OF DESIGNATED DEVELOPMENT.

THE PROPOSAL ALSO INVOLVES REMOVING THE RIGHTS OF APPEAL OF WATER ACT OBJECTORS TO THE LAND AND ENVIRONMENT COURT. THIS DECISION HAS NOT BEEN TAKEN LIGHTLY. AS I MENTIONED PREVIOUSLY, THE LICENSING PROVISIONS OF THE WATER ACT PREDATED THE EP&A ACT WHERE IN A SOME SITUATIONS THERE IS NO RIGHT OF APPEAL.

IT IS ALSO OF INTEREST TO NOTE THAT MORE RECENT PROVISIONS OF THAT WATER ACT RELATING TO JOINT WATER SUPPLY SCHEMES WHERE THERE ARE MULTIPLE APPLICANTS PROVIDE THAT A LAND BOARD MERELY MAKES RECOMMENDATIONS TO THE MINISTERIAL CORPORATION, WHOSE DECISION IS NOT SUBJECT TO APPEAL. THE PROPOSED AMENDMENT IN THIS RESPECT THEREFORE INTRODUCES A CONSISTENCY OF APPROACH WITH OTHER EXISTING STATUTORY PROCESSES.



MEMBERS MAY WISH TO LEARN HOW THE TWO MAJOR PROVISIONS LINK TOGETHER. THE PROPOSED AMENDMENTS TO THE EP&A ACT AND THE WATER ACT COMPLEMENT EACH OTHER.

THEY DEAL WITH TWO SITUATIONS, ONE WHERE THE PROPONENT HAS ALREADY APPLIED FOR A WATER ACT LICENSE, AND THE OTHER WHERE THE PROPONENT HAS NOT.

WHERE THE WATER ACT LICENSE HAS BEEN APPLIED FOR AND OBJECTIONS LODGED PRIOR TO THE COMMENCEMENT OF THE COI, THE MINISTERIAL CORPORATION IS REQUIRED TO FORWARD THE LICENSE APPLICATIONS AND OBJECTIONS TO THE COI FOR ITS ASSESSMENT. THE OBJECTORS MAY THEN MAKE SUBMISSIONS TO THE COI WHEN IT ADVERTISES THAT SUBMISSIONS MAY BE MADE. THIS PROCEDURE IS SET OUT IN THE AMENDMENT TO THE WATER ACT.

FROM AN ADMINISTRATIVE VIEWPOINT THE MINISTERIAL CORPORATION WILL INFORM THE OBJECTORS OF THE CHANGE IN FORUM AND ADVISE THEM THAT THEY SHOULD APPROACH THE COI.

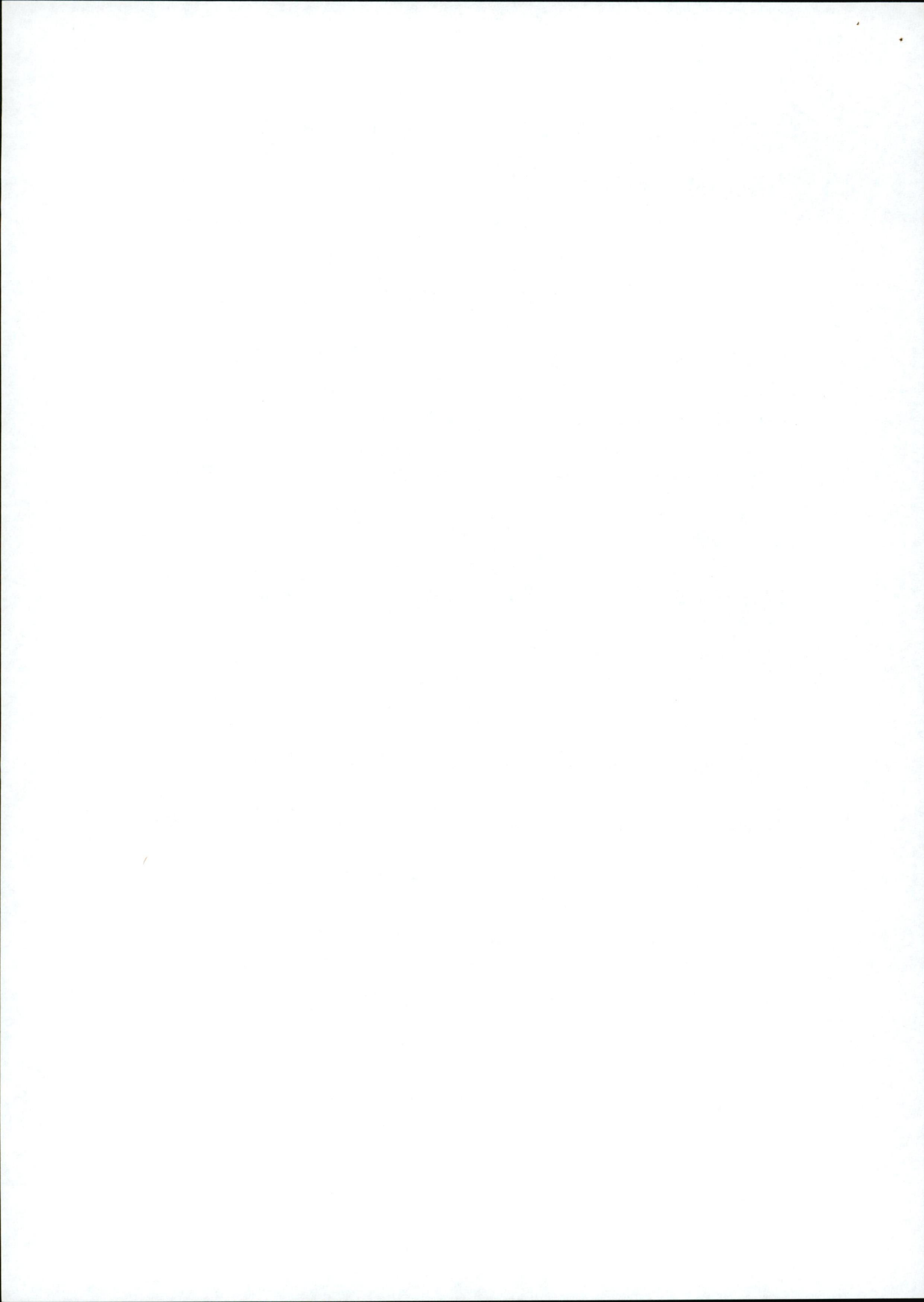
IN THE SECOND SITUATION WHERE THE WATER ACT LICENSE HAS NOT BEEN APPLIED FOR, THE COI MUST NOT UNDER THE EP&A ACT AMENDMENTS WAIT UNTIL THIS HAS OCCURRED AND THE APPLICATION HAS BEEN ADVERTISED BY THE MINISTERIAL CORPORATION. IT CAN OF COURSE CONTINUE WITH ITS INQUIRY INTO NON-WATER ISSUES IN THE MEANTIME. THE PROCEDURE WILL THEN BE THAT THE MINISTERIAL CORPORATION WILL ONCE AGAIN FORWARD THE LICENSE APPLICATIONS AND OBJECTIONS TO THE COI AND THE OBJECTORS MAY APPROACH THE COI.

IF THE COI DISCOVERS DURING ITS PROCEEDINGS THAT A LICENSE IS REQUIRED THERE IS PROVISION IN THE AMENDMENTS TO THE EP&A ACT FOR IT TO NOTIFY THE PROPONENT

ACCORDINGLY. THIS SETS IN TRAIN THE APPLICATION AND ADVERTISING PROCESS.

IT IS ALSO PROPOSED THAT UNDER THE PROPOSED AMENDMENTS IF THERE IS A COI IN PROGRESS WHEN THE AMENDMENTS COME INTO AFFECT THE COI WILL, AFTER GIVING APPROPRIATE NOTICE THAT IT WILL BE DEALING WITH WATER ISSUES, RECEIVE SUBMISSIONS FROM ANY WATER ACT OBJECTORS OR OTHER INTERESTED PEOPLE OR ASSOCIATIONS WHO WISH TO PEAK FURTHER ON THE SUBJECT.

THIS WILL PUT TO REST ANY SUGGESTION THAT SOME WATER ACT OBJECTORS WHO HAVE NOT ADDRESSED THE COI MAY HAVE BEEN RESERVING THEIR RESOURCES FOR A LAND BOARD HEARING AND WILL UNDER THE PROPOSED CHANGES LOSE THEIR OPPORTUNITY TO EXPRESS THEIR CONCERNS TO A PUBLIC FORUM.



MR SPEAKER, IT IS IMPORTANT THAT PROJECTS SUCH AS THOSE PROPOSED BY NEWCREST MINING LIMITED SHOULD RECEIVE FULL SCRUTINY. IT IS ALSO IMPORTANT THAT THEY SHOULD NOT BE SUBJECTED TO UNNECESSARY DUPLICATION OF PROCESSES AND THE RESULTING BURDEN OF RED TAPE WHICH THE GOVERNMENT IS COMMITTED TO CUTTING. I COMMEND THE BILL TO THE HOUSE.



New South Wales

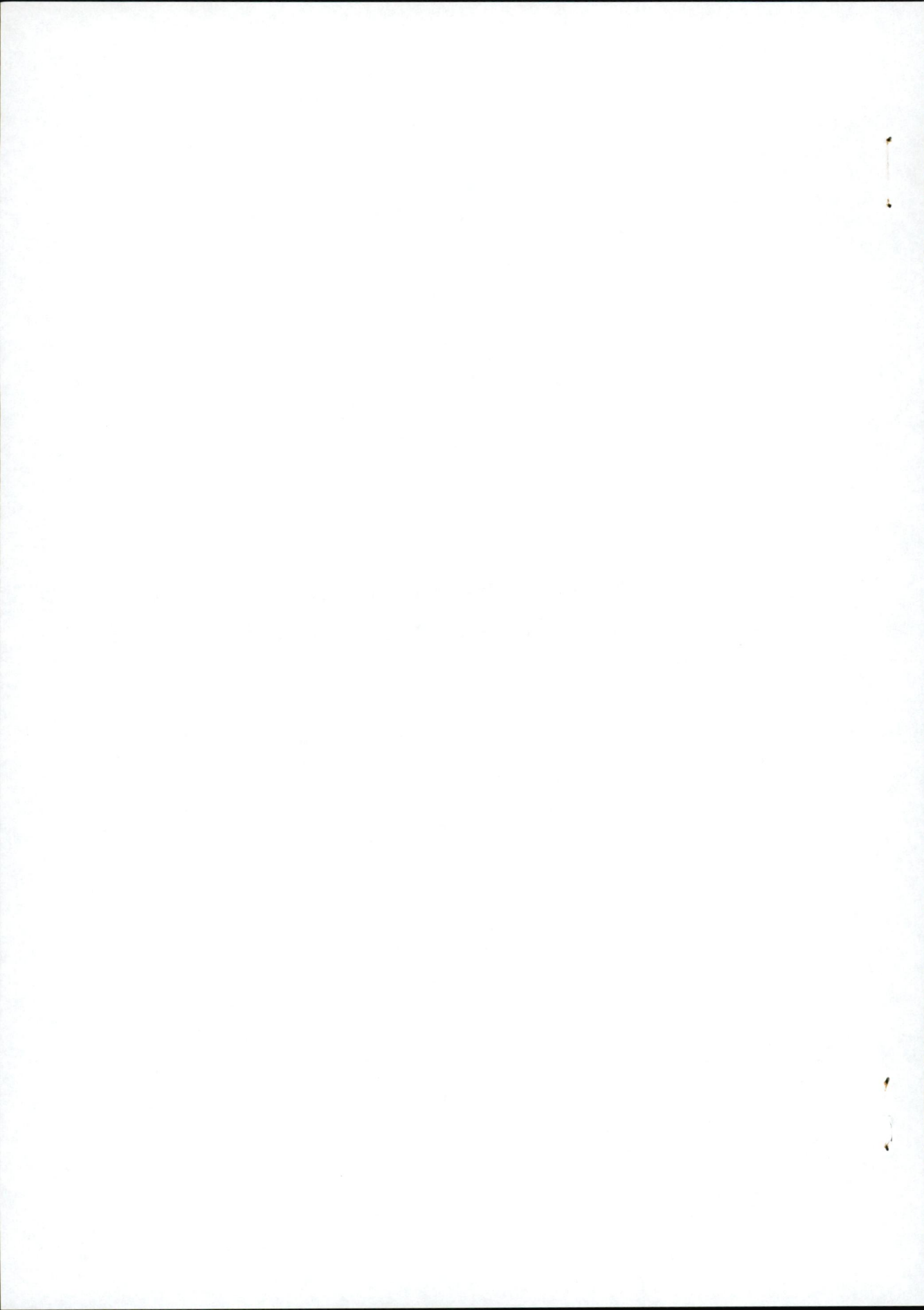
Environmental Planning and Water Legislation Amendment Act 1996 No 31

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Environmental Planning and Assessment Act 1979 No 203	2
4 Amendment of Water Act 1912 No 44	2

Schedules

1 Amendment of Environmental Planning and Assessment Act 1979	3
2 Amendment of Water Act 1912	6





New South Wales

Environmental Planning and Water Legislation Amendment Act 1996 No 31

Act No 31, 1996

An Act to amend the *Environmental Planning and Assessment Act 1979* and the *Water Act 1912* with respect to the joint consideration of matters arising under those Acts. [Assented to 24 June 1996]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Environmental Planning and Water Legislation Amendment Act 1996*.

2 Commencement

This Act commences on the date of assent.

3 Amendment of Environmental Planning and Assessment Act 1979 No 203

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

4 Amendment of Water Act 1912 No 44

The *Water Act 1912* is amended as set out in Schedule 2.

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979

(Section 3)

[1] Section 120 Procedure at inquiries

Insert after section 120 (11):

- (12) This section is subject to section 120A.

[2] Section 120A

Insert after section 120:

120A Additional procedural requirements where water licence is involved

- (1) A Commission of Inquiry must cause notice to be given to the Water Administration Ministerial Corporation if, before or at any time up to the conclusion of an inquiry held by it into:
- (a) the environmental aspects of any proposed development the subject of a development application, whether or not it is designated development, or
 - (b) the environmental aspects of any activity referred to in section 112 (1),
- it is of the opinion that the development or activity involves a work that may require a water licence.
- (2) For the purposes of subsection (1), an inquiry concludes when the Commission of Inquiry provides its report on the inquiry to the Minister under section 119 (6), regardless of when any public hearings conducted in connection with the inquiry are concluded.
- (3) The Commission of Inquiry must also cause notice to be given to the applicant for the development, or the proponent of the activity, advising that an application for a water licence should be made promptly if it has not already been made.

- (4) The Commission of Inquiry must defer concluding its inquiry for sufficient time to enable the applicant or proponent to make an application for a water licence under section 10, and for objectors to lodge objections in accordance with section 11, of the *Water Act 1912*.
- (5) As soon as practicable after the applicant's or proponent's application for a water licence is referred to it by the Water Administration Ministerial Corporation under section 11A of the *Water Act 1912*, the Commission of Inquiry must give at least 14 days' notice, by advertisement published in the Gazette and in such newspapers as it thinks necessary, of its intention to hold a public hearing in connection with the application and of the time and place at which that hearing is to be held.
- (6) The advertisement under subsection (5) may, but need not, form part of the advertisement referred to in section 120 (2).
- (7) In addition to considering any submissions that are made to it in the course of its inquiry, the Commission of Inquiry must consider:
 - (a) the application for a water licence, and
 - (b) any objection to the granting of a water licence that has been referred to it under section 11A of the *Water Act 1912*.
- (8) In any report prepared by it under section 119 (6), the Commission of Inquiry must include findings and recommendations with respect to:
 - (a) the question of whether or not a water licence should be granted, and
 - (b) the period, term, limitations and conditions of any such licence.
- (9) The Commission of Inquiry must cause a copy of any such report to be given to the Water Administration Ministerial Corporation.

- (10) This section extends to any inquiry that had been begun by a Commission of Inquiry, but in respect of which a report had yet to be made under section 119 (6), as at the commencement of this section.
- (11) The regulations may make further provision for or with respect to the procedure of a Commission of Inquiry in relation to those aspects of its inquiry that relate to the granting of a water licence.
- (12) In this section, *water licence* means a licence under Division 3 of Part 2 of the *Water Act 1912*.

Schedule 2 Amendment of Water Act 1912

(Section 4)

[1] Section 11 Notification of application for licence

Insert after section 11 (6):

- (7) This section is subject to section 11A.

[2] Section 11A

Insert after section 11:

11A Determination of applications affected by public inquiries under the Environmental Planning and Assessment Act 1979

- (1) This section applies to any application under section 10 that concerns a work in respect of which a Commission of Inquiry has given a section 120A notice to the Ministerial Corporation before the Ministerial Corporation makes its decision on the application under section 11 (3).
- (2) The Ministerial Corporation:
- (a) must refer to the Commission of Inquiry:
- (i) the application (including any accompanying particulars referred to in section 10 (3)), and
- (ii) any objection to the granting of a licence that is duly lodged in connection with the application,
- whether the application or objection is made or lodged before or after the section 120A notice is received, and
- (b) must defer making any decision on the application under section 11 (3) until it receives the Commission of Inquiry's section 119 report.

-
- (3) In making its decision on the application under section 11 (3), the Ministerial Corporation must have regard to the findings and recommendations contained in the Commission of Inquiry's section 119 report.
- (4) The Ministerial Corporation's decision under section 11 (3) on the application is final, and the provisions of section 11 (4), (5) and (6) do not have effect in relation to that decision.
- (5) This section extends to applications made before the commencement of this section.
- (6) In this section:

Commission of Inquiry means a Commission of Inquiry constituted under section 119 of the *Environmental Planning and Assessment Act 1979*.

section 119 report means a report referred to in section 119 (6) of the *Environmental Planning and Assessment Act 1979*.

section 120A notice means a notice referred to in section 120A (1) of the *Environmental Planning and Assessment Act 1979*.

[Minister's second reading speech made in—
Legislative Assembly on 6 June 1996
Legislative Council on 20 June 1996]

11

11