# "Local Government Enforcement – New Powers Under the Environmental Planning and Assessment Act, 1979."

# Environment and Planning Law Association Conference 2015

***Alexander Singh*** *LLM, Accredited Specialist (Local Government and Planning Law), is a Senior Solicitor in the Legal & Governance Division of the Council of the City of Sydney. Alex was admitted in 1992 and has worked in private practice in Sydney and country NSW prior to joining the City of Sydney in 2007. Alex's practice has been litigation based since 1994 and has involved a substantial criminal and civil practice, which included prosecuting for the WorkCover Authority, the Mid-North Weight of Loads Group and local councils. Since joining the legal team at the Council of the City of Sydney, his practice consists of the conduct of planning appeals as well as civil and criminal enforcement of legislation administered by the Council.*

## Recent Changes to the Environmental Planning and Assessment Act, 1979

On 31 July, 2015, Division 1A of Part 6 (ie sections 118A to 118N inclusive) of the Environmental Planning and Assessment Act, 1979 (**the Act**) effectively ceased to operate. Instead, a new Division 1C was inserted. This division increases the ability for Council law enforcement officers to take effective action to investigate and remedy breaches of the Act and the Environmental Planning and Assessment Regulation 2000 (**the Regs**).

## Council Investigation Officers

One of the new amendments includes provision for the appointment of Council Investigation Officers ("**CIO**") and that CIO's must be issued by Council with an identification card. New employees will have to be appointed as such if they are to act under the Act. The amendments also permit Council to appoint a class of persons as CIO's. By virtue of a new clause 39 in Schedule 7 of the Regulations (Inserted by Item [16] in Schedule 1 of the Environmental Planning and Assessment Amendment (Offences and Enforcement) Regulation 2015), people who were already authorised by Council under the former s118A of the Act immediately prior to the commencement of the new division, are taken to be CIO's. Similarly, written authorities issued under the former s118I to officers authorised under the former s118A of the Act are taken to be an identification card for the purposes of s119B(4) of the Act. This simply means that if you were a duly authorised officer under the Act, with a written authority from Council prior to 31 July, 2015, you are automatically a CIO with a valid identification card for the purposes of the new division. It is important to check whether the officer actually had the requisite authorisation beforehand. Sometimes there will be a form of authority card that says that the officer has Council delegations or is an "authorised person". This would not necessarily attract the automatic deeming provisions. In order to do so, the officer would have had to have been authorised in writing by the Council to enter premises. So, if no such written authorisation was provided, the officer is not automatically a CIO and would need to be appointed.

However, Section 127A of the Act contains the power to serve a penalty notice and this power is vested in an "authorised person". An authorised person is defined as follows:

> *In this section,*
> ***"authorised person"*** *means a person who is declared by the regulations to be an*

*authorised person for the purposes of this section or who belongs to a class of persons so declared.*

For Councils, the relevant regulation is Regulation 284(3)(c), which states that for the purposes of s127A of the Act, any person (including an employee of a council) who is generally or specially authorised by a council to be an authorised person for those purposes is declared to be an authorised person and therefore able to issue penalty notices.

**Utilities Orders**

A new s121ZS is inserted into the Act which permits the enforcement of orders by cessation of utilities where there has been a failure to comply with a brothel closure order or an order to cease use of premises for backpackers' accommodation and boarding houses. The new powers under s121ZS can be applied to orders to cease use as backpackers' accommodation and boarding houses that were served before 31 July, 2015 but only if the failure to comply occurred after 31 July, 2015.

The definitions for backpackers accommodation and boarding houses are the definitions contained in the standard LEP instrument. They are as follows:

***backpackers' accommodation*** means a building or place that:

(a) provides temporary or short-term accommodation on a commercial basis, and
(b) has shared facilities, such as a communal bathroom, kitchen or laundry, and
(c) provides accommodation on a bed or dormitory-style basis (rather than by room).

***boarding house*** means a building that:

(a) is wholly or partly let in lodgings, and
(b) provides lodgers with a principal place of residence for 3 months or more, and
(c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and
(d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,

but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.

**Investigations and Existing requirements to answer questions**

An investigation can be conducted under the new division even if the matter being investigated arose before 31 July, 2015. However, the new s119M(1) and 119M(2) do not apply in relation to the failure by a person to comply with any existing requirements to answer questions or furnish information. In the case of any such breaches of existing obligations in force as at 31 July, 2015, sections 118N(1)(a) and 118N(1)(c) continue to have effect. So, as an example, if there were any notices issued under the former section 118BA prior to 31 July, 2015 and they are not complied with and there is a desire to prosecute for the offence of not complying, that prosecution would be brought under the former s118N(1)(a) and not the new s119M(1). Any new requirements to answer questions or furnish information made after 31 July, 2015 that are not complied with would be dealt with under s119M.

**Penalties**

On 31 July, 2015, a new penalty system came into force. Sections 125A, 125B and 125C were inserted as well as a definition of tier 1 maximum penalties, tier 2 maximum penalties

and tier 3 maximum penalties. These sections set out the new tiered penalty system. In brief the tiered system is as follows:

- **Tier 1**
  - s125A – offences against the Act under s125(1) committed intentionally and that cause or are likely to cause significant harm to the environment or caused the death of or serious injury or illness to a person.
  - Tier 1 Maximum Penalties:
    - (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.
- **Tier 2**
  - S125B - offences against the Act under s125(1) other than an offence to which section 125A applies or an offence for which a tier 3 maximum penalty applies.
  - Tier 2 Maximum Penalties:
    - (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.
    - Provided however that if any provision of the Act declares a different maximum penalty for a particular offence to which s125B applies, that different penalty shall apply
- **Tier 3**
  - S125C – This applies to certificate-related offences or any other offence against the Act under s125(1) for which a tier 3 maximum penalty is declared by the Act to apply. A **"certificate-related offence"** is an offence under section 125 arising under any of the following provisions of the 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.
  - Tier 3 Maximum Penalties:
    - (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.

Offences against the regulations are dealt with by s125D and the maximum penalty is the maximum penalty prescribed by the regulation or a maximum of $110,000 if no penalty is prescribed.

Of interest is the fact that some penalties will have been reduced by virtue of the fact that they would now fall within the description of a Tier 2 offence rather than the general penalties provision under the former s126 of the Act. So what happens when an offence has been committed and the penalties change in between the commission of the offence and its prosecution? The answer is found in s19 of the Crimes (Sentencing Procedure) Act 1999, which is reproduced below:

> **19 Effect of alterations in penalties**
> (1) If an Act or statutory rule increases the penalty for an offence, the increased penalty applies only to offences committed after the commencement of the provision of the Act or statutory rule increasing the penalty.
> (2) If an Act or statutory rule reduces the penalty for an offence, the reduced penalty extends to offences committed before the commencement of the provision of the Act or statutory rule reducing the penalty, but the reduction does not affect any penalty imposed before that commencement.
> (3) In this section, a reference to a penalty includes a reference to a penalty that is expressed to be a maximum or minimum penalty.

Where proceedings are brought in the Local Court, the maximum penalty is still the amount prescribed by the offence provision or 1,000 penalty units, whichever is the lesser. A penalty unit is still $110 (s17 Crimes (Sentencing Procedure) Act, 1999).

**Penalty Notice Offences**

On 14 August, 2015 new penalty notice provisions commenced operation. They increase some of the penalties and introduce some new penalty notice offences, notably a penalty notice for s121B order 6 (fire safety orders).

The fines for penalty notices have in the most part increased under the amended provisions and in many cases have doubled. Care has to be taken in the event that a person were to elect to deal with the matter in Court as the penalty notice figure is no longer the applicable penalty and the Court has open to it the maximum under the legislation.

**Additional Orders in Prosecutions in the Land and Environment Court**

A valuable inclusion is a new s126(2A) which incorporates the provisions of Part 8.3 of the *Protection of the Environment Operations Act 1997* ("POEO") and applies those provisions to offences under the Act and Regs in the same way that they apply to an offence under POEO or its Regulations. However, the provisions only apply to offences dealt with in the Land and Environment Court not the Local Court and are expressed to be subject to any modifications prescribed by the Regs. In this regard, a new Regulation 285A was inserted into the Regs by item [12] of the Environmental Planning and Assessment Amendment (Offences and Enforcement) Regulation 2015. This provides modifications to the application of Part 8.3 of POEO and reads as follows:

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

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

(a) references in that Part to preventing, controlling, abating or mitigating any harm to the environment caused by the commission of the offence are taken to include a reference to reversing or rectifying any unlawful development or activity related to the commission of the offence,

(b) the terms ***environment*** and ***public authority***, when used in that Part, have the same meaning as they have in the *Environmental Planning and Assessment Act 1979*,

(c) references in that Part to a "regulatory authority" or "the EPA" are to be read as references to a "public authority",

(d) the reference to the Environment Trust established under the *Environmental Trust Act 1998* in section 250 (1) (e) is to be disregarded,

(e) the maximum penalty for an offence under section 251 of failing to comply with an order is:

(i) in the case of a corporation—"$50,000", and

(ii) in the case of an individual—"$10,000".

The inclusion of s126(2A) is very important as it allows Council to bring prosecutions in the Land and Environment Court *and* obtain orders in addition to just the penalty. These orders could be orders to restore premises following unlawful development, payment of compensation, etc.

**Aid & Abet**

A new section 125(3A) was inserted that makes it an offence for anyone to aid, abet, counsel or procure another person to commit an offence against the Act or Regs and to conspire to commit an offence against the Act or Regs. If convicted, such a person is liable to the same penalty applicable to an offence arising under the relevant provision.

**Time for bringing prosecutions**

Pursuant to s127(5) of the Act, proceedings for an offence against the Act or Regulations may be commenced not later than 2 years after the date when offence is alleged to have been committed. HOWEVER, a new s127(5A) has been inserted which reads:

(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.

This must be read in conjunction with the amended s127(5B), which reads:

(5B) If subsection (5A) is relied on for the purpose of commencing proceedings for an offence, the information or application must contain particulars of the date on which evidence of the offence first came to the attention of any such investigation officer and

need not contain particulars of the date on which the offence was committed. The date on which evidence first came to the attention of any such investigation officer is the date specified in the information or application, unless the contrary is established.

So the effect of the new s127(5A) is to permit prosecutions to be brought in certain circumstances within 2 years of the offence coming to the attention of a CIO who is a member of staff of the Council. This is rebuttable by the defendant if evidence to the contrary can be provided.

**Powers of entry**

This power is found in s119D. There is a power to enter any premises that the CIO reasonably suspects that any industrial, agricultural or commercial activities are being carried out. This power can be exercised at any time during which those activities are being carried out. Any other premises can be entered at any reasonable time subject to the provisions for entry to premises or parts of premises being used for residential purposes (this is separately dealt with). Of interest is the fact that there is no longer a requirement to give notice prior to entry. The notice requirement only applies to residential premises in certain circumstances, such as where there is a need to inspect works being carried out under a consent, approval or certificate under the Act, or if a building certificate has been applied for. Accordingly, entry can be made without prior notice in most cases. Further, the power to enter permits entry by foot or vehicle or any other manner. A CIO can also enter with the aid of police, other CIO's or such other persons as the CIO considers necessary. Section 119D(5) allows reasonable force to be used in exercising this function.

If force is used, even under a search warrant, note that s119I requires notice of the use of force to be given to Council then Council must give notice of the use of force to such persons or authorities as appear to be appropriate in the circumstances. I would suggest that notice under s119I(2) should be given to the owner(s), occupier(s) and the Police as a minimum. It is important to note that s119P requires Council to compensate "all interested parties" for any damage caused by a CIO in exercising a power of entry.

Further, there is a requirement to take care when exercising the power of entry as set out in s119H. This requires as little damage as possible to be done to the premises and may require Council to provide another means of access if the existing means is taken away or interrupted by a CIO. Similarly, entry through fences needs to be via the intended opening. If it is necessary to make a new opening, it must be fully restored once the need for entry has ceased.

There is no need for a separate authority to enter premises. The fact that an officer is a CIO, means that they can exercise this power.

**Entry to Residential Premises**

Entry to premises used for residential purposes can be done with the consent of the occupier or under a search warrant. There is a further power for a CIO to enter if it is necessary to do so to inspect work being carried out under a consent, approval or certificate under the Act, or 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.

If entry to premises used for residential purposes is required to inspect work carried out under a consent or approval or for the purpose of issuing a building certificate, notice of entry is required pursuant to s119E. This requires the CIO to give written notice to the owner or occupier of the CIO's intention to enter the premises. The notice must state the day upon which the CIO intends to enter. There is no guidance as to how much notice is

required, only that notice cannot be given on the date that entry is made. Of interest are the circumstances in s119E(4) where notice need not be given. The circumstances are as follows:

> *(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.*

The first three seem reasonably straight-forward, but the fourth one is "interesting". I cannot find where the Act or regulations state that a Council can provide such an authority. Accordingly, the way that I interpret s119E(4) is that Council can provide a written authority for a particular kind of case that permits the entry to premises used for residential purposes where entry is required urgently. Note that this is different to s119E(4)(c). In other words, Council may, for example, issue a written authorisation to a CIO that authorises the entry to premises used for residential purposes in a boarding house without notice if it is required urgently.

**New Powers s119F**

> ***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.*

The important thing to understand at the outset is that these are powers that can be exercised by a CIO on premises ONLY IF entry onto those premises has been made lawfully.

Assuming then that access is gained to premises lawfully, the powers in s119F can be exercised. A CIO does not then require further permission to take photographs, samples, etc.

The powers in s119F(1)(a)-(f) should not come as a surprise as they are similar to many of the powers in the former s118B. The sections do, however, set out the powers in a more specific way to remove doubt. Interestingly, the power to require a person to answer questions (former s118B(d)) is not there. Instead, there is a clear power to require the production of records and to seize anything that the CIO has reasonable grounds for believing is connected with an offence against the Act. This is an important addition to the Council officer's powers. Note s119F(2) regarding the things that can be seized. Of importance is the fact that the CIO must have formed the belief on reasonable grounds that an offence against the Act has been committed. The CIO is not required to proceed with a prosecution, he/she simply has to have had a belief on reasonable grounds that an offence had been committed against the Act.

It is important to note s119F(1)(k). This provides the power to ask questions and require the provision of records set out in section 119J and 119K to be exercised as well as the recording of evidence set out in s119L. These powers operate independently of the powers in s119F and will be separately discussed below. Of greater value in considering the other powers under the division that may be exercised courtesy of s119F(1)(k) is s119O. This section allows Council (as opposed to the CIO) to give written notice to an owner or occupier of premises to provide certain reasonable assistance and facilities.

**Powers to Obtain Information**

Again, this is an important subdivision and is set out in sections 119J, 119K, 119L as well as s119S.

It is important to note that the requirement to furnish records (s119J) and the requirement to answer questions (s119K) are powers that are exerciseable without the need for a power of entry to be exercised.

Section 119J is a new power and the provision reads as follows:

> ***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.*

This section is reasonably straight forward and reference should be had to the notice provisions in s119R and the warning requirements of s119S.

Sections 119K and 119L together are almost the same as the former s118BA, which was the provision that permitted council officers to compel the answering of questions. The main difference is in s119K(1). This is a clearer expression of the use of the power with one notable change. Under the former s118BA, an authorised person had be satisfied on reasonable grounds that a person had knowledge of matters *in respect of which information is **reasonably required** to enable Council to exercise its functions under the Act.*

Under s119K, however, the test is a little stricter. Under that section, a CIO can require a person to answer questions if the CIO suspects on reasonable grounds that the person has knowledge of the matter and *that it is **necessary** to require information for the investigation purpose*. The investigation purpose is defined in the Act and are the purposes set out in s119C(2) (ie enabling Council to exercise a function under the Act or determining whether adequate fire safety has been made in connection to a building in accordance with a request from the Commissioner of Fire and Rescue NSW [see also s119T(6)]).

Once again, a warning must be given under s119S of the Act before a person can be guilty of an offence of failing to comply with their obligations to answer questions or furnish information. This section is in the same terms as the former s122U, which applied previously.

**Search Warrants**

The search warrant power is found in s119G. Under this section, the CIO has to "*believe on reasonable grounds that this Act is being or has been contravened at any premises*." For

the purposes of Part 6 Division 1C "the Act" includes the Environmental Planning & Assessment Act and the Regulations.

A belief on reasonable grounds is required. This means that it requires the existence of facts which are sufficient to induce that state of mind in a reasonable person: *George v Rockett [1990] HCA 26 @ 8.* At paragraph 5 of the judgment in *George*, the High Court referred to the fact that, under statute, search warrants authorise an invasion of premises contrary to the wishes of those in lawful occupation and as a result, to insist on strict compliance with the statutory conditions governing the issue of search warrants is simply to give effect to the purpose of the legislation.

Once a CIO is seized of a belief on reasonable grounds that the Act or Regs are being or have been contravened at any premises, he/she can apply for a search warrant enter the premises and *exercise any function of an investigation officer under the Division*.

The new section 119G is set out in full below for reference purposes:

> ***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.*

The power in s119G enables a search warrant to be obtained:

> *(a) to enter the premises, and*
>
> *(b) to exercise any function of an investigation officer under this Division*

Leaving (a) to one side for a moment, the CIO can exercise any function of an investigation officer under Division 1C. Under s119A, a CIO is an "investigation officer". The powers that CIO's can exercise under ss119F, 119J & 119K can be exercised for an "investigation purpose". This is defined in s119A as:

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

The purposes for which powers under Division 1C may be exercised by Council are set out in s119C(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.*

In *Zhang v Woodgate and Lane Cove Council* [2015] NSWLEC 10, the Land and Environment Court indicated that a function that Council has under the Act includes a function to determine whether proceedings can be brought under the Act. The *power* to bring proceedings is found in the Local Government Act ("**LGA**") ss 21, 684 and 687. Section 22 of the LGA, acknowledges that Council has functions imposed upon it by other Acts including the Act as well as the power to "…do all such things as are supplemental or incidental to, or consequential on, the exercise of its functions.": s23 LGA.

Further, the broad power of entry given by the use of the expression "*any* premises", does not seem to restrict Council to entering any premises only within its local government area. Further, no such restriction appears to be present in relation to the exercise of the powers and functions under Division 1C.

**False or Misleading Information – Planning Matters**

On 30 September, 2015, a new offence of providing false or misleading information in a planning matter was created by the commencement of s148B of the Act and Regulation 285B of the Regs. The new provisions are reproduced below:

> ***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.*

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

*For the purposes of section 148B(3)(d) of the Act, the provision of information in response to a requirement imposed by any of the following conditions (except a condition imposed under section 122C of the Act) is declared to be the provision of information in connection with a planning matter for the purposes of section 148B of the Act:*

*(a) a condition of development consent,*

*(b) a condition of an approval to carry out a project that is a transitional Part 3A project (as defined in clause 2 of Schedule 6A to the Act),*

*(c) a condition of an approval to carry out State significant infrastructure under Part 5.1 of the Act.*

There is also a penalty notice offence created for this offence, which carries a penalty of $1,500.00 for an individual or $3,000.00 for a corporation.

Alexander Singh