

**NATIONAL PARKS AND WILDLIFE AMENDMENT BILL 2010  
(OMNIBUS BILL) AND REGULATIONS**

**Better Regulation Statement**



**Environment,  
Climate Change  
& Water**

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# 1. Executive Summary

The *National Parks and Wildlife Act 1974* (NPW Act) has remained largely unchanged since enactment. A number of issues have arisen in applying the provisions of the Act, particularly in relation to Aboriginal cultural heritage, resulting in administrative law challenges and court decisions affecting the operation of the Act. The Department of Environment, Climate Change and Water (DECCW), development applicants and the Aboriginal community have all been impacted, largely to the detriment of achieving the objectives of the Act.

The Omnibus Bill makes a number of amendments to the NPW Act and the *Threatened Species Conservation Act* (TSC Act) and a number of other statutes. The Omnibus Bill creates a number of new Regulation-making powers and requires a number of consequential amendments to the National Parks and Wildlife Regulation 2002 (the NPW Regulation) and the Threatened Species Conservation Regulation 2002 (the TSC Regulation).

The most significant area addressed through the proposed amendments is enhancing the effective protection of Aboriginal cultural heritage. Consultations with key stakeholders, particularly from the development sector, have found that the current regulatory scheme to protect Aboriginal heritage is cumbersome and likely to result in unnecessary delays to development.

It should be noted that the Aboriginal heritage legislative amendments in the Bill are limited to improvement of the existing regulatory regime. These amendments are not a major reform of the existing legislation. The current proposals are interim measures in the process of broader reform in this area. The proposed amendments in the Bill and Regulation cover a broad range of issues including:

- protecting Aboriginal Cultural Heritage
- administering the NPW Act and the TSC Act
- amendments to Part 4A – Boards of Management for Aboriginal Owned Parks
- compliance and enforcement
- improving financial reporting requirements for Aboriginal co-managed parks Boards of Management
- simplifying wildlife licensing and improving management of protected flora and fauna.

The proposals introduce due diligence provisions, similar to the 'duty of care' provisions in the Queensland *Aboriginal Cultural Heritage Act 2003*. New community consultation requirements are being incorporated through supporting regulations, with the aim of ensuring the most appropriate Aboriginal persons 'speak for Country' and are involved in the protection of their heritage. In addition, streamlining the permit and assessment process will assist developers and DECCW by reducing approval times and preparation and processing costs.

Revised penalty provisions will encourage improved compliance. The new provisions make it easier to prosecute breaches of the Act and substantially increase penalties applying over the range of breaches. There are two types of offence: harming an object known to be an Aboriginal object (a 'knowing offence'); and harming an Aboriginal object whether known or not to be an Aboriginal object (a 'strict liability offence').

The Due diligence Code of Practice for the protection of Aboriginal objects in NSW provides guidance for individuals and organisations contemplating undertaking activities that could have an impact on Aboriginal objects. Due diligence is a defence to the strict liability offence. Implementation of these requirements will improve the protection of Aboriginal cultural heritage.

Consultation has been undertaken with key stakeholders, including Aboriginal groups, environment groups, the property industry, the NSW Minerals Council, NSW Farmers and other government agencies. The provisions in the Bill and the Regulation have been amended where possible to address concerns raised through this process. Further details of issues raised in this consultation are contained in section 6 of this document. A full summary of submissions and DECCW's responses can be found at [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au).

In assessing the impacts of the amendments, two options are examined:

- Option 1. Baseline – no amendment to Acts and Regulations
- Option 2. Proposed amendment Bill and Regulations

Analysis of the costs and benefits for the proposed amendments shows that the projected benefits exceed the additional costs from implementing and managing the new and revised provisions.

The major benefits are: improved Aboriginal cultural heritage protection; and cost savings to DECCW and to development proponents, particularly from an expected reduction in number of permits and in legal costs from challenges and prosecutions.<sup>1</sup>

Many of the costs and benefits associated with the large number of minor changes across the other key elements of the Bill that clarify provisions, reduce conflicts and streamline administration are difficult to assess and quantify and consequently any analysis of these changes is qualitative. The quantifiable benefits from the Aboriginal heritage amendments, however, are sufficient to justify proceeding with the total package of amendments. The analysis projects a total net quantifiable benefit of \$0.709 million in Year 1 and \$0.809 million in each subsequent year.

The government (DECCW), business and the community all clearly benefit from the changes. The community will benefit from improved protection and management of Aboriginal cultural heritage covering places and objects. The clearer requirements for consultation with Aboriginal people regarding the significance of Aboriginal cultural heritage is also an improved outcome.

Almost all the additional implementation and ongoing costs will be borne by DECCW, primarily for the upgrade and annual management of the Aboriginal Heritage Information Management System (AHIMS) database. These costs will be offset by expected annual savings estimated at \$0.52 million per year from a reduction in Aboriginal Heritage Impact Permit (AHIP) assessments and reduced costs for legal challenges and prosecutions.

Businesses and organisations involved in developing and managing land will also benefit from the proposed amendments to the Aboriginal heritage provisions. Development proponents and other parties will not be charged for online access to the AHIMS basic database. Until the new due diligence provisions become more routine, there may be some additional costs for development proponents to ensure there is evidence of compliance with all requirements, however any new costs should be small and reduce over time. The potential savings to applicants from the possible reduction in AHIPs required is estimated at \$0.437 million per year.

In conclusion, the analysis supports proceeding with the Omnibus Bill and the supporting Regulations.

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<sup>1</sup> Note that benefits of improved Aboriginal cultural heritage protection are not quantifiable and do not directly form part of the cost benefit analysis.

## 2. Need for Government Action

The NSW Government has proposed a range of amendments to the NPW Act, the TSC Act and a number of the other statutes to streamline administration, reduce red tape, provide consistency with similar environmental legislation and improve effectiveness.

Evidence from submissions to the Internal Government Red Tape Review of Aboriginal Heritage and Threatened Species raised issues about the scope of regulatory compliance required and the excessive administrative burden involved in compliance. These submissions suggested Aboriginal heritage assessments could be undertaken more efficiently to reduce the costs of regulation to both government agencies and businesses undertaking developments.

Reviews of other related and more recent legislation such as the *Protection of the Environment Operations Act* (POEO Act) have also highlighted issues and inconsistencies with the NPW Act. Legal challenges, difficulties with prosecutions and low penalties have reduced compliance with Aboriginal cultural heritage requirements; increased costs for business, government and the community; and created the need for government action to reform the NPW Act and regulations.

The need for Government action can be detailed for two key areas of the legislation: Aboriginal Cultural Heritage and Compliance and Enforcement.

### Aboriginal Cultural Heritage

1. The Legislation has been largely unchanged since 1974 and requires updating to better meet the current needs of DECCW, developers and Aboriginal communities. Queensland in 2003 and Victoria in 2006 reformed their legislation for the protection of Aboriginal cultural heritage. The Omnibus Bill is an initial reform step for NSW. The current NSW legislation is not sufficiently flexible, especially in dealing with larger or more complex sites, such as large subdivisions.
2. The processing and administration of AHIPs can be time-consuming, often requiring referral back to the proponents for amendments and re-submission. DECCW has made improvements to the administration and policy aspects of issuing AHIPs, however the legislation needs to change to facilitate additional improvement.
3. There have been a number of administrative law challenges to decisions made by DECCW in relation to AHIPs (see Case Study 1- Sandon Point). The number of administrative law challenges will decrease as a result of the Omnibus proposals. This will benefit DECCW and developers through a decrease in costs to defend challenges and will provide developers with greater certainty about AHIPs.

#### *Case Study 1 – Sandon Point*

Since 2002, DECCW has been a party to 18 challenges relating to Aboriginal cultural heritage issues at Sandon Point, including 4 judicial review challenges to the validity of s.90 consents; at least 6 urgent injunction applications by local Aboriginal representatives; and other interlocutory and costs hearings. The challenges are being used to try and stall development, rather than to protect cultural objects. Findings adverse to DECCW have been made in only one matter, reinforcing the importance of the reforms in making the regulatory systems even more robust. It is difficult to estimate the wider costs the developers will have incurred as a result of the litigation. In various cases the developer has indicated that additional site management costs incurred through delays as a result of the litigation are estimated at \$34,500 per day (e.g. security, contractors' costs). This figure does not include the developer's legal costs or lost opportunity costs through delays in releasing land for development.

4. Under the current legislation there is a disincentive to detailed investigations on proposed development sites. Lack of knowledge of objects or their significance is a legal defence under the requirement to have knowledge that objects were Aboriginal Objects and where they were located (see Case Study 2 - The Histollo case).

#### *Case Study 2 – The Histollo case*

The Histollo case in 1992 involved the destruction of objects on land protected by a conservation agreement. The purchaser was aware of the agreement and that there were 'stones of significance' on the land, but did not know the type and extent of these objects. National Parks and Wildlife Services (NPWS) officers visited the site after the defendant conducted earthworks and advised that any further works would require a s.90 consent. The defendant undertook further earthworks after this date. The charges related to times both before and after NPWS visited the site. NPWS was successful at first instance before the Land and Environment Court. The case was successfully appealed by the defendant. The Court of Criminal Appeal said that reckless indifference by the defendant as to whether its conduct would cause damage to the artefacts generally known to be on the site is not sufficient ie. the prosecution needed to show the defendant knew the precise nature and location of actual objects.

Because the Court of Criminal Appeal found that the defendant did not have the requisite knowledge of the precise nature and location of the Aboriginal objects, it did not have to consider whether the defendant knew it was damaging the objects.

5. The current maximum penalties are inadequate and out of step with other DECCW administered legislation, such as the POEO Act. Low penalties provide an inadequate deterrence and a reluctance to comply. In extreme cases, blatant breaches occur, which undermine the credibility of the existing system. Strict liability offences under other legislation attract penalties of up to \$1.1 million for corporations or individuals (see *Heritage Act 1977* s.157).
6. In recognition of problems with current penalties, the court has been stepping in with alternatives.

#### **Compliance and Enforcement**

1. Fines are not an adequate response in many cases. Alternative sentencing orders introduced in the Omnibus Bill are based on the POEO Act. Alternatives to the court process allow for orders in addition to penalties and can be specifically tailored to the circumstances of the case.
2. Under the legislation, directors can avoid legal responsibility with the 'no knowledge' defence. The Omnibus Bill removes this defence in line with offence provisions in the POEO Act.
3. Under the current system, problems arise in removing seized animals from where they are usually kept. The Omnibus Bill allows animals to be seized but left in current housing until DECCW is equipped to safely remove and relocate them.
4. The current limitation periods often allow insufficient time for complex investigation of offences under the NPW Act. The Omnibus Bill provides an extended limitation of either two years from when the offence occurred or two years from when the offence came to the attention of an authorised officer.

## **The Omnibus Bill Amendments**

The proposed amendments in the Omnibus Bill address the issues as noted above as well as addressing other provisions of the Acts and making administrative changes. The amendments can be summarised as including provisions to:

- streamline approval processes relating to Aboriginal cultural heritage
- increase penalties for breaches of Aboriginal cultural heritage legislation
- improve processes and financial reporting requirements for Aboriginal co-managed parks Boards of Management
- enable DECCW to recover costs incurred in providing health and building services in Kosciuszko National Park
- improve the management and administration arrangements relating to roads in parks
- simplify wildlife licensing and improve management of protected flora and fauna
- enhance enforcement powers including to:
  - amend the limitation period for offences to allow proceedings to be commenced within 2 years from the date of the offence coming to the attention of DECCW.
  - empower DECCW to issue remediation directions where lands reserved under the NPW Act for threatened species have been damaged.

### **Increased penalties for breaches of Aboriginal cultural heritage legislation**

A key aspect of the reform proposal is the introduction of a two-tiered offence in relation to Aboriginal cultural heritage protection to amalgamate and adapt the two main offences in the current Act. The first tier relates to offences where intent can be proved. The second tier is a strict liability offence where only the activity causing the breach needs to be proved. This provision was introduced in 2001 but did not commence because the legislation did not provide for a regulation clarifying the defence of due diligence.

The current two main offence provisions relating to Aboriginal cultural heritage are s.86 and s.90 of the NPW Act. The existing s.86 offence is a pure strict liability offence with no defences other than the common law defence of honest and reasonable mistake. The s.90 offence requires the prosecutor to prove the person knew they were causing harm and knew that the objects were Aboriginal objects.

In practice, breaches of s.90 have proved very difficult to prosecute. Currently, if Aboriginal objects are damaged, the prosecutor must prove beyond reasonable doubt that the person knew the objects harmed were Aboriginal objects. The offence provision effectively encourages landholders and developers to avoid responsibility by not properly investigating sites with potential significant artefacts.

### **Improved processes and financial reporting requirements for Aboriginal co-managed parks Boards of Management**

Part 4A of the NPW Act provides for certain land reserved under that Act to be returned to the ownership of Aboriginal people and subsequently leased back to DECCW for its joint management. A report on the review of the operation of Part 4A was tabled in Parliament in 2003 suggested a number of miscellaneous changes to address its effective operation; Boards of Management; and more significant changes relating to issues such as rent.

The miscellaneous amendments proposed in the Cabinet Minute and included in this Bill reflect only those recommendations from the Part 4A report tabled in Parliament in 2003 that are non-contentious and of a minor and machinery nature.



Other more substantial recommendations from the Part 4A report dealing with issues such as options for co-management with Aboriginal communities will be dealt with as part of a separate review process.

### **Improving the management and administration arrangements of parks**

The Bill contains a number of miscellaneous amendments aimed at improving administration of both the NPW Act and the TSC Act. These include:

- amendments to enable DECCW to recover costs incurred in providing health and building services in Kosciuszko National Park. It is proposed that the fees charged by DECCW for these services will be comparable to those charged by local government
- continuing the need for DECCW to seek concurrence of Sydney Catchment Authority and Hunter Water Corporation for minor activities within the inner catchment special areas but removing the need to seek concurrence for activities within the broader catchment areas
- improving the management and administrative arrangements relating to roads and boundary adjustments in national parks to cut red tape, simplify operational matters and remove ambiguity in the legislation. This will negate the current need, in some circumstances, for an Act of Parliament in order to make minor adjustments to road boundaries and road corridor widths.

### **Remediation directions**

The amendments aim to improve the conservation of threatened species by empowering the Director-General of DECCW to issue remediation directions, where lands reserved under the NPW Act, or threatened species or their habitats, have been damaged. Further amendments have been proposed to approve the inclusion of provisions in the Bill empowering the Director-General of DECCW to issue similar remediation directions in respect to Aboriginal objects and Aboriginal places that have been harmed. This is consistent with the other provisions in the Bill that strengthen protection of Aboriginal heritage.

It is appropriate that the person who causes an incident requiring remediation should bear the costs of the required remediation works. This is consistent with the 'polluter pays' principle and avoids costs being borne by 'innocent' parties. General administrative law requirements provide that any costs recovered must be reasonable.

### **Amendments to the Regulations**

The National Parks and Wildlife Amendment Regulation 2010 (the Regulation) gives effect to the amendments of the Acts. The key aspects of these new and revised Regulations are:

- a due diligence Code of Practice and industry-specific codes of practice to protect Aboriginal heritage
- consultation requirements relating to Aboriginal heritage permits
- increased penalties applying to a range of offences under the NPW Act and the TSC Act
- details of a public register of permits.

### **Due diligence Codes of Practice**

The proposed Regulations provide for the Due diligence Code of Practice for the protection of Aboriginal objects in NSW and codes of practice for specific industries and activities. These codes of practice set out positive steps developers need to take to identify Aboriginal objects through exercising due diligence. Proponents will be taken to have exercised due diligence if they comply with the requirements of the prescribed guideline or a code of practice for their relevant industry.

### **Aboriginal community consultation**

Aboriginal community consultation requirements are also prescribed in the regulations. DECCW released a discussion paper after reviewing consultation requirements and developed the revised requirements after forums and submissions involving local Aboriginal communities, proponent groups, heritage professionals and state and local government stakeholders. These requirements aim to ensure the most appropriate Aboriginal persons 'speak for Country' as part of the AHIP application process. The proposed regulations include the directions for the major stages of the process, who should be consulted, the nature of consultations and the opportunities for parties to review and provide feedback on methodology. These directions detail the steps involved at each of stages with the parties, required information, timeframes, notification and reporting requirements.

### **Public register of permits**

The amendments to the NPW Act specify that the issue of an AHIP must be notified by a public notice with a three-month period allowed for any legal challenge to be taken to the Land and Environment Court. A regulation amendment includes directions on how the public notice is to be made. The granting of an AHIP will be publicly notified for the purposes of section 90P of the Act by publishing it on the public register. This register will be open for public inspection, without charge, during normal business hours. Details of this register are included in the regulation.

Collapsing requirements for a permit and consent will streamline the current regulatory process. A permit will no longer be required to survey and identify objects, only when it is proposed to harm identified objects.

### **Increased penalties and charges for permits and notices**

The regulations will also provide details of increased penalties and charges for permits and notices. These changes are detailed in Appendix 1.

### **3. Objective of Government Action**

The Omnibus Bill makes several amendments to the NPW Act and the TSC Act and a number of other statutes. It creates a number of new Regulation-making powers, as well as requiring a number of consequential amendments to the National Parks and Wildlife Regulation 2002 (the NPW Regulation) and the Threatened Species Conservation Regulation 2002 (the TSC Regulation).

The objectives of the amendments are to streamline administration of the Acts, reduce red tape, improve effectiveness and provide consistency with similar environmental legislation.

Within the current regulatory framework for the protection of Aboriginal cultural heritage, it is very difficult to prosecute breaches of s90. It is imperative that these provisions are adopted to allow more effective regulation of Aboriginal cultural heritage. The penalties for harm to Aboriginal cultural heritage are also significantly less than in other jurisdictions and these provisions redress that difference.

A range of other amendments proposed in the Bill aim to improve operation of the legislation and make administration more consistent and effective.

## 4. Consideration of options

There are two options considered in this Report:

- Option 1. Baseline – No Amendment to Acts and Regulations
- Option 2. Proposed Amendment Bill and Regulations

### **Option 1 : No Amendment to Acts and Regulations**

Not proceeding with the proposed amendments to the Act and Regulations would result in continuing losses to DECCW, stakeholders and the broader community due to inconsistencies and administrative inefficiencies arising from provisions of the current Act.

The proposed amendments have been developed in response to issues identified over many years and aim to better protect Aboriginal cultural heritage and to improve the efficiency and effectiveness of environmental legislation.

There is a strong case for implementing the changes, particularly for the provisions on Aboriginal cultural heritage. The administrative and financial benefits from these changes provide a good foundation for proceeding with the total package of measures, many of which although relatively minor, should improve operations of the Acts.

Maintaining the existing Acts and Regulations and deferring the Omnibus amendments would delay needed reforms and the opportunity to gain potential cost savings.

### **Option 2 : The proposed Omnibus Amendment**

This option provides a means to make a range of amendments to the NPW Act 1974 and related legislation to correct inconsistencies, reduce red tape and improve administration.

The proposed amendments are changes that will improve the operation of the legislation, both for DECCW and the wider community, by providing for more effective cost recovery and in most cases cost savings to DECCW, business and the community.

Importantly the 'proposed Omnibus Amendment' option aims to streamline provisions and enhance the operation of the NPW Act. The costs should be low to implement changes in existing processes and new provisions resulting from the proposed amendments to the Act and Regulations.

The amendments to the provisions on Aboriginal cultural heritage involve the most significant changes and some additional costs; however these costs will be offset by the gains from more effective heritage protection and projected savings from reductions in administration requirements and improved procedures. For most of the other provisions the changes are administrative and the cost impacts should be relatively small.

The objective of the total package of amendments in the Omnibus Bill is to enhance the performance of the legislation and improve the environmental and cultural protection outcomes for all stakeholders, however it is also expected to produce some savings.

This is the **preferred** option.

### **Method of assessment**

The broad package of amendments in the Omnibus Bill makes assessment of the impacts a complex exercise.

There is some information available on the approach taken in other states and their experience with reforms to related legislation. New Acts and Regulations for the protection of Aboriginal cultural heritage were introduced in Queensland in 2003 and in Victoria in 2006 and 2007. A Regulatory Impact Statement of the Victorian regulations is available and Queensland recently completed a review of the Aboriginal Cultural Heritage Act 2003, which is yet to be released.

The amendments proposed in NSW in the Omnibus Bill for Aboriginal cultural heritage have some common processes with the Queensland and Victorian legislation, however the differences between the states and the limited quantitative information available does not provide much assistance for analysis.

As discussed above, however, many of the Omnibus changes are administrative. Subsequently, the approach adopted for this analysis is to focus on the changes involving key elements of the Bill and quantify the impacts on costs and benefits for these key elements.

The key elements of the Bill examined in detail below are:

- protection of Aboriginal Cultural Heritage
- administration of the NPW and TSC Acts
- amendments to Part 4A – Boards of Management for Aboriginal Owned Parks
- compliance and enforcement.

### **Protection of Aboriginal Cultural Heritage**

The protection of Aboriginal cultural heritage covered in Part 6 of the NPW Act is the major area for changes proposed in the new Bill and Regulations.

The case for reforms to the Act to more effectively protect Aboriginal heritage has developed over a number of years in response to a range of administrative issues and difficulties in applying the existing provisions. In particular, under the current Act, it has been very difficult and expensive for DECCW to successfully prosecute anyone for disturbing or destroying Aboriginal heritage.

To assist further examination of the proposed amendments to the Aboriginal heritage provisions, the changes can be grouped into three categories: due diligence provisions; community consultations; and changes to the permit system.

#### *Due diligence Code of Practice*

The Bill references due diligence codes of practice that will be prescribed by regulation. These codes of practice have been developed in co-operation with the other relevant agencies and stakeholder bodies. The sectoral codes of practice that will be prescribed are:

- The Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW
- The Plantation and Reafforestation Code
- Private Native Forestry Code of Practice
- NSW Minerals Industry Due Diligence Code of Practice for the Protection of Aboriginal Objects

With these codes clarifying requirements for all activities, the amended Bill will introduce a new strict liability offence for harming Aboriginal objects, in addition to retaining a revised knowledge offence. This two tier offence structure will facilitate effective enforcement of the heritage protection provisions of the Act. The first tier offence is where DECCW can prove intent. The second tier is a strict liability offence, where only the activity itself needs to be proved. New, higher penalties for more serious offences bring the heritage protection system into line with other parts of the NPW Act, the POEO Act and other environment and conservation regulation.

### *Community consultations*

As stated previously, the Omnibus Bill creates a new regulation power allowing the making of regulations for consultation in relation to Aboriginal heritage impact permits (AHIPs). The new community consultation requirements have been developed after reviewing existing requirements in place since December 2004. Following an adverse court case about consultation, DECCW released a Discussion paper and has held a series of facilitated forums across the state with local Aboriginal communities; proponent groups; heritage professionals; and state and local government stakeholders.

### *Permit system*

The amendments to Part 6 of the Act are intended to improve the permit system for cultural heritage protection; ensure the system is effective and enforceable; and better align provisions with other areas of environmental and conservation regulation.

Under the Bill, a single more flexible permit replaces the existing two Aboriginal Heritage Impact Permits (AHIPs) required for the initial survey work and the subsequent consent for harming objects. The new AHIP permit can also cover larger areas and a range of stages in the development process.

Improvements in procedures and reductions in red tape are also expected to reduce processing times for AHIPs and provide other gains for business.

When the new procedures are fully implemented, development applicants and other interested parties will be able to access the DECCW Aboriginal Heritage information Management System (AHIMS) database online. Using the cultural heritage information from AHIMS on areas being considered, developers will then be able to determine whether an AHIP application is required.

### *Costs*

There will be costs involved in moving from the existing legislative arrangements (the base case) to implementing the provisions of the Omnibus Bill (Option 2).

The potential impacts of the due diligence provisions and the changes to Part 6 of the Act on activities and business costs have been examined following issues raised in consultations with other agencies and stakeholders.

Development and finalisation of the Due diligence Code of Practice and subsequent industry-specific codes of practice will involve staff time and resources. The new penalty provisions will require process changes and administration. However, most of these costs are in the initial implementation phase and there should be no significant new ongoing costs.

The community consultations requirements have been developed after an extensive review process. The total cost of the process, including regional forums, submissions and stakeholder engagements and DECCW staff input is estimated at \$300,000. However, these development costs have been excluded from the cost analysis for implementation of the Bill, because DECCW's commitment and development of revised community consultation requirements had proceeded well in advance of the Omnibus Bill proposal. Ongoing costs estimated at \$60,000 a year for the community consultation provisions associated with communication and training for Aboriginal communities and other stakeholders and other support and development are included in the analysis.

For DECCW, there will be implementation costs for the amended provisions, particularly the single AHIP permit and upgrading the AHIMS database to provide online access for development proponents and interested parties. The AHIMS database upgrade costs have been estimated at an initial capital cost of \$100,000 with an annual operating cost of \$90,000.

The due diligence provisions may initially create some cost increases for business in ensuring requirements are being met, at least until the new arrangements are more routine. For businesses in breach of the requirements of the Act, the increased likelihood of prosecution and higher penalties will increase costs.

### *Benefits*

The benefits to DECCW, business and the broader community from the Bill amendments are largely from improvements in the provisions for protection of Aboriginal heritage.

With the implementation of the Due Diligence Code of Practice, new offence provisions, streamlined permits and clearer definitions of terms and procedures, the heritage assessment process will be less complex and more efficient for developers and land managers, while still strongly protecting Aboriginal cultural heritage.

For DECCW, the due diligence provisions, new strict liability offence and revised single permit arrangements will result in improved administration and significant cost reductions from clearer requirements, reduced disputes and better compliance and enforcement procedures.

The savings to DECCW from an expected reduction in AHIP applications can be estimated by the reduction in numbers factored by the average DECCW processing cost per application. It is estimated that the improvements will reduce the number of permits issued by up to one third.

Legal costs will be lower for DECCW under the amended legislation in contesting challenges to assessments and preparing prosecutions for breaches. There have been 30 challenges over the past six years at an estimated cost of \$100,000-150,000 per case for defence. A reduction in challenges will produce significant annual savings in legal costs.

For development applicants, there are readily identifiable savings from the reduction in AHIP applications due to a single permit replacing the two existing permits and the revised permits covering multi-stage developments. At an average cost to a business for preparing an AHIP, broadly estimated at a \$9500 for a medium development, removing the need for some applications will produce significant annual savings. Fees for submitting AHIP applications are low but there would also be fee savings to business for each AHIP not required.

### **Administration of the NPW and TSC Acts**

The changes to the Act in relation to Community Service Charges for Kosciuszko National Park are to authorise DECCW to levy charges on commercial operators within the park to recover the cost of providing municipal and associated services. Operators are currently being charged by DECCW for these services but the legal basis for this situation was not clear. The amendment is clear that these charges will be at similar levels to local government charges and will not increase other park fees.

Amendments to improve the management and administration of roads within all national parks and reserves will provide more flexibility by considering dedication of road reserves and transfers for road construction as 'boundary adjustments'. Validation of certain existing access roads and widths will also be applied for a specified time, but will be confined to instances where the Minister for Lands has already consented to the changes to Crown lands or Crown roads.

The Bill proposes that the concurrence of the relevant Water Authority would not be required for DECCW activities outside the inner catchment special areas in reserved water catchments such as leases, licences, easements and rights of way. The agreement of the relevant Water Authorities would continue to be required in the inner catchment areas.

### *Costs*

For all these amendments to assist in administration of the Acts, the additional costs would be limited to implementing new procedures for DECCW recovery of health and building service costs from operators.

No cost increases are anticipated for other parties or the broader community.

### *Benefits*

The amendments for Kosciuszko National Park will allow some costs currently absorbed by DECCW to be recovered. These relatively small additional costs are estimated at about \$2000 per year.

There will also be benefits from all the above amendments through streamlining of administrative processes.

## **Boards of Management for Aboriginal Owned Parks**

The Bill proposes changes to Part 4A to improve operation of the Boards of Management for Aboriginal Owned Parks. National parks, nature reserves and historic sites are exempt from local government rates and the Bill confirms the same exemption for lands reserved under Part 4A and leased back from Aboriginal owners by the NSW government. The Bill also requires changes to the Boards' financial management and planning functions.

### *Costs*

DECCW will continue to be responsible for the costs for the management of part 4A reserves with no increase in costs resulting from the changes in the provisions of the Bill.

### *Benefits*

The benefits are clearer responsibilities for parties involved and reduced administration. Aboriginal communities will benefit by having clear title and control for the land transferred.

## **Compliance and enforcement**

A key element of the Bill is to make penalty provisions of the NPW and TSC Acts consistent with similar provisions in related legislation, such as the POEO Act and legislation in other states. Any implementation costs to DECCW associated with this penalty alignment would be very low. There would be no increase in costs to other parties, except for those successfully prosecuted under the new provisions for breaching the Acts or regulations. The aim of the amendment for higher penalties for a range of breaches under the Act is to help encourage improved compliance with environmental legislation.

The current penalty rates are detailed in Appendix 1 in Table 1.1 and the proposed revised penalty rates are detailed in Table 1.2.

Under the Schedule 2 Penalty notice in the proposed NPW Amendment (Omnibus) Regulation 2010, a more severe penalty for an offence would apply. Along with increases in penalty rates, there is now a distinction between individual and corporation penalty rates for Section 90(J), 91(Q) and 91(R). Table 1.2 in Appendix 1 shows the list of new penalties for individuals and corporations.

Under the proposed TSC Regulation 2010, the maximum penalty for offences under Clauses 7(1) and (2), 7A(1), 8(1), 9, 10(1) and (2), 11(2), 12C(3) and 12E(3) will increase from 50 penalty units (currently \$5500) to 200 penalty units (currently \$22,000). This is expected to provide a stronger deterrent to commit the action as specified in the above Clauses. Table 1.3 in Appendix 1 is a summary of the Clauses and the changes in penalty units.



Any implementation costs to DECCW associated with this penalty alignment would be very low and there would be no increase in costs to other parties, except for those successfully prosecuted under the new provisions for breaching the Acts or regulations. The aim of the amendment is to achieve higher penalties for breaches to help encourage improved compliance with environmental legislation.

#### *Costs*

Implementing the new compliance and enforcement provisions will not add to the costs of DECCW or other parties.

#### *Benefits*

A more severe penalty regime covered in the proposed NPW Amendment (Omnibus) Regulation 2010 is likely to better deter unauthorised actions towards Aboriginal cultural heritage. Disturbances to threatened species would be reduced by the proposed TSC Regulation 2010.

DECCW would benefit from these amendments through reduced administration and probably lower legal costs in applying penalty provisions.

#### **Additional Provisions**

There are a wide range of minor amendments proposed in the Bill to take advantage of the opportunity created by the need to proceed with the other more major changes outlined above. Many of these changes are to clarify definitions and conditions and improve consistency in proceedings and offences between the NPW Act and TSC Act and related legislation, particularly the POEO Act. Any costs involved are small and the benefits are in terms of improved operation and efficiency of the NPW Act for all parties.

Provisions empowering the Director-General of DECCW to issue remediation directions aimed at improving the conservation Aboriginal cultural heritage and threatened species are proposed. These remediation directions can be in addition to, or instead of, legal proceedings. Damage to Aboriginal cultural heritage or threatened species, communities or their habitats on land reserved under the NPW Act can be addressed more quickly through a direction to the parties responsible to carry out remediation work.

These changes do not create increased costs to DECCW or to business but help ensure that the party or parties responsible for any damage bear the costs of remediation, rather than the wider community.

#### *Costs*

Implementing the new provisions to issue remediation directions would involve some costs to DECCW to establish processes and ongoing administration. Any additional costs from the other proposed changes are likely to be negligible.

For business, the only increase in costs would be for those businesses breaching regulations and then subject to remediation directions or other revised penalty provisions. Successful remediation directions would ensure the 'polluter pays' and transfer costs from DECCW and other parties to the party responsible for the incident and any environmental damage.

## 5. Costs and benefits of options

This section outlines expected costs and benefits of the two options. It focuses mainly on the amendments to the Aboriginal cultural heritage provisions, which include the major proposed changes and the more readily quantifiable costs and benefits. The financial estimates discussed are outlined in Table 1: Summary of Estimated Costs and Benefits.

The base case in this comparison is the no amendment, or 'do nothing' option. It involves maintaining services at the current level and defers the opportunity to implement major changes and achieve both improved performance and cost savings. The cost and benefits from the Omnibus Bill amendments can be assessed by directly comparing the costs and savings under the new arrangements with the 'do nothing' base case.

While no financial data is presented on costs and benefits for a number of the amendments, the total impacts on DECCW, business and the community from those amendments are likely to be much smaller than the costs and benefits estimated for the Aboriginal cultural heritage changes. The impacts of these other amendments to the Bill are in most cases on administrative procedures. It would be difficult to make any financial estimates for the relative costs and benefits from these amendments and no attempt has been made for this evaluation. The changes should be readily implemented at low cost with minimal ongoing costs and the streamlining of the procedures will clearly benefit DECCW and business.

### Costs

Implementation of the amendments to the NPW Act and supporting regulations will involve a number of new processes and additional costs. Some of these changes were under way before the Omnibus proposal. After the implementation phase in Year 1, the ongoing costs are expected to be low for DECCW and all other parties affected by the changes. For DECCW, the major additional costs relate to administering the new and revised procedures. For development proponents, there will be some additional costs to ensure compliance with the due diligence requirements. Penalty notices are more likely to be applied for proponents not complying with requirements under the Act and will be at higher levels than under the current provisions of the Act.

### Benefits

There are clear benefits from the amendments to the NPW Act and regulations through improving and streamlining processes, reducing conflicts and introducing new provisions. Benefits are expected in improved protection of Aboriginal cultural heritage and more efficient delivery of services and enforcement of the provisions of the Act. These benefits are not quantifiable and therefore do not directly enter the cost benefit analysis.

The financial data presented in Table 1 shows a strong case for Option 2 and proceeding with the amendments to the Bill and regulations. The total annual cost of the current Act provisions (i.e. Option 1 – Base Case) is estimated at \$2.6 million. Under the Omnibus Bill amendments (Option 2), total annual cost are estimated to fall to \$1.89 million in the first year and then after the one-off implementation costs are complete will be down to \$1.79 million in Year 2 and each subsequent year.

Based on this analysis, the net benefits from the Omnibus amendments are estimated at \$0.709 million in Year 1 and projected at \$0.809 million per year for each subsequent year.

The costs and benefits can be examined in terms of the impacts on the DECCW, business and the community.

## **Costs to the Government**

The costs to DECCW represent all the costs to government from the amendments proposed to the NPW and TSC Acts. Extensive consultations with government departments have addressed a number of concerns and ensured there are no significant costs or other impacts on these departments from the changes. The minimal impacts of the changes to the legislation are consistent with the underlying objectives to: streamline administration; reduce red tape; provide consistency with similar environmental legislation; and improve the effectiveness of the provisions of the Acts.

There are costs to DECCW for the development and implementation of the revised community consultation requirements. The other major cost is for the new AHIMS database being developed for online access by development proponents and other parties.

The total additional costs to DECCW, as shown in Table 1, are estimated at \$250,000 in Year 1 for implementation of the changed and new procedures and \$150,000 per year over successive years.

## **Benefits to the Government**

Many of the proposed legislative changes are direct responses to issues that have arisen in administering the Acts over a number of years. There are a range of amendments that will improve interpretation and administration of the legislation and produce cost savings to DECCW. The less significant benefits to other government departments are difficult to quantify, so the analysis of benefits to government has been limited to the benefits to DECCW.

The estimated total benefits to DECCW from all Aboriginal cultural heritage amendments are \$520,000 per year, comprising \$145,000 from reduced AHIP processing costs and \$375,000 from savings in legal costs

## **Costs to business**

There may be some initial costs to business in adapting to the changes to the regulatory regime, but these costs should be minor and easily offset by the savings from streamlining and improvements to processes.

During consultations with stakeholders, businesses have suggested the due diligence requirements may increase their costs. The revised community consultation requirements could also increase costs for some developer parties for preparation of AHIP applications.

The enhancement of compliance and enforcement procedures is likely to increase prosecutions for breaches of regulations by businesses. A higher rate of prosecution and increases in the penalties applied would impact heavily on the businesses breaching regulations and serve as a warning to other businesses. While business may have some increase in costs due to more effective compliance and enforcement procedures, from a community perspective these costs would be offset by improved environmental and conservation outcomes. The increase in compliance costs for business helps to recover costs that would otherwise fall on government and the community for environmental damage and losses.

The new provisions to issue remediation directions will also assist the government improve environmental outcomes by putting the responsibility and costs for repairing environmental damage on the businesses or individuals causing the damage.

In conclusion, there will be some minor additional costs with the introduction of new procedures and higher costs for those businesses breaching regulations. However, for the business sector in total, these cost increases will be easily offset by the benefits from reductions in other costs, improved administration and more timely approval of applications.

### **Benefits to business**

Some of the broader benefits to business from the amended procedures have been discussed above and will provide benefits above the savings levels that can be valued directly.

The direct benefits from the improvements to the AHIP application process and the expected reduction in AHIP applications needing to be submitted by businesses can be estimated. Based on the assumptions detailed in Table 1 for the reduction in the number of AHIP and industry estimates for typical costs to businesses for preparing these applications, the business sector could save up to \$437,000 per year under the new streamlined arrangements. These savings are attributable to the due diligence provisions and a revised single permit replacing the two existing permit and consent AHIPs.

### **Costs and benefits to the community**

As detailed in Table 1, there are not expected to be any quantifiable direct costs or benefits to the broader community under the proposed amendments.

There are, however, indirect community benefits from a number of the amendments. The changes to Part 4A for management of Aboriginal-owned parks will benefit the Aboriginal community with clarification of title and responsibilities for the land transferred.

The changes to the Aboriginal cultural heritage provisions will provide more effective protection of Aboriginal heritage for the Aboriginal communities affected, and preserving this heritage will benefit the broader community.

Provisions to issue remediation directions to parties breaching regulations and causing damage to the environment or threatened species will benefit the community by hastening recovery actions and helping ensure costs are born by the responsible parties, rather than the government and the community.

**Table 1: Summary of Estimated Costs and Benefits from the Omnibus Bill Amendments**

Costs/ benefits	Sector	Option 1 (Base Case)	Option 2 (Amendments)	Incremental costs/benefits of Option 2
	<b>Government</b>			
	Administrative costs of permit processing	\$676,778 per year (for 136 permits)	\$532,198 per year (for 90 permits)	Reduction in costs due to fewer permits \$144,579 per year
	Monitoring/enforcement costs	-	-	Reduction? no data
	Prosecution and legal costs	\$625,000 per year	\$250,000 per year	Reduction in costs due to decline in number of prosecutions \$375,000 per year
	New AHIMS database		\$100,000 (non-recurring)	Increase in one-off set-up costs -\$100,000 year one only
	Maintenance of AHIMS		\$90,000 per year	Increase in database maintenance costs after Yr 1 -\$90,000 per year
	Community consultations training		\$60,000 per year	Increase in training costs -\$60,000 per year
	Due Diligence Code of Practice and industry specific Codes of Practice	no	yes	Development costs for Codes? no data
				Reduced revenue from decrease in permit numbers: -\$2,875 per year
	<b>Applicants</b>			
	Permit application preparation	\$1,292,000 per year (for 136 permits)	\$855,000 per year (for 90 permits)	Reduction in costs due to fewer permits: \$437,000 per year
	* Permit fee	\$32,125 per year (for 136 permits)	\$29,250 per year (for 90 permits)	Reduced costs due to decrease in permit numbers: \$2,875 per year
	Welfare loss associated with restrictions in development	yes	reduced	Reduction
	Time for AHIP Approval		reduced	Reduction
	<b>Government</b>			
	*Revenue from Permit fee	\$32,125 per year (for 136 permits)	\$29,250 per year	
	Revenue from service provision in Kosciuszko National Park		\$2,000 per year	Increased revenue from developers for local services \$2,000
	<b>Community</b>			
	Improved preservation of aboriginal heritage	no	yes	Increase in welfare gains due to improved probability of conserving aboriginal heritage
<b>Net quantifiable cost/benefit:</b>		- per year	- Year 1	<b>Net Benefit (Year 1) \$708,579</b>

	\$2,593,778	\$1,885,198		
		-		
		\$1,785,198	Year 2	
				Net Benefit (Year 2 onwards)
				\$808,579

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## 6. Consultation

Throughout the process of developing the amendment proposals, DECCW has undertaken a program of targeted consultations with key development, agricultural, mining, environmental and Aboriginal community stakeholders, particularly in relation to changes to the Aboriginal cultural heritage.

These stakeholders have included:

- NSW Aboriginal Land Council
- NSW Farmers
- NSW Minerals Council
- Urban Development Institute of Australia
- NTSCORP (formerly NSW Native Title Services)
- Aboriginal Cultural Heritage Advisory Committee
- Urban Taskforce
- Co-managed National Parks' Boards of Management under the Part 4A leases and the relevant Local Aboriginal Land Councils
- Property Council of Australia
- Nature Conservation Council
- Environmental Defenders Office
- Local Government and Shires Association
- National Parks Association
- Committees and boards established under registered Indigenous Land Use Agreements that include lands administered under the *National Parks and Wildlife Act 1974*.

Aboriginal groups noted the common issues being covered by the Omnibus reform process and the parallel development of community consultation guidelines. The NSW Land Council and NTSCORP raised the establishment of a separate Aboriginal Heritage agency and the need to undertake a fundamental review of Aboriginal cultural heritage regulation in NSW. The Government has now announced this review will take place. A working party will be established and new stand-alone legislation to protect Aboriginal cultural heritage will be developed within two years.

Aboriginal groups also opposed the proposed section 90S, which provided that Aboriginal objects authorised to be destroyed are taken no longer to be Aboriginal objects for the purpose of the NPW Act. These provisions have subsequently been removed from the Bill.

Aboriginal groups had concerns about powers in the Bill to allow further defences to be adopted by regulation or amendment to the definition of harm. The Bill has been amended to ensure that any proposed defences can only relate to low-impact activities and that there will be consultation on any proposals to add to the defences or amend the definition of harm.

Further amendments were made to the Bill to ensure the adequacy of the consultation process and Aboriginal submissions on AHIP applications are taken into account in the AHIP process. Minimum standards are also to be prepared for any due diligence codes to be adopted by the regulation.

Members of the Minerals Council, representing major mining operations and developments, have raised a number of issues, focussing on the Due diligence Code of Practice; an industry code of practice; the development of the AHIMS database; and accessibility and impacts on minerals exploration. The Minerals Council and the

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property industry also want greater clarity around the significance of objects. This will involve extensive negotiation and will form a key part of any broader review. The Minerals Council has prepared the NSW Minerals Industry Due Diligence Code of Practice for the Protection of Aboriginal Objects for adoption by the Regulation.

Farmers groups had some concerns about the increasing involvement of government in regulations affecting their business operations. There is a concern that the requirements of the Omnibus Bill will create difficulties in relations between operators and local communities.

The property sector has been a key group in the need for a reduction of red tape and streamlining processes to reduce costs and reduce approval times for developments. Large developers with experience in the requirements for consulting with local Aboriginal communities and the assessment processes are expected to be the main beneficiaries of the proposed amended provisions for protecting Aboriginal cultural heritage. The industry also requested that AHIPs be able to be transferred without a change in the conditions. The Bill has been amended to allow this to occur.

Among environment groups, the NPA was mainly concerned with park management issues, while the EDO and NCC were interested in the detail of the amendments on Aboriginal heritage.

No submissions were received on the National Parks and Wildlife Amendment Regulation 2010 or the Threatened Species Conservation Amendment Regulation 2010, which commenced on 2 July 2010. The majority of the changes to these Regulations are mechanical. These amendments were not addressed by any of the stakeholders throughout the consultation process.

Extensive consultation has taken place with Government agencies and Aboriginal stakeholders on elements of the National Parks and Wildlife Amendment (Aboriginal Objects and Aboriginal Places) Regulation 2010. Aboriginal stakeholders were consulted on the minimum standards, the due diligence codes and the low impact activity defences prescribed in the regulation.

The NSW Aboriginal Land Council (NSWALC) and the Aboriginal Cultural Heritage Advisory Committee (ACHAC) considered that activities such as construction of dams and bulk sampling were not low impact activities and should require due diligence. These activities are only low impact if they occur on disturbed land.

Aboriginal stakeholders also expressed concern that consultation with the Aboriginal community was not required as part of the due diligence process. This has been addressed by encouraging engagement with communities and providing contact details in the codes of practice.

The National Parks and Wildlife Amendment (Aboriginal Objects and Aboriginal Places) Regulation 2010 commenced at the same time as the remaining provisions of the Act on 1 October 2010.

A full summary of submissions received on the Bill and DECCW's response can be found at [www.environment.gov.au](http://www.environment.gov.au).



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## 7. Preferred option

Under the existing Acts and regulations, a number of issues have emerged that limit their effectiveness in meeting environmental and other objectives and add costs directly to government and business and indirectly to the community. The base case, examined as Option 1 to not amend the Acts, would result in a continuation of existing difficulties in applying provisions of the Acts; higher breach rates and harm to the environment; and significant costs to the government and the community with legal proceedings.

The Omnibus amendments proposed as Option 2 are an effective way of addressing, at minimum cost, a number of major and minor changes to improve operation of the Acts over a range of the key provisions of the legislation. Most importantly, the amendments are designed to deliver improved investigation and protection of Aboriginal cultural heritage and better outcomes and compliance with a range of provisions of the environment protection legislation. The analysis shows that costs to government for implementing the changes and managing the new and amended provisions should be low and not impose any significant additional costs on business or the community. An evaluation of the benefits expected from the amendments details ongoing cost savings to government and business estimated as a net benefit of around \$0.809 million per year after the implementation phase.

It is therefore recommended that the proposed amendments to the NPW Act and related legislation should proceed to correct inconsistencies, reduce red tape and improve administration.

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## 8. Evaluation and Review

Evaluation and review of the implementation of these amendments will form the basis of any comprehensive and fundamental review of Aboriginal cultural heritage protection in NSW.

The Aboriginal heritage legislative amendments in the Bill are limited to improvement of the existing regulatory regime. The reforms are required to improve the operation and effectiveness of the existing legislation which has remained largely unchanged since 1974. These amendments are interim measures in the process of broader reform in this area.

In recent years, Queensland and Victoria have completed comprehensive reviews of their relevant legislation and new regimes are now operating in those states. South Australia, Tasmania and Western Australia have instituted similar reviews. It is appropriate for NSW to also comprehensively review its legislation. This will need to involve Aboriginal people across NSW, as well as other stakeholders, and given the experience in other states, may take some time to complete.

A broader review would go beyond Aboriginal heritage regulation, and include consideration of the roles and opportunities for Aboriginal people in the ongoing conservation of their heritage. Government's role in Aboriginal heritage protection and support for communities' conservation needs, including improved conservation mechanisms, would also be examined. The Government has now announced this review will take place. A working party will be established and new stand-alone legislation to protect Aboriginal cultural heritage will be developed within two years.

## Appendix 1 – Penalty Rates

**Table 1.1: Schedule 2 penalty rates for individuals and corporations in the National Parks and Wildlife Regulation 2002**

Offences under <a href="#">National Parks and Wildlife Regulation 2002</a>	Penalty for individuals (and corporations where no penalty in Column 3) (\$)	Penalty for corporation (\$)
Section 86 (a)	500	
Section 86 (b)	300	
Section 86 (c)	300	
Section 86 (d)	300	
Section 86 (e)	300	
Section 91	300	

**Table 1.2: Schedule 2 penalty rates for individuals and corporations in the proposed NPW Amendment Regulation 2010**

Offences under <a href="#">National Parks and Wildlife Regulation 2002</a>	Penalty for individuals \$	Penalty for corporations \$
Section 86 (2)	1500	1500
Section 86 (4)	3300	3300
Section 90J	1500	1500
Section 91Q	1650	3300
Section 91R(1)(a)	750	1500
Section 115A(9)	300	300

**Table 1.3: Schedule 2 penalty rates for the proposed TSC Amendment Regulation 2010**

<b>Offences under <a href="#">TSC Regulation 2002</a></b>	<b>Previous penalty units</b>	<b>Penalty units (amending)</b>	<b>Changes in penalty units</b>	<b>Summary of offence</b>
Clauses 7(1)	50	200	150	Companion animal in Little Penguin Critical Habitat (accompanied with owner).
Clauses 7(2)	50	200	150	Companion animal in Little Penguin Critical Habitat (unaccompanied)
Clauses 7A(1)	50	200	150	Anchor or moor a vessel in the Little Penguin Critical Habitat area A during breeding season.
Clauses 8(1)	50	200	150	Taking or attempt to take fish from the Little Penguin Critical Habitat between sunset and sunrise during little penguin breeding season.
Clauses 9	50	200	150	Interference with a burrow or nesting box in the Little Penguin Critical Habitat.
Clauses 10(1)	50	200	150	Knowingly be within 5 metres of a little penguin while that penguin is on land in the Little Penguin Critical Habitat.
Clauses 10(2)	50	200	150	Knowingly disturb a little penguin in the Little Penguin Critical Habitat if the bird is moulting.
Clauses 11(2)	50	200	150	Designated officer need to direct the person to cease activity and to leave Little Penguin Critical Habitat.
Clauses 12C(3)	50	200	150	The person not to enter, or remain, or leave a vehicle parked, the Wollemi Pine Critical Habitat.
Clauses 12E(3)	50	200	150	A person must not, without reasonable excuse, fail or refuse to comply with a direction of a designated officer to cease activities and to leave the Wollemi Pine Critical Habitat.