

DECCW ANALYSIS AND RESPONSES TO ISSUES RAISED IN TARGETED PUBLIC CONSULTATION ON THE NATIONAL PARKS AND WILDLIFE AMENDMENT BILL 2009.

TOPIC	ISSUE	RESPONSE
<p>DEFINITIONS</p> <p>“Aboriginal object”</p> <p>“harm”</p> <p>“Due diligence”</p> <p>“Habitat”</p>	<p>Definition of object is too broad.</p> <p>Definition of object should be limited to significant items.</p> <p>Definition of harm should not include “move”. This should be a separate offence which requires knowledge.</p> <p>Definition of harm should not include desecration as it can only relate to a place not an object. Desecrate is potentially too vague / subjective.</p> <p>Definition of harm should extend to the immediate area in which an object is located.</p> <p>Low impact activities should be excluded from the definition of harm in the regulation.</p> <p>“Trivial and negligible” needs to be defined.</p> <p>Due diligence needs further defining in the Act.</p> <p>Habitat definition should be the same as other legislation.</p>	<p>Both issues need to be dealt with in consultation with Aboriginal stakeholders and are unable to be addressed in the current Bill process.</p> <p>“Move” remains part of “harm” definition. Movement associated with some archaeological investigations will be addressed by a separate code to be developed by DECCW.</p> <p>“Desecrate” to apply only in relation to the offence of harm to an Aboriginal Place and the offence of knowingly harm an Aboriginal object.</p> <p>Too difficult to define the limits of the area (eg scattered artefacts).</p> <p>A defence for low impact activities is more appropriate and is consistent with approaches in other legislation.</p> <p>No change required. Common meaning of the words is sufficient and is not assisted by further definition. Examples included in Due Diligence Code.</p> <p>No change required. Bill sets out definition that is further expanded by a code adopted under the regulation.</p> <p>No change required. A different definition is appropriate. The definition in the TSC Act is relevant to the listing process, but the definition in the NPW Act is relevant to remediation directions and threatened species related offences.</p>
TOPIC	ISSUE	RESPONSE
<p>OFFENCES & DEFENCES</p>	<p>Retain the defence of “honest and reasonable mistake”.</p> <p>Remove liability of an AHIP holder for acts of “associated persons” such as contractors.</p>	<p>Agreed. Text has been inserted in due diligence code advising that the common law defence of “honest and reasonable mistake” is still available for the new strict liability offences.</p> <p>AHIP holders should be responsible for acts of contractors.</p>

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	<p>Retain the existing defence from personal criminal liability for company directors.</p> <p>Due diligence defence should apply to all offences relating to harm of Aboriginal objects.</p> <p>The defence for VCAs should only be used when local Aboriginal community were involved in establishing VCA.</p> <p>Remove power for defences in the Regulation. All should be in Act.</p> <p>Any addition or amendment to the low impact activities proposed for the regulation should only be made with the approval of the Aboriginal Cultural Heritage Advisory Committee (ACHAC).</p> <p>Cultural Heritage Management Plans developed under Part 3A must be acknowledged in legislation as a defence.</p> <p>Prior granting of an AHIP should be a defence.</p> <p>Change due diligence defence to “took reasonable steps to determine whether an activity would harm Aboriginal objects and reasonably believed that Aboriginal objects would not be harmed”.</p>	<p>Current laws accept that criminal liability for directors in environmental offences is appropriate but the no knowledge defence is out of step with good corporate practices.</p> <p>The concept of precaution (i.e. due diligence) should be used for the strict liability Aboriginal objects offence in situations where there is no clear information about whether objects are present or not.</p> <p>Community involvement is not legally required for VCAs, but this does not prevent discussions with community.</p> <p>Regulation-making power needed for effective operation of provisions.</p> <p>The Bill has been amended to state that additions or alterations to defences made by Regulation will be made in consultation with ACHAC.</p> <p>A project approval issued under Part 3A of the EP&A negates the need for an AHIP.</p> <p>Only current AHIPs should be available as a defence.</p> <p>Changed slightly. Suggestion has same legal effect as proposed due diligence wording. Due diligence is built on what is reasonable.</p>
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<p>EXEMPTIONS</p>	<p>Traditional owners need to authorise the traditional activities which are exempt from the Part 6 offences.</p> <p>Traditional Cultural Activities should be defined.</p>	<p>Courts would consider views of Aboriginal community in deciding whether this exemption applies. Traditional owners can ensure Aboriginal community understands appropriate scope of this exemption.</p> <p>This is best determined within Aboriginal communities. But Aboriginal people should be able to provide information to DECCW and the courts what is and is not considered a traditional cultural activity if an activity is contested. Bill</p>

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	<p>Use Routine Agricultural Management Activities exemptions (or similar) to limit impact of the strict liability Aboriginal objects offence on the average farmer.</p> <p>Emergency fire fighting exemption is not appropriate.</p> <p>If emergency fire fighting exempted then there should be investigation of post fire impacts with traditional owners and LALC, with this information being fed into subsequent fire planning processes.</p> <p>Aboriginal people should be exempt from having to notify DECCW when they find objects.</p> <p>Objection to s.86 exemption for DECCW authorised conservation and protection works, given experience with DECCW works and in some instances lack of REF.</p>	<p>amended to provide that this exemption only applies to non-commercial traditional cultural activities.</p> <p>This is best treated under the low impact activities defence rather than a complete exemption.</p> <p>Emergency operations need to proceed unhindered. Emergency bush fire hazard reduction work has also been exempted.</p> <p>DECCW and RFS will confer on strengthening Aboriginal community involvement in fire planning and monitoring and on site awareness training for fire fighters (staff and volunteers).</p> <p>It is important that Aboriginal people notify DECCW of objects as the accuracy of Aboriginal Heritage Information Management System (AHIMS) data is critical to the strict liability amendments and so that objects can be protected. Protocols are in place to ensure culturally sensitive information is not inadvertently released.</p> <p>The exemption applies to conservation works specifically relating to Aboriginal cultural heritage (e.g. when Aboriginal burials are revealed) not conservation works more broadly and includes works authorised by DECCW officers.</p>
TOPIC	ISSUE	RESPONSE
<p>DUE DILIGENCE</p>	<p>Due Diligence concepts / standards do not sufficiently protect Aboriginal cultural heritage:</p> <ul style="list-style-type: none"> - should be more than practicable measures - should not include low impact activities - self-assessment insufficient - should be undertaken by qualified archaeologists / heritage experts - does not include sacred / spiritual. <p>Include Aboriginal community consultation in due diligence process.</p>	<p>No change required. Due diligence is defined as “reasonable and practicable” measures (precautions). Due diligence is not an alternative to regulation, nor does it authorise harm. Due diligence needs to remain as simple precautionary steps that are able to be completed by any reasonable person as independently as possible. Due diligence relates to detecting the physical presence of objects, not their significance.</p> <p>Community consultation should commence at further investigation Environmental Impact Assessment or</p>

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	<p>Codes of Practice need to meet standards of due diligence code.</p> <p>Alternative due diligence regimes undermine the standard.</p> <p>DECCW should review / confirm an individual's due diligence compliance.</p> <p>Due diligence compliance should be documented.</p> <p>Incorrect / unclear due diligence code process logic ('yes/no' steps).</p> <p>Due diligence code should:</p> <ul style="list-style-type: none"> - provide more information about activities that can occur without a permit - define trivial and negligible - not use the term 'previously disturbed land' - costs associated with AHIMS should be mentioned - low impact activities should specify underground power lines. <p>Seismic survey should be in low impact activities list.</p> <p>Using landforms may lead the developer to believe that these are the only landform sites that will contain Aboriginal cultural heritage. Landscapes and land condition are not adequate site predictors for due diligence.</p> <p>The provisions about archaeological excavation should be available for public review.</p>	<p>AHIP application stages.</p> <p>Agreed. Codes of practice can give directed guidance for certain industries / classes of activity consistent with the general due diligence logic and standard.</p> <p>Individuals should manage their risks (take adequate precautions) in ways they deem suitable. The generic due diligence code is a standard / benchmark for how they do this but should not prevent other customised alternatives of a comparable standard.</p> <p>Due diligence is a responsibility that rests with people carrying on an activity and the due diligence code sets a general framework as a guide people can follow.</p> <p>Agreed. The current code recommends documentation / record keeping.</p> <p>Agreed. Due diligence process revised to clarify 'yes/no' steps</p> <p>Due diligence code has been amended to:</p> <ul style="list-style-type: none"> - list exempt activities - list low impact activities - include examples of trivial or negligible harm - clarify definition of 'disturbed land' - mention AHIMS cost for manual searches - include maintenance of underground powerlines on disturbed land in low impact list. <p>Agreed on disturbed land. Low impact activities are now part of the regulations as an additional defence.</p> <p>Use of simple landscape features and land condition are useful site predictors in this preliminary, precautionary due diligence stage. Additional guidance has been included in the code. Landscape models will also be integrated into AHIMS to improve site prediction in the future.</p> <p>This request will be considered, but may not be possible due to available time. Consideration will be given to seeking public comment (including AACA Inc) at a later date and then revising the code as required after 12 months of operation.</p>

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<p>AHIPS</p>	<p>AHIPs take too long to process.</p> <p>Section 90C of the Bill reads as if the DG will not refuse a permit.</p> <p>Include a specific requirement that a cultural heritage assessment report is prepared as part of an AHIP application.</p> <p>Heads of consideration should be weighted. More / equal weight should be given to Aboriginal community views vs technical / archaeological views.</p> <p>AHIPs should be required for subsurface investigation.</p> <p>Aboriginal people should be consulted on variations to AHIPs.</p> <p>The DG should be required to consider any independent representations made by Aboriginal people in relation to the granting of an AHIP.</p> <p>AHIPs need to be automatically transferred to new owners.</p> <p>AHIPs should only be varied at the request of the permit holder.</p> <p>There should be no power to suspend or revoke a permit except where there is corruption.</p>	<p>AHIP turnaround times have improved and the procedures for processing and determining AHIPs have been streamlined.</p> <p>The Bill provides that an AHIP application is deemed to be refused (unless earlier granted or refused) on the expiration of 60 days from the date the application is received by DECCW. Bill amended to clarify.</p> <p>Agreed. Bill amended to include provision.</p> <p>All relevant factors need to be considered. Weighting of factors does not happen in other legislation. Factors need to be considered on a case by case basis.</p> <p>This is an important red tape reduction. The regulations will provide for certain archaeological investigations to be undertaken in accordance with a code of practice rather than an AHIP. This will be finalised prior to commencement of these provisions.</p> <p>Agreed. The Regulation will provide for Aboriginal community consultation for significant AHIP variations.</p> <p>The Regulation will require that copies of submissions received by the proponent as part of the community consultation process will be included in the documentation for the AHIP application. The Bill also now requires copies of these submissions to be taken into account by the DG in making a decision.</p> <p>Bill amended to enable area-based AHIPs to be transferred in appropriate cases without amendment to new land owners with consent in writing of the current holder of the AHIP.</p> <p>Applicants have a right of appeal against variations.</p> <p>Bill sets out the procedure for suspending or revoking an AHIP. Notice of intention and reasons must be given. AHIP holder can make submissions and there is a right of appeal.</p>

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	<p>AHIPs should not be issued for entire developments.</p> <p>DECCW should support precinct wide assessment for the purposes of granting precinct wide AHIP.</p> <p>Bill to include provisions for notification of parties when AHIP decision is made. Include reference to when /how public notice is given.</p> <p>When is an Aboriginal object deemed to be legally destroyed? This is relevant to subdivisions and other projects when staged works occur on a parcel of land.</p> <p>Amend regulation making powers to clarify that consultation provisions are about proposed applications, so clear consultation occurs prior to lodging an application.</p>	<p>Impact assessment including community consultation will be required for all AHIPs as appropriate to size / scope of the development.</p> <p>Agreed. This has occurred where adequate information is available and consultation has occurred (e.g. with projects in the Growth Centres).</p> <p>Agreed. Bill provides for the setting up of a public register and public notification of AHIPs. The regulations also provide for the AHIP holder to supply copies of the applicant's cultural heritage assessment report to registered Aboriginal parties.</p> <p>Bill amended to provide that if an AHIP authorises an Aboriginal object to be destroyed and the permit has been acted upon accordingly, then in future the Aboriginal object is taken not to be an Aboriginal object for the purposes of the Act, and thus will not require any further AHIP.</p> <p>Agreed. Regulation amended to clarify.</p>
TOPIC	ISSUE	RESPONSE
APPEALS	<p>AHIP appeals should be to the Land & Environment (L&E) Court.</p> <p>Who has right of appeal about interpretation of trivial?</p> <p>Merit appeals should be available to Aboriginal people in relation to AHIPs.</p> <p>AHIP appeal process should to apply to AHIP variations.</p> <p>The Act should be subject to the Administrative Decisions Tribunal (ADT).</p>	<p>Agreed. Bill amended to allow appeals to the L&E Court.</p> <p>Any person can take judicial review proceedings if they think the Act has not been correctly applied by DECCW or another party.</p> <p>Merit appeal rights are accorded to applicants only. Judicial review is still available regarding a DECCW decision.</p> <p>Bill provides for variation appeals for AHIP holders.</p> <p>Judicial review applications (on administrative law grounds) for NPW Act matters are made to the NSW Land & Environment Court, not the ADT.</p>
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PENALTIES	<p>Increases in penalties are good but they could have just been implemented by gazettal.</p>	<p>2001 amendments did not increase penalties and so increased penalties could not have occurred by gazettal.</p>

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	<p>Penalties should be equivalent with European heritage impact offences</p> <p>There should be no imprisonment imposed for any strict liability offence.</p> <p>The penalty for contravention of an AHIP condition should be the same as with knowingly harm penalty.</p> <p>Affected communities/ traditional owners should have the opportunity to elect an alternative to a penalty.</p> <p>Money from prosecution and permits should go to traditional owners, LALC and/or co management boards for conservation works.</p> <p>Ensure that any payments to the NPW Fund for DECCW supervised works under alternative sentencing orders can be paid into the NPW Fund.</p> <p>The broad definition of object means that compliance with the notification provision is difficult. Do not support the penalty provision for non-compliance with Aboriginal objects reporting unless the definition is reformed.</p> <p>Significantly reduce the increase in penalties. Disagree with proposed penalties and offences, as they will discourage people from reporting sites.</p>	<p>Proposed penalties are in line with other heritage and environment protection penalties. Higher penalties will ensure appropriate precaution is exercised and will deter people from harming sites.</p> <p>Imprisonment removed as an option from Aboriginal objects strict liability penalty. Option retained in Bill for Aboriginal Places and Aboriginal objects knowledge offence.</p> <p>Any major incident – including a serious breach of AHIP that causes harm – may be prosecuted as a Tier 1 offence. Condition breaches are strict liability and should attract lesser penalty.</p> <p>The court decides appropriate penalty, including alternatives to fines. Affected communities can ask the court to consider an appropriate alternative penalty.</p> <p>Fines will go into a separate account for Aboriginal cultural heritage conservation. DECCW policy is that conservation works undertaken using this money will be monitored by ACHAC. Sentencing orders in Bill provide greater scope for involvement of affected groups in restoration works. However, monies received for permits will continue to be retained by DECCW, as this money partially recoups the DECCW resources spent in determining the permit.</p> <p>Bill amended to provide for this.</p> <p>No change required. As explained above, “objects” definition cannot be changed at this time. Notification requirements continue to apply to all persons.</p> <p>Higher penalties are well justified (ie in line with other legislation) and provide better deterrence to unauthorised harm. Bill does not change penalties for non-reporting of sites. Further differentiation has occurred for some strict liability penalties.</p>

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	Does monitoring of QLD regime show that strict liability approach is effective, not just in terms of successful prosecution, but in terms of better outcomes on the ground (better relationships between Aboriginal people and farmers, and better protection of Aboriginal objects)?	No change required. The NSW strict liability approach is not modelled on Queensland's legislation but the guidelines have some parallels.
TOPIC	ISSUE	RESPONSE
PROSECUTIONS	<p>Delete the provision that the onus of proof about reasonable or lawful excuse lies with the defendant.</p> <p>DECCW should take a more active role in prosecuting offenders.</p> <p>People who stop and notify should be given protection against prosecution.</p> <p>Local Aboriginal community must be involved when prosecuting alleged offence as only local Aboriginal community can know significance of Aboriginal cultural heritage.</p> <p>Statute of limitations should be 1 year after the offence was committed or 6 months after evidence came to the attention of DECCW.</p>	<p>Onus of proof is about whether defendant had a reasonable excuse. Defendants asserting a reasonable excuse need to state what the excuse was.</p> <p>The Bill amendments will allow DECCW to prosecute offences.</p> <p>No change required. Due diligence code provides this protection from prosecution.</p> <p>Agreed. The ability to involve Aboriginal people in court proceedings already exists and is used.</p> <p>The proposed amendment for 2 years from when the offence came to the attention of an authorised officer recognises that Aboriginal cultural heritage offences are difficult to investigate.</p>
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REMEDIAL DIRECTIONS	<p>Remediation directions should require that remediation be carried out by a local Aboriginal person, at the cost of the offender.</p> <p>Remediation directions should be made in consultation with the traditional owners.</p> <p>Remediation directions should only be made by a court.</p> <p>Remediation directions should be subject to merit appeal and should be capable of being set aside by the Court</p>	<p>DECCW policy is to seek opportunities for Aboriginal community involvement in remediation required by a remediation order or by court order.</p> <p>DECCW policy is to provide opportunities for Aboriginal community involvement in remediation required by a remediation order or by court order.</p> <p>Remediation directions issued by DECCW are a useful alternative to prosecution / court proceedings.</p> <p>Merit appeal provisions now included in Bill.</p>

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	Directions should be issued to the person responsible for the harm or – if that person cannot be located – the landowner.	No change required. The Bill already provides for issuing a direction to either party and there should not be a hierarchy as a quick and flexible response is appropriate.
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PUBLIC REGISTERS – ACCESS TO INFORMATION – AHIMS	Need for improved AHIMS services for AHIPs and Due Diligence: <ul style="list-style-type: none"> - better response times - free access - improved quality and reliability of sites information - ability to search by defined regions (property / mining tenement / precinct). 	AHIMS improvements underway to provide easier public access. This includes: <ul style="list-style-type: none"> - free, web based access for initial Due Diligence related searches - information on sites recorded as destroyed - searching by region (tenement etc).
	Provide landscape information on AHIMS.	Agreed. Landscape modelling products will be included in AHIMS services as they become available.
	Define the time period for which an AHIMS search is valid.	Agreed. Due diligence code will provide that a person can rely on an AHIMS search for 1 year. After that they will need to re-check if any newly identified objects have been recorded.
	Public registers needed for AHIPs (issued and varied), remediation directions, Aboriginal Places.	Agreed. Bill provides for: establishment of public registers; legal identity for AHIMS; associated regulation-making powers (AHIMS access and use). Registers for AHIPs and other relevant information.
	Expand service provisions in s.174 NPW Act and in s.149 TSC Act to be like s.321 POEO Act.	Bill amended to provide for this.
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ACHAC	ACHAC members must be Aboriginal.	Agreed. This is included in the Bill.
	NTSCorp should be an ACHAC member.	Agreed. Recognised as a peak group.
	The Chairs of Joint Management Parks group be represented on ACHAC.	The Chairs have a separate committee. DECCW will ensure that linkages are established between the 2 groups.
	AACAI could be a member of ACHAC.	ACHAC was established as a body of Aboriginal people to provide advice to DECCW. AACAI members who are Aboriginal may nominate through the community nomination process.

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<p>PART 4A PARKS ESTABLISHMENT & MANAGEMENT</p>	<p>Ability is needed to add lands to existing Part 4A parks of a different reserve category to that of the existing.</p>	<p>Agreed. Bill amended to allow this to occur.</p>
	<p>When Part 4A leases expire the land should revert to LALC freehold land not parks.</p>	<p>Part 4A lease 'holds over' (i.e. remains in force) at end of term until a new lease is executed.</p>
	<p>Clarify that establishment of Part 4A and the appointments of Board members are not affected by the expiry of a lease.</p>	<p>Agreed. Bill amended to clarify.</p>
	<p>Minister should not have discretion to negotiate a lease for Schedule 14 lands. Lease must be negotiated if requested by either party (Local Aboriginal Land Council or Minister).</p>	<p>Agreed. Bill amended to remove provision giving Minister discretion and this issue has been deferred until other Part 4A provisions are further considered.</p>
	<p>Seeking requirement that all persons who have a role to play on Part 4A lands undergo site identification and cultural awareness training.</p>	<p>No change required. This is a policy issue for Boards of Management and DECCW.</p>
	<p>Changes to road boundaries with Part 4A lands only be made with the approval of the relevant Board.</p>	<p>Agreed. Bill amended accordingly.</p>
	<p>Concern over the potential absence of transparent management intent in the absence of a plan of management for Part 4A lands, given that it is not policy that Boards must prepare a Statement of Interim Management Intent.</p>	<p>No change required. For lands that already have PoM, s.79A requires application of old PoM till new one adopted. In addition s71AO(6) requires that for lands for which no PoM is in force, a Board is to consult with Director-General. Lands must always be managed in accordance with NPW Act.</p>
	<p>Any new areas nominated for Aboriginal ownership should meet a standard set of criteria for cultural significance.</p>	<p>This is a significant policy issue which requires further consultation and will not be addressed in this process.</p>
	<p>Schedule 14 should be limited to National Park estate lands where traditional links make Aboriginal ownership and management relevant and meaningful. A notification process should be established to inform conservation groups of parks proposed for Aboriginal ownership before they occur.</p>	<p>This is a significant policy issue which requires further consultation and will not be addressed in this process.</p>
	<p>Altering the status of a National Park to a less secure tenure should be deleted from the</p>	<p>This is a significant policy issue which requires further consultation and will not be addressed in this process.</p>

	<p>Aboriginal ownership provisions.</p> <p>A statutory position should be provided on each Board for an NPA/NCC member.</p> <p>National Parks and Wildlife Advisory Council should be consulted on adding land to existing Schedule 14 reserves managed under Part 4A.</p>	<p>The intention of the Act is that the conservation representative will be nominated by groups with an interest in the local region.</p> <p>This is a significant policy issue which requires further consultation and will not be addressed in this process.</p>
TOPIC	ISSUE	RESPONSE
<p>PART 4A BOARDS</p> <p>GOVERNANCE & MEMBERSHIP</p> <p>(Separate to the Bill, Part 4A Boards were consulted about a schedule of proposed Board procedures).</p>	<p>Minister's ability to remove Board members should be changed to 3 consecutive meetings unless absence approved by Board.</p> <p>The Minister should only remove a Board member on a recommendation from the Board.</p> <p>Objection to proposed provisions making it mandatory for Minister to remove Board members, particularly on grounds of mental incapacitation, conviction of an offence or bankruptcy as this could be discriminatory and may unnecessarily prevent people from being Board members.</p> <p>Minister's ability to remove Board member requires clarity on process to determine if someone is mentally incapacitated.</p> <p>The deputy for a Board Member should be appointed to fill the vacant position of a Board Member for the remaining term, and the Board should be able to develop its own procedures on back filling a vacant Deputy position.</p> <p>Old Board should remain in place until new Board is appointed.</p> <p>Each Board should be able to determine its own decision making procedures. Boards should only be bound to making majority decisions where different decision making protocol has not yet been</p>	<p>Agreed. Bill amended to provide for this.</p> <p>Minister needs to be able to act as circumstances for proper governance dictate. This can include – but should not be limited to – removal on the recommendation of a majority of other Board members.</p> <p>Minister needs to be able to act as circumstances for proper governance dictate. Agree to remove from Bill specific reference to conviction and bankruptcy. Retain reference to mental incapacity.</p> <p>Bill uses common approach from the Interpretation Act. Consistent terms will be used in Regulation and Bill.</p> <p>Minister appoints Board members in accordance with the provisions of the Act. A deputy while acting in the place of a member has all the functions of a member and is taken to be a member.</p> <p>Board members are appointed for a specified term. Administrative processes will be improved to ensure Board meetings are not delayed as a result of the appointment process.</p> <p>Bill has been amended to enable Boards to adopt an alternative decision making procedure.</p>

	<p>negotiated.</p> <p>New decision making process should not refer to “written correspondence” but “communication” as some members cannot read or write.</p> <p>Boards should be recompensed for costs incurred by the Board when assisting investigation or prosecution of alleged offence.</p> <p>Additional funding should be made available to Part 4A boards to carry out their financial management functions.</p> <p>Reporting standards should be in line with the Corporations (Aboriginal and Torres Strait Islander) Act 2006 in Commonwealth law.</p> <p>Indemnity for Board members should cover deputy Board members.</p> <p>Board should not be able to delegate approval of leases or plans of management.</p>	<p>Some processes must be in writing – meeting resolutions are written or recorded as an agreed record of the meeting, resignations need to occur in writing by or on behalf of the member who is resigning.</p> <p>Investigation costs incurred by DECCW staff can be recovered. If a Board member acts as a witness their reasonable costs are also covered.</p> <p>This is a function for which DECCW in-kind support is already provided.</p> <p>Reporting standards for Part 4A Boards should comply with NSW Government reporting standards for boards and committees rather than Commonwealth standards for Aboriginal Corporations.</p> <p>Deputy members when acting in the place of a member is taken to be member of the Board and covered by indemnity provisions.</p> <p>The Board can only delegate powers to other Board members, DECCW staff or other people prescribed by regulation if it chooses to delegate its powers.</p>
TOPIC	ISSUE	RESPONSE
GENERAL PARK MANAGEMENT	<p>Oppose the granting of access rights for occupiers.</p> <p>Oppose the power to issue lease/licences for broadcasting facilities.</p> <p>Section 188C should:</p> <ul style="list-style-type: none"> - ensure that the boundary cannot be changed to exclude a road that was previously included in the park or move the road further into the park. - Remove the possibility that a park boundary could be varied before a road is built - Ensure setback cannot be increased without the usual consultation 	<p>Not agreed. The rights of access to landlocked areas for owners should also be accorded to occupiers that lease that same land.</p> <p>Not agreed. This is clarification of the intent that the provisions for ‘telecommunications’ facilities apply equally to ‘broadcasting’ facilities.</p> <p>The section applies to ‘public roads’ which are not therefore part of the park at the time of adjustment. The section cannot be used to ‘move’ roads into a park.</p> <p>Bill amended to clarify that this section only applies to public roads that are built.</p> <p>There is no ‘usual’ consultation process, and the adjustments are so minor as to not warrant the consultation required for</p>

	<p>processes</p> <ul style="list-style-type: none"> - Set a maximum setback of the road to 25 metres from the road centreline. - Ensure consultation on all boundary changes. <p>Section 188D – the maximum width of access roads should be 20m.</p> <p>DECCW should consider including powers to confiscate property such as mountain bike.</p> <p>Increase in fees in Kosciusko National Park should not be passed on to Aboriginal groups conducting commercial operations in the park.</p> <p>Aboriginal people should be exempt from the offences of taking flora and fauna for cultural purposes. Delegation of licensing powers should be held by a DECCW Aboriginal officer.</p> <p>Processes for Aboriginal use of plants and animals on Park requires review and should be made clearer. Traditional owners should be able to authorise.</p> <p>Some groups would like to be consulted on any leases or licences in the outer catchment areas of the State Conservation Area.</p> <p>Oppose the provisions relating to roads in parks as these may lead to road closures.</p>	<p>revocations.</p> <p>‘appropriate setback’ is defined in the Bill and a width does not need to be prescribed. Total corridor width of 50 metres is excessive anyway.</p> <p>Consultation not warranted.</p> <p>The maximum width of 30m allows batters, drainage structures etc which often need to go beyond 20m.</p> <p>Current seizure powers are adequate. Powers to seize need to be carefully used.</p> <p>DECCW has discretion as to which commercial operators are charged. Fees for Aboriginal commercial operations are a subject for DECCW’s Aboriginal Partnerships Policy.</p> <p>No change required. Exemptions for domestic purposes in some situations already in Act. Other taking of flora and fauna can be authorised and this issue is generally governed by DECCW Aboriginal Partnerships Policy.</p> <p>For individual parks this is further governed by any relevant terms of a co-management agreement or Plan of Management.</p> <p>No change required. Issue can be dealt with in Memorandum of Understanding.</p> <p>Provisions can only be used to adjust alignment, not close roads.</p>
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MISCELLANEOUS	Oppose the protection of officers from liability.	Not agreed. DECCW officers conducting authorised activities and implementing national parks legislation in good faith should not be subject to personal liability. The Crown would instead be liable.