

6 July 2009

Reform and Compliance Branch
Department of Environment and Climate Change NSW
PO Box A290
Sydney NSW 1232

Dear Sir/Madam,

Re: Submission on National Parks & Wildlife Amendment Bill 2009

Thank you for the opportunity to respond to the above bill and attendant Due Diligence Guidelines¹ in relation to the protection of Aboriginal objects. I am a consultant archaeologist who has worked for nearly a decade under the current NPW Act on a broad range of projects. I am also a full member of the Australian Association of Consulting Archaeologists Inc (AACAI).

In this submission I refer to several aspects of the legislation as it relates to Aboriginal heritage which I feel require further explanation. However of greater concern to me is the process by which these proposed amendments will be turned into policy by DECC, as this will require major changes to existing DECC endorsed Aboriginal heritage management procedures². Specifically, I hope that some process of formal engagement with archaeological consultants will be undertaken by DECC in the formulation of policy to guide the enactment of the proposed legislative amendments. Logically, this would be through the AACAI, as its members represent many of the people who are ultimately responsible for the preparation of NPW Act approvals on behalf of proponents in New South Wales, and whose collective experience in Aboriginal heritage management in New South Wales is currently an under-utilised resource by the DECC. It is also hoped that consultant archaeologists, through the AACAI, will be kept informed of developments in relation to the bill and attendant regulations and policies.

Notwithstanding the comments above, in general, those sections of the amendment bill relating to Aboriginal heritage are positive and welcome. However, I feel that clarification is required on the following aspects:

¹ As at <http://www.environment.nsw.gov.au/legislation/DueDiligence.htm>

² NPWS *Aboriginal Cultural Heritage Standards & Guidelines Kit. DRAFT 1997*. Some components of this kit, such as the "Guidelines for Archaeological Survey Reporting" are still in draft form and have not been finalised. Other sections such as the "Standards Manual for Archaeological Practice in Aboriginal Heritage Management" were intended as updatable guides though no supplement has been provided since the original edition in 1997. These documents are assumed therefore to be continuing valid expressions of best archaeological practice according to the DECC.

Schedule 1 [24] – new s86(8) – what is the definition of “trivial or negligible”?

This is a key term in relation to impacts to Aboriginal heritage items and has large implications for both heritage management and potential prosecutions under the act. Creating a suitable definition would require input from archaeologists as well as an Aboriginal perspective due the wide range of types of Aboriginal ‘objects’ and the ways in, and degrees to, which they are considered significant.

Schedule 1[24] – new s87A(2) & (3) – what is the definition of “traditional cultural activities”?

This term definitely requires very specific definition. The ICOMOS Venice Charter principles on which the Aboriginal heritage provisions of the current NPW Act were based argue strongly against any impacts to heritage fabric, however it has been recognised (for example in the revised Burra Charter) that there is a need to acknowledge the right of Aboriginal people to continue to observe traditional cultural activities in relation to Aboriginal sites. The problem for regulation is definition e.g. What activities are permitted? Who decides what is ‘traditional’ and who has the right to carry out such activities at particular places? Clearly it is not the intention of the legislation that any Aboriginal person can for example re-engrave any rock engraving they feel needs retouching, though without clear and strict definitions, the enforcement of this provision will be impossible and the above example would become possible.

Schedule 1[28] – new s90D(1) and (4) – What are the grounds for the Director-General being able to vary a permit at any time?

Could a permit be varied in the middle of an excavation? And if so on what grounds could amendments be made? Shouldn’t the same review/appeal procedure be in place as for the refusal, suspension or revocation of permits? Does the s90L appeals process apply to these cases?

Schedule 1[112] – new Schedule 9 – Why are all members of Aboriginal Cultural Heritage Advisory Committee Aboriginal?

As per my comments above, it is hoped that some ongoing dialogue could be established on policy matters between the DECC and archaeological consultants (through the AACAI). I understand that AACAI representation on the above committee may not be appropriate (though would hope that a DECC archaeologist would be part of this committee). However if this is the case, is there another committee which could be established, or an existing committee of which representatives of archaeological consultants might be part?

I would be happy to discuss any of the above issues at any time, should you wish to do so. Please do not hesitate to contact me at the numbers above.

Kind regards,

