

To whom it may concern
via email: consultation.npwbill2009@environment.nsw.gov.au

26 June 2009

Dear Sir/Madam,

Thank you for the opportunity to comment on the *National Parks and Wildlife Amendment Bill 2009* and the *Due Diligence Guidelines for Protection of Aboriginal Objects in NSW*.

In relation to the *National Parks and Wildlife Amendment Bill 2009* we make the following comments:

- 1) 87(2) - in many contexts, it will be virtually impossible (or highly imprudent) for a heritage practitioner to state in any due diligence process that **no** Aboriginal object would be harmed. Aboriginal objects, particularly stone artefacts, occur in a widespread distribution in the landscape, in areas that have not been totally impacted by existing development. If there is no review of "due diligence" assessments by DECC, the opportunity is created for unethical or inexperienced "assessors" to falsely or misleadingly downplay the potential for Aboriginal objects, thereby allowing impacts to proceed in the absence of appropriate Aboriginal community consultation and/or an appropriate level of assessment (eg. by a qualified practitioner in accordance with specified guidelines/policies). Without any form of DECC review, one suspects that some "consultants", being paid by proponents, may act in a manner detrimental to the heritage resource and Aboriginal people, and regrettably escape sanction or censure for those actions.
- 2) It is disappointing that such a key document as the "Code of Practice" to guide any archaeological excavation is not available for review.
- 3) In the absence of the former s87 Permits, presumably such activities (eg. archaeological test excavations) would come under the auspice of the proposed s86 and s87 and therefore an AHIP is still required for such activities?

In relation to the *Due Diligence Guidelines for Protection of Aboriginal Objects in NSW* we make the following comments:

- 1) The use of "regional cultural heritage assessments" as a due diligence process is highly questionable, as these assessments are of such a broad nature, not 'site-specific' and are often prepared without any form of DECC approval or compliance with DECC guidelines. Sometimes these "assessments" are prepared by people without sufficient qualifications or experience. To rely on such "assessments", that do not take into account any 'site-specific' data for a specific locality, would lead to unacceptable impacts to the heritage resource.
- 2) Section 2(a) on previously disturbed areas requires refinement. The first bullet point should state "underground" powerlines within the existing alignment". Often Aboriginal sites are located in above-ground powerline easements, including in some instances sites of significance. Such easements should not be included in the category of "developed areas" in which impacts may proceed without further investigation.

- 3) The key issue not touched upon by the document is: - who is permitted to undertake "due diligence"? For such a sensitive subject matter, with serious penalties for infringement of the Act, the qualifications and experience of persons who are suitable to undertake such assessments should be clearly established in the Guidelines or Act. How can a proponent possibly claim to have undertaken "due diligence" if the assessment is not undertaken by a person with suitable qualifications and experience to appropriately address the issues?

Please do not hesitate to contact me should you wish to discuss this matter further.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'P. Kuskie', written in a cursive style.

Peter J. Kuskie,
Managing Director,
South East Archaeology Pty Ltd.