

Better law enforcement for the protection of Aboriginal heritage, national parks and threatened species in New South Wales

Recent amendments to the *National Parks and Wildlife Act 1974* (NPW Act) have brought its compliance and enforcement provisions more into line with those in other NSW environmental protection and heritage legislation, and with those in some other states.

Offences and penalties for harming or desecrating Aboriginal objects and declared Aboriginal Places

The new and existing Aboriginal cultural heritage offences and the penalty for each offence are summarised below.

Offence	Maximum penalty: Individual	Maximum penalty: Corporation
A person must not harm or desecrate an Aboriginal object that the person knows is an Aboriginal object.	2,500 penalty units (\$275,000) or imprisonment for 1 year <hr/> 5,000 penalty units (\$550,000) or imprisonment for 2 years or both (in circumstances of aggravation)	10,000 penalty units (\$1,100,000)
A person must not harm or desecrate an Aboriginal object (strict liability offence).	500 penalty units (\$55,000) <hr/> 1,000 penalty units (\$110,000) (in circumstances of aggravation)	2,000 penalty units (\$220,000)
A person must not harm or desecrate an Aboriginal Place (strict liability offence).	5,000 penalty units (\$550,000) or imprisonment for 2 years or both	10,000 penalty units (\$1,100,000)
Failure to notify DECCW of the location of an Aboriginal object (existing offence and penalty)	100 penalty units (\$11,000). For continuing offences a further maximum penalty of 10 penalty units (\$1,100) applies for each day the offence continues.	200 penalty units (\$22,000). For continuing offences a further maximum penalty of 20 penalty units (\$2,200) applies for each day the offence continues
Contravention of any condition of an Aboriginal Heritage Impact Permit	1,000 penalty units (\$110,000) or imprisonment for 6 months, or both, and in the case of a continuing offence a further penalty of 100 penalty units (\$11,000) for each day the offence continues	2,000 penalty units (\$220,000) and in the case of a continuing offence a further penalty of 200 penalty units (\$22,000) for each day the offence continues

Enforcement of National Parks and Wildlife Act 1974 and Threatened Species Conservation Act 1995

Orders and alternative sentencing options

In addition to a fine, a court can also impose a range of orders and alternative sentences. These include publication orders, restoration and prevention orders, expenses and compensation orders, monetary benefits orders and investigation cost orders.

Remediation directions

Provisions have been added to the NPW Act aimed at improving the conservation of Aboriginal heritage, land reserved under the NPW Act and threatened species by empowering DECCW to issue remediation directions.

A direction to carry out remediation work is an effective way of quickly addressing the consequences of damage. Remediation directions can be issued instead of, or in addition to, the commencement of legal proceedings for a breach of the NPW Act.

Remediation directions can be issued to the current or former holder of land in relation to which a direction is issued or any other person the Director General thinks is responsible for the damage or harm. The recipient of a remediation direction has the right to have the decision to issue a remediation direction reviewed by a court within 30 days of receiving the direction. It is an offence not to comply with a remediation direction.



The amendments also provide for:

- an offence for delaying or obstructing a person carrying out a remediation direction
- a cost recovery provision which states that where the recipient of a remediation direction is not the person who caused the damage, the costs of complying with the direction can be recovered from the person who caused the relevant damage.

Statute of limitations

An additional provision has been included to allow for a two-year period to prosecute following the evidence of the alleged offence first coming to the attention of an authorised officer.

Civil and criminal enforcement

Introduction of ancillary offence provision

New sections in the NPW Act and the *Threatened Species Conservation Act 1995* (TSC Act) allow prosecution of a person who aids, abets, attempts and/or conspires to commit an offence against the NPW Act or TSC Act.

Restraint of breaches

Section 176A of the NPW Act and s.147 of the TSC Act have been amended to clarify that proceedings may be brought in the Land and Environment Court for an order to remedy or restrain a breach or a threatened or apprehended breach of the Act or related Regulations. Previously the legislation only allowed proceedings to be taken to restrain actual breaches of the Acts.

Interim protection orders and stop work orders

Under Part 6A of the NPW Act the Minister administering this Act can make an interim protection order or stop work order in respect of land. It is an offence to fail to comply with an interim protection order or stop work order. A provision has been incorporated in the NPW Act creating an offence for *causing or permitting* a person to fail to comply with an interim protection order or stop work order.



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Further information

Further information on Aboriginal cultural heritage regulation can be found at www.environment.nsw.gov.au/licences/achregulation.htm Further information on the flora and fauna changes to the NPW Act can be found in fact sheet 5. Further information on threatened species can be found at www.environment.nsw.gov.au/threatenedspecies. Alternatively, contact DECCW's Environment Line on 131555 or by email at info@environment.nsw.gov.au.

Published by:

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DECCW 2010/703 ISBN 978 1 74232 893 5 September 2010