

# National Parks and Wildlife Amendment Act 2010 No 38

[2010-38]



New South Wales

## Status Information

### Currency of version

Repealed version for 3 July 2010 to 1 October 2010 (accessed 22 December 2024 at 20:32)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Repeal**

The Act was repealed by sec 30C of the [Interpretation Act 1987 No 15](#) with effect from 2.10.2010.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# National Parks and Wildlife Amendment Act 2010 No 38



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# National Parks and Wildlife Amendment Act 2010 No 38



New South Wales

An Act to amend the *National Parks and Wildlife Act 1974*, the *Threatened Species Conservation Act 1995* and various other Acts to make further provision with respect to the protection of Aboriginal objects and places, the protection of fauna, native plants and threatened species, and general administration and enforcement matters; and for other purposes.

## 1 Name of Act

This Act is the *National Parks and Wildlife Amendment Act 2010*.

## 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

## 3 Repeal of *National Parks and Wildlife Amendment Act 2001 No 130*

The *National Parks and Wildlife Amendment Act 2001* is repealed.

## Schedule 1 Amendment of *National Parks and Wildlife Act 1974 No 80*

### [1] (Repealed)

### [2] Section 5 (1)

Insert in alphabetical order:

**Aboriginal heritage impact permit** means a permit issued under Division 2 of Part 6.

**Aboriginal person** has the same meaning as in the *Aboriginal Land Rights Act 1983* and **Aboriginal people** has a corresponding meaning.

**critically endangered species** has the same meaning as in the *Threatened Species Conservation Act 1995*.

**damage** in relation to habitat (including critical habitat) includes damage by the removal or relocation of the habitat or a part of the habitat.

**Department** means the Department of Environment, Climate Change and Water.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**habitat** includes habitat periodically or occasionally occupied by a species, population or ecological community.

**harm** an object or place includes any act or omission that:

- (a) destroys, defaces or damages the object or place, or
- (b) in relation to an object—moves the object from the land on which it had been situated, or
- (c) is specified by the regulations, or
- (d) causes or permits the object or place to be harmed in a manner referred to in paragraph (a), (b) or (c),

but does not include any act or omission that:

- (e) desecrates the object or place, or
- (f) is trivial or negligible, or
- (g) is excluded from this definition by the regulations.

**national parks legislation** means each of the following Acts and the regulations under those Acts:

- (a) this Act,
- (b) [Threatened Species Conservation Act 1995](#),
- (c) [Wilderness Act 1987](#),
- (d) [Marine Parks Act 1997](#).

**plant** includes fungi and lichen.

**public register** means the public register kept under section 188F.

**species presumed extinct** has the same meaning as in the [Threatened Species Conservation Act 1995](#).

**[3]-[8] (Repealed)**

**[9] Section 5 (7)**

Insert after section 5 (6):

- (7) Before a regulation is made under paragraph (c) or (g) of the definition of ***harm*** in subsection (1), the Minister is required to ensure, as far as is reasonably practicable, that:
- (a) a notice is to be published in a daily newspaper circulating throughout New South Wales:
    - (i) stating the objects of the proposed regulation, and
    - (ii) advising where a copy of the regulation may be obtained or inspected, and
    - (iii) inviting comments and submissions within a specified time, but not less than 28 days from publication of the notice, and
  - (b) consultation is to take place with the Aboriginal Cultural Heritage Advisory Committee, and
  - (c) all the comments and submissions received are to be appropriately considered.

**[10]-[30] (Repealed)**

**[31] Part 6, Division 1, heading**

Insert after the heading to Part 6:

Division 1 **General**

**[32] Section 85 Director-General's responsibilities as to Aboriginal objects and Aboriginal places**

Omit section 85 (2) (b). Insert instead:

- (b) subject to Division 2, for the proper restoration of any such land that has been disturbed or excavated in accordance with an Aboriginal heritage impact permit.

**[33] Sections 86-87B**

Omit sections 86 and 87. Insert instead:

**86 Harming or desecrating Aboriginal objects and Aboriginal places**

- (1) A person must not harm or desecrate an object that the person knows is an Aboriginal object.

Maximum penalty:

- (a) in the case of an individual—2,500 penalty units or imprisonment for 1 year, or both, or (in circumstances of aggravation) 5,000 penalty units or imprisonment for 2 years, or both, or
- (b) in the case of a corporation—10,000 penalty units.

(2) A person must not harm an Aboriginal object.

Maximum penalty:

- (a) in the case of an individual—500 penalty units or (in circumstances of aggravation) 1,000 penalty units, or
- (b) in the case of a corporation—2,000 penalty units.

(3) For the purposes of this section, ***circumstances of aggravation*** are:

- (a) that the offence was committed in the course of carrying out a commercial activity, or
- (b) that the offence was the second or subsequent occasion on which the offender was convicted of an offence under this section.

This subsection does not apply unless the circumstances of aggravation were identified in the court attendance notice or summons for the offence.

(4) A person must not harm or desecrate an Aboriginal place.

Maximum penalty:

- (a) in the case of an individual—5,000 penalty units or imprisonment for 2 years, or both, or
- (b) in the case of a corporation—10,000 penalty units.

(5) The offences under subsections (2) and (4) are offences of strict liability and the defence of honest and reasonable mistake of fact applies.

(6) Subsections (1) and (2) do not apply with respect to an Aboriginal object that is dealt with in accordance with section 85A.

(7) A single prosecution for an offence under subsection (1) or (2) may relate to a single Aboriginal object or a group of Aboriginal objects.

(8) If, in proceedings for an offence under subsection (1), the court is satisfied that, at the time the accused harmed the Aboriginal object concerned, the accused did not know that the object was an Aboriginal object, the court may find an offence proved under subsection (2).

## **87 Defences**

- (1) It is a defence to a prosecution for an offence under section 86 (1), (2) or (4) if the defendant shows that:
  - (a) the harm or desecration concerned was authorised by an Aboriginal heritage impact permit, and
  - (b) the conditions to which that Aboriginal heritage impact permit was subject were not contravened.
- (2) It is a defence to a prosecution for an offence under section 86 (2) if the defendant shows that the defendant exercised due diligence to determine whether the act or omission constituting the alleged offence would harm an Aboriginal object and reasonably determined that no Aboriginal object would be harmed.
- (3) The regulations may provide that compliance with requirements specified in the regulations, or in a code of practice adopted or prescribed by the regulations, is taken for the purposes of subsection (2) to constitute due diligence in determining whether the act or omission constituting the alleged offence would harm an Aboriginal object.
- (4) It is a defence to a prosecution for an offence under section 86 (2) if the defendant shows that the act or omission constituting the alleged offence is prescribed by the regulations as a low impact act or omission.
- (5) The Minister is not to recommend the making of a regulation under subsection (3), unless:
  - (a) the Director-General has, under subsection (6), set minimum standards for requirements specified in the regulations, or in a code of practice adopted or prescribed by the regulations, and
  - (b) the Minister:
    - (i) is satisfied that the requirements specified in the recommended regulation, or in the code of practice adopted or prescribed by the recommended regulation, meet those minimum standards, and
    - (ii) has consulted with the Aboriginal Cultural Heritage Advisory Committee.
- (6) The Director-General may, for the purposes of subsection (5) set minimum standards for requirements specified in the regulations, or in a code of practice adopted or prescribed by the regulations, under subsection (3). The Director-General is to publish any such minimum standards in the Gazette.
- (7) The Minister is not to recommend the making of a regulation under subsection

(4) unless the Minister has consulted with the Aboriginal Cultural Heritage Advisory Committee.

### **87A Exemptions for certain activities**

Section 86 (1)-(4) do not apply in relation to the following:

- (a) work for the conservation or protection of an Aboriginal object or place that is carried out by an officer of the Service or a person under the direction of such an officer,
- (b) any emergency fire fighting act or bush fire hazard reduction work within the meaning of the *Rural Fires Act 1997* that is authorised or required to be carried out under that Act,
- (c) any thing authorised by or under the *State Emergency and Rescue Management Act 1989* in relation to an emergency (within the meaning of that Act) and that was reasonably necessary in order to avoid an actual or imminent threat to life or property,
- (d) any thing specifically required or permitted under the express terms of a conservation agreement entered into under Division 12 of Part 4 of this Act (being an agreement that was entered into or modified after the commencement of this section).

### **87B Exemption for traditional Aboriginal cultural activities**

- (1) The object of this section is to exempt Aboriginal people from the provisions of section 86 that prohibit the harming of an Aboriginal object or place.
- (2) Aboriginal people are exempt from the provisions of section 86 (1), (2) and (4) to the extent to which those provisions would, but for this section, prohibit Aboriginal people from carrying out traditional cultural activities (except commercial activities).
- (3) This section applies to and in respect of any dependants (whether Aboriginal or not) of Aboriginal people in the same way as it applies to and in respect of Aboriginal people.

### **[34] Section 90 Destruction etc of Aboriginal objects or Aboriginal places**

Omit the section.

### **[35] Section 91 Notification of sites of Aboriginal objects**

Insert at the end of the section:

Maximum penalty:



- (a) in the case of an individual—100 penalty units and, in the case of a continuing offence, a further penalty of 10 penalty units for each day the offence continues, or
- (b) in the case of a corporation—200 penalty units and, in the case of a continuing offence, a further penalty of 20 penalty units for each day the offence continues.

**[36] Section 91 (as amended by item [35])**

Renumber as section 89A and insert it after section 89.

**[37] Part 6, Division 2**

Insert before Part 6A:

## **Division 2 Aboriginal heritage impact permits**

### **90 Aboriginal heritage impact permits**

- (1) The Director-General may issue an Aboriginal heritage impact permit.
- (2) An Aboriginal heritage impact permit may be issued subject to conditions or unconditionally. However, a condition cannot be imposed on a permit if compliance with the condition would result in a breach of a requirement made by or under this Act.
- (3) An Aboriginal heritage impact permit may be issued in relation to a specified Aboriginal object, Aboriginal place, land, activity or person or specified types or classes of Aboriginal objects, Aboriginal places, land, activities or persons.

#### **90A Application for issue of permit**

- (1) An application may be made to the Director-General for the issue of an Aboriginal heritage impact permit.
- (2) An application must:
  - (a) be made in or to the effect of a form approved by the Director-General, and
  - (b) contain or be accompanied by such documents and information as is required by regulations or by the Director-General (as indicated in the form or in material accompanying the form).

#### **90B Application for transfer of permit**

- (1) An application may be made to the Director-General for the transfer of an Aboriginal heritage impact permit to another person.

**Note—**

Section 90E requires the application to be made only with the consent in writing of the holder of the

permit.

- (2) An application for the transfer of a permit must:
  - (a) be made in or to the effect of a form approved by the Director-General, and
  - (b) contain or be accompanied by such documents and information as is required by the Director-General (as indicated in the form or in material accompanying the form).

### **90C Grant or refusal of application**

- (1) The Director-General may grant or refuse an application for the issue or transfer of an Aboriginal heritage impact permit.
- (2) An application is granted by the issue or transfer of the permit concerned.
- (3) If the Director-General proposes to refuse such an application, the Director-General must before doing so:
  - (a) give notice to the applicant that the Director-General intends to do so, and
  - (b) specify in that notice the reasons for the Director-General's intention to do so, and
  - (c) give the applicant a reasonable opportunity to make submissions in relation to the matter, and
  - (d) take into consideration any such submissions by the applicant.
- (4) A permit is issued or transferred by notice in writing given to the applicant.

#### **Note—**

Section 90L enables appeals to be made in connection with permit applications within a specified period after the person is given notice of the decision concerned.

### **90D Variation of permits**

- (1) The Director-General may vary an Aboriginal heritage impact permit (including the conditions of such a permit).
- (2) A variation includes the imposing of a condition on a permit (whether or not any conditions have already been imposed), the substitution of a condition, the omission of a condition or the amendment of a condition.
- (3) A permit may be varied only on the application of the holder of the permit. However, the Director-General may vary a permit:
  - (a) to correct a typographical error, or

(b) to resolve an inconsistency between conditions to which the permit is subject.

(4) A permit may be varied at any time during its currency, including (subject to section 90R) on its being transferred to another person.

(5) A permit is varied by notice in writing given to the holder of the permit.

#### **90E Restrictions on making applications to transfer permits**

An application for the transfer of an Aboriginal heritage impact permit may be made only with the consent in writing of the holder of the permit.

#### **90F Requirement for further information**

(1) If an application has been made under this Division, the Director-General may, by notice in writing given to the applicant, require the applicant to supply to the Director-General such further information as the Director-General considers necessary and relevant to the application and specifies in the notice.

(2) In this section:

*information* includes plans and specifications.

#### **90G Suspension or revocation of permit**

(1) The Director-General may suspend or revoke an Aboriginal heritage impact permit.

(2) A suspension or revocation of a permit is effected by notice in writing given to the holder of the permit.

(3) A suspension may be for a specified period, or until the fulfilment of specified conditions, or until further order of the Director-General.

(4) Without limiting subsection (1), a permit may be revoked while it is suspended.

(5) The Director-General must not suspend or revoke a permit unless before doing so the Director-General has:

(a) given notice to the holder of the permit that it intends to do so, and

(b) specified in that notice the reasons for its intention to do so, and

(c) given the holder of the permit a reasonable opportunity to make submissions in relation to the proposed revocation or suspension, and

(d) taken into consideration any such submissions by the holder of the permit.

(6) The reasons for suspending or revoking a permit may include (but are not

limited to) the following:

- (a) the holder of the permit has obtained the permit improperly,
- (b) a condition of the permit has been contravened,
- (c) the activities covered by the permit are completed or no longer being carried on.

(7) No fees are refundable on the suspension or revocation of a permit.

### **90H Surrender of permit**

An Aboriginal heritage impact permit may, on the written application of the holder of the permit, be surrendered with the written approval of the Director-General.

### **90I Conditions of suspension, revocation or surrender**

- (1) The Director-General may, by notice in writing, impose conditions on the suspension or revocation of, or the approval of the surrender of, an Aboriginal heritage impact permit.
- (2) Those conditions may include (but are not limited to) any conditions to which the permit was subject immediately before it was suspended, revoked or surrendered.
- (3) The Director-General may, by notice in writing, impose new conditions on, or vary or revoke any existing conditions of, the suspension, revocation or surrender of the permit.

#### **Note—**

Section 90J makes it an offence to breach conditions under this section.

### **90J Failure to comply with conditions**

- (1) **Offences** If any condition of an Aboriginal heritage impact permit is contravened by any person, the holder of the permit (or, if more than one person holds the permit, each holder of the permit) is guilty of an offence.
- (2) If any condition to which a suspension or revocation of, or the approval of the surrender of, an Aboriginal heritage impact permit is subject is contravened by any person, the holder of the permit or former permit (or, if more than one person holds or held the permit or former permit, each holder of the permit or former permit) is guilty of an offence.

Maximum penalty (subsections (1) and (2)):

- (a) in the case of an individual—1,000 penalty units or imprisonment for 6 months, or both and, in the case of a continuing offence, a further penalty of

100 penalty units for each day the offence continues, or

(b) in the case of a corporation—2,000 penalty units and, in the case of a continuing offence, a further penalty of 200 penalty units for each day the offence continues.

(3) **Defence** The holder of an Aboriginal heritage impact permit or former Aboriginal heritage impact permit is not guilty of an offence against this section if the holder establishes that:

(a) the contravention of the condition was caused by another person, and

(b) that other person was not associated with the holder at the time the condition was contravened, and

(c) the holder took all reasonable steps to prevent the contravention of the condition.

A person is associated with the holder for the purposes of paragraph (b) (but without limiting any other circumstances of association) if the person is an employee, agent, licensee, contractor or sub-contractor of the holder.

**90K Factors to be considered in making determinations regarding permits**

(1) In making a decision in relation to an Aboriginal heritage impact permit, the Director-General must consider the following matters:

(a) the objects of this Act,

(b) actual or likely harm to the Aboriginal objects or Aboriginal place that are the subject of the permit,

(c) practical measures that may be taken to protect and conserve the Aboriginal objects or Aboriginal place that are the subject of the permit,

(d) practical measures that may be taken to avoid or mitigate any actual or likely harm to the Aboriginal objects or Aboriginal place that are the subject of the permit,

(e) the significance of the Aboriginal objects or Aboriginal place that are the subject of the permit,

(f) the results of any consultation by the applicant with Aboriginal people regarding the Aboriginal objects or Aboriginal place that are the subject of the permit (including any submissions made by Aboriginal people as part of a consultation required by the regulations),

(g) whether any such consultation substantially complied with any requirements

- for consultation set out in the regulations,
- (h) the social and economic consequences of making the decision,
  - (i) in connection with a permit application:
    - (i) any documents accompanying the application, and
    - (ii) any public submission that has been made under the *Environmental Planning and Assessment Act 1979* in connection with the activity to which the permit application relates and that has been received by the Director-General,
  - (j) any other matter prescribed by the regulations.
- (2) The Director-General, in making a decision in relation to an Aboriginal heritage impact permit, must not consider any matter other than the matters referred to in subsection (1).

### **90L Appeals**

- (1) An applicant for, or holder or former holder of, an Aboriginal heritage impact permit may appeal to the Land and Environment Court against any of the following decisions of the Director-General:
  - (a) a decision to refuse any application in relation to an Aboriginal heritage impact permit or former permit,
  - (b) a decision in relation to any condition to which a permit or former permit (or a surrender of a permit) is subject,
  - (c) a decision to suspend or revoke a permit.
- (2) The Land and Environment Court:
  - (a) may refuse to grant the appeal, or
  - (b) may grant the appeal wholly or in part, and may give such directions in the matter as the Land and Environment Court thinks appropriate.
- (3) The decision of the Land and Environment Court on the appeal is final and is binding on the Director-General and the appellant, and is to be carried into effect accordingly.
- (4) The regulations may (but need not) prescribe the manner in which an appeal is to be made under this section.
- (5) An appeal under this section must be made within 21 days after the day the person was given notice of the decision being appealed.

- (6) For the purposes of this section, an application is taken to be refused (unless it is earlier granted or refused), and notice of that refusal is taken to have been given to the applicant, on the expiration of the period of 60 days after the date on which the application was received by the Director-General.
- (7) For the purposes of subsection (6), any period under section 90F during which an applicant is required to supply to the Director-General such further information is to be disregarded in determining whether the 60 day period referred to in that subsection has expired.

### **90M Date from which decision operates**

A decision of the Director-General in relation to an Aboriginal heritage impact permit operates from:

- (a) the date of the decision, or
- (b) if another later date is specified by the Director-General in the decision—that other date.

### **90N Regulations relating to consultation**

The regulations may make provision for or with respect to the following:

- (a) consultation that must be undertaken in relation to an application or proposed application that relates to an Aboriginal heritage impact permit (including the nature, extent and timing of the consultation),
- (b) the persons, or classes of persons, who must be so consulted (including but not limited to Aboriginal people with a cultural association with the object or land concerned),
- (c) the opportunity of persons, or classes of persons, so consulted to make submissions as part of the consultation.

### **90O Interaction between permits and stop work and interim protection orders**

For the avoidance of doubt, the existence of an Aboriginal heritage impact permit does not prevent the making of an order under Division 1 of Part 6A or an interim protection order under Division 2 of Part 6A.

### **90P Validity of permits**

The validity of the Aboriginal heritage impact permit cannot be questioned in any legal proceedings except in proceedings commenced in the Land and Environment Court before the expiration of 3 months from the date on which the issue of the permit was published on the public register.

### **90Q Aboriginal Heritage Information Management System**

- (1) The Director-General is to establish and keep a database to be known as the Aboriginal Heritage Information Management System (***the AHIMS***).
- (2) The AHIMS is to contain:
  - (a) information and records regarding Aboriginal objects whose existence and location have been reported to the Director-General, and
  - (b) copies of any reports that have been provided to the Director-General regarding Aboriginal objects and other objects, places and features of significance to Aboriginal people, and
  - (c) any other information required by the regulations.
- (3) The purposes of the AHIMS are:
  - (a) to maintain a record of Aboriginal objects whose existence and location have been reported to the Director-General, and
  - (b) to maintain a copy of any report that has been provided to the Director-General relating to the assessment of objects, places and features that are or are likely to be of significance to Aboriginal people, and
  - (c) to maintain a record of the details of any other report (of which the Director-General is aware) relating to the assessment of objects, places and features that are or are likely to be of significance to Aboriginal people, and
  - (d) to allow access to the AHIMS:
    - (i) by Aboriginal people and organisations and by academic researchers, and
    - (ii) by or on behalf of persons exercising due diligence to determine whether an act or omission would harm an Aboriginal object for the purposes of section 87 (2), and
    - (iii) by public and local authorities in the exercise of their land management, planning and other similar functions,but the AHIMS is not intended to be conclusive about whether any information or records contained within it is up-to-date, comprehensive or otherwise accurate.
- (4) The AHIMS is to be kept and maintained in such form as the Director-General thinks fit. Different parts of the AHIMS may be kept in different forms.
- (5) The regulations may prescribe any or all of the following:
  - (a) the persons and classes of persons who may be granted access to



information and records contained in the AHIMS,

- (b) the method of accessing the AHIMS,
- (c) the form in which access to the AHIMS is to be given (for example, whether by access to full records or summaries or through supplied maps or other forms of information),
- (d) the type of information or records that are available to be accessed from the AHIMS and any conditions or restrictions on the access to, and use of, that information or those records,
- (e) fees for access to the AHIMS and for copies or extracts of information and records kept on the AHIMS.

**90R Certain Aboriginal heritage impact permit conditions to run with the land**

If an Aboriginal heritage impact permit relates to a specified parcel of land and an application is made under section 90B to transfer the permit to another person, the Director-General:

- (a) must not refuse the application, and
- (b) in granting the application, must not vary any of the conditions of the permit.

**[38]-[40] (Repealed)**

**[41] Part 6A, Division 3**

Insert after Division 2:

**Division 3 Remediation directions**

**91J Definitions**

In this Division:

***damage:***

- (a) in relation to land reserved under this Act or acquired under Part 11, includes:
  - (i) harming an animal, or picking a plant, that is in or on that land, or
  - (ii) damming, diverting or polluting any waters on that land, or
  - (iii) damage to anything in or on the land (such as a building, structure, pipe, sign, gate, fence etc or any object or place of cultural value), or

- (iv) removal of anything, or part of anything, in or on the land, and
- (b) in relation to a plant, includes picking the plant, and
- (c) in relation to an animal, includes harming the animal.

**landholder** means a person who owns land or who, whether by reason of ownership or otherwise, is in lawful occupation or possession, or has lawful management or control, of land.

**pollute waters** has the same meaning as in the *Protection of the Environment Operations Act 1997*.

**waters** includes a stream, creek, river, estuary, dam, lake or reservoir.

### **91K Directions for remedial work relating to damage to land, habitat and plants and animals**

- (1) The Director-General may, by notice in writing, direct a person to carry out specified remediation work in a specified manner and within a specified time, if the Director-General is satisfied that:
  - (a) any land reserved under this Act or acquired under Part 11, or
  - (b) any critical habitat, or habitat of threatened species, an endangered population or an endangered ecological community, or
  - (c) any plant or animal that is of, or is part of, a threatened species, an endangered population or an endangered ecological community,has been damaged in or as a result of the commission of an offence under this Act (whether or not any person has been proceeded against or convicted for the offence).
- (2) The specified remediation work to be carried out by a person may include one or more of the following types of work:
  - (a) work to control, abate or mitigate the damage to the land, habitat, plant or animal concerned,
  - (b) work to maintain, remediate or restore the damaged land, habitat, plant or animal concerned (including replacing removed or dead plants or animals).
- (3) A direction under this section may be varied or revoked by a further notice in writing.

### **91L Directions for remedial work relating to harm to Aboriginal objects and**

**places**

- (1) The Director-General may, by notice in writing, direct a person to carry out specified remediation work in a specified manner and within a specified time, if the Director-General is satisfied that:
  - (a) any Aboriginal object, or
  - (b) any Aboriginal place,has been harmed in or as a result of the commission of an offence under this Act (whether or not any person has been proceeded against or convicted for the offence).
- (2) The specified remediation work to be carried out by a person may include one or more of the following types of work:
  - (a) work to control, abate or mitigate the harm to the Aboriginal object or Aboriginal place concerned,
  - (b) work to protect, conserve, maintain, remediate or restore the harmed Aboriginal object or Aboriginal place concerned.
- (3) A direction under this section may be varied or revoked by a further notice in writing.

**91M Persons to whom directions may be given**

A direction under this Division may be given to any or all of the following persons:

- (a) the current or former landholder of any land affected by the damage or harm referred to in section 91K or 91L or on which such damage or harm occurred,
- (b) any other person the Director-General reasonably believes is responsible for that damage or harm or caused or permitted that damage or harm.

**91N Other ancillary actions that may be directed to be carried out**

The Director-General in a direction under this Division may also direct a person to carry out the following actions:

- (a) ascertaining the nature and extent of the damage or harm concerned and furnishing the information or records obtained to other persons (including to the Director-General),
- (b) preparing, furnishing and carrying out a plan of action,
- (c) furnishing progress reports,
- (d) monitoring, sampling and analysing anything to ascertain the nature and extent

of the harm concerned or the progress in remediating the harm,

- (e) vacating the land concerned (or part of it), ceasing to carry on, modifying, or not commencing, an activity on, or use of, the land (or part of it),
- (f) carrying on an activity (or an aspect of it) only during particular times or in a particular manner,
- (g) in relation to harm to an Aboriginal object or place, preparing a report on an activity's likely impact on the Aboriginal object or Aboriginal place concerned,
- (h) construction, installation or removal of anything (including plants and structures such as fencing, walls, bunds or other barriers),
- (i) erecting or displaying on the land concerned any sign or notice containing directions to persons not to enter the land or not to use the land in a specified manner or for a specified purpose or containing other directions of that kind or any other kind,
- (j) refraining from disturbance or further disturbance of the land concerned in a specified manner or below a specified depth,
- (k) informing the Director-General of any change in the ownership or occupancy of the land concerned, to the extent that the person subject to the requirement is aware of the change,
- (l) in relation to harm to an Aboriginal object or place, consulting with Aboriginal community groups or representatives (for example to develop a strategy or plan in relation to the remediation work),
- (m) in relation to harm to an Aboriginal object, moving the object.

**91O Other person may carry out remediation work if failure to comply with direction**

- (1) If a person fails to comply with a direction under section 91K or 91L, the Director-General may direct any other person to enter the land concerned and carry out all or part of the specified work.
- (2) The Director-General may recover the cost of that work from the person given the direction in any court of competent jurisdiction as a debt due by that person to the Crown.

**91P Entry to land to carry out direction**

- (1) A person may enter land to carry out a direction under this Division.
- (2) Nothing in this Division authorises a person to enter any part of premises used

only for residential purposes except with the consent of the occupier of the premises.

**91Q Failure to comply with remediation direction**

(1) A person must not, without reasonable excuse:

- (a) contravene a direction under this Division, or
- (b) cause or permit another person to contravene such a direction.

Maximum penalty:

- (a) in the case of a corporation—2,000 penalty units and 200 penalty units for each day the offence continues, or
- (b) in any other case—1,000 penalty units and 100 penalty units for each day the offence continues.

(2) For the purposes of subsection (1), an example of a reasonable excuse is that the person was unable to enter land because of the refusal of access to the land by its occupier, but entry to that land was essential for the person to avoid committing the relevant offence.

**91R Delay or obstruction of remediation direction**

A person must not wilfully delay or obstruct another person:

- (a) who is carrying out any action in compliance with a direction under this Division, or
- (b) who is authorised to enter land and carry out work under this Division.

Maximum penalty:

- (a) in the case of a corporation—2,000 penalty units and 200 penalty units for each day the offence continues, or
- (b) in any other case—1,000 penalty units and 100 penalty units for each day the offence continues.

**91S Recovery by person given notice**

If the person given a direction under this Division complies with the direction but was not the person who caused the damage or harm concerned, the cost of complying with the direction may be recovered by the person who complied with the direction as a debt in a court of competent jurisdiction from the person who caused the damage or harm.

## **91T Appeals under this Division**

- (1) A person given a direction under this Division may appeal against the direction to the Land and Environment Court within 30 days of the service of the notice of the direction.
- (2) The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay action on the direction appealed against.

**[42]-[128] (Repealed)**

## **Schedule 2 (Repealed)**

## **Schedule 3 Amendment of other Acts**

### **3.1**

(Repealed)

### **3.2 Environmental Planning and Assessment Act 1979 No 203**

#### **[1] Section 75U Approvals etc legislation that does not apply**

Omit section 75U (1) (d). Insert instead:

- (d) an Aboriginal heritage impact permit under section 90 of the *National Parks and Wildlife Act 1974*,

#### **[2], [3] (Repealed)**

#### **[4] Section 91 What is “integrated development”?**

Omit the matter relating to the *National Parks and Wildlife Act 1974* from section 91 (1).

Insert instead:

*National Parks and Wildlife  
Act 1974*

s 90

grant of Aboriginal heritage  
impact permit

#### **[5] Section 91 (2)**

Omit “the consent required under section 90”.

Insert instead “an Aboriginal heritage impact permit required under Part 6”.

**[6] (Repealed)**

**3.3-3.14**

(Repealed)