

APPENDIX B: RELEVANT LEGISLATION FOR THE PROTECTION AND MANAGEMENT OF ABORIGINAL CULTURAL HERITAGE IN NEW SOUTH WALES

INTRODUCTION

This appendix provides only a brief outline of the main pieces of legislation that are relevant to the management and protection of Aboriginal cultural heritage in New South Wales. Further information can be gained from the NSW National Parks & Wildlife Services' Draft Aboriginal Cultural Heritage Standards & Guidelines Kit.

In addition, best practice in heritage assessment is described in the non-statutory *Australian ICOMOS Burra Charter, 1999*. Australian ICOMOS (International Council of Monuments and Sites) is an international non-governmental organisation of professionals dedicated to the conservation of the world's historic monuments and sites. These guidelines have been established by to guide the assessment and protection of monuments and sites of significance. The Burra Charter sets out the principles, practices and processes of site conservation.

STATE LEGISLATION

The principal pieces of State legislation relevant to the management and protection of Aboriginal cultural heritage are:

- the NSW National Parks and Wildlife Act 1974; and
- Environmental Planning & Assessment Act 1979.

Other relevant state statutory provisions include:

- NSW Heritage Act 1977;
- the Local Government Act 1993;
- National Parks and Wildlife Amendment (Aboriginal Ownership) Act 1996; and
- Protection of the Environment Operations Act 1997.

NSW National Parks & Wildlife Act 1974 (NPW Act)

The NPW Act provides for the protection of all Aboriginal 'relics' within the State of New South Wales. Under the Act a 'relic' is defined as,

'any deposit, object or material evidence (not being a handicraft made for sale) relating to indigenous and non-European habitation of the area that comprises New South Wales, being habitation both prior to and concurrent with the occupation of that area by persons of European extraction, and includes Aboriginal remains'.

Thus, under the Act, ‘relics’ are confined to the physical evidence of Aboriginal occupation. However, the Act also protects Aboriginal Places, which are locations that may or may not contain physical evidence of Aboriginal occupation but are significant to an Aboriginal community or individuals and have been specially declared by the Minister as an Aboriginal Place. Aboriginal people prefer the term ‘relic’ not to be used, and other terms are usually adopted except in legal contexts.

The Act is administered by the NSW National Parks & Wildlife Service (NPWS). It an offence to knowingly destroy, deface, damage or disturb Aboriginal sites without first obtaining the written consent of the Director-General of National Parks & Wildlife. The Act prohibits the destruction or disturbing of any Aboriginal heritage sites or items, regardless of whether they have been formally registered on the NPWS Aboriginal Sites Register. Care of Aboriginal cultural heritage within the Sydney area falls under the aegis of the within Metropolitan Aboriginal Heritage Unit of the NPWS Aboriginal Heritage Division which is based at the Head Office building at Hurstville.] #

Under the Act, a Permit or Consent must be gained before any form of disturbance or more formal excavation of deposits can proceed in the search for Aboriginal archaeological remains. This applies to potential archaeological deposits as well as known archaeological deposits (which include stone artefact scatters).

Environmental Planning and Assessment Act 1979

The EP&A Act is the NSW legislation which provides planning controls and requirements for environmental assessment in the development approval process. It also establishes the framework for Aboriginal heritage values to be formally assessed in land use planning and development consent processes. Under this Act, the definition of ‘environment’ includes cultural heritage.

Protection of the Environment Operations Act 1997

The Protection of the Environment Operations Act 1997 is a NSW State Act, which aims to protect, restore and enhance the quality of the environment in the state, having regard to the need to maintain ecologically sustainable development. Any management plan for Aboriginal heritage should comply with the principles of the PEO Act.

COMMONWEALTH LEGISLATION

Commonwealth legislation covering Aboriginal sites:

- the Aboriginal and Torres Strait Islander Heritage Protection Amendment Act 1987;
- the Australian Heritage Commission Act 1975; and
- the Environmental Protection and Biodiversity Conservation Act 1999.

Aboriginal and Torres Strait Islander Heritage Protection Amendment Act 1987

The purpose of this Act is to preserve and protect areas and objects which are of significance to Aboriginal people and which are under threat of injury or desecration; objects include skeletal remains. A request can be made only by or on behalf of

Aboriginal people or Torres Strait Islanders or their organisations; such applications are made to the Federal Minister for Aboriginal Affairs. The Act is administered by the Aboriginal and Torres Strait Islander Commission. Under the Act, the Minister can issue interim or permanent conservation orders to protect sites and areas of assessed significance. If an application is received from or on behalf of an Aboriginal or a group of Aboriginals seeking the protection of a specified area from desecration, the Minister may investigate and may decide to make a declaration protecting the area.

The Act applies to all States and Territories but operates concurrently with existing State and Territory legislation so far as this legislation is consistent with the Act.

Australian Heritage Commission Act 1975

The AHC Act (1975) offers some protection through the listing of heritage sites and areas on the Register of the National Estate. The Register of the National Estate, which is maintained by the Australian Heritage Commission, has a direct protective role only in relation to actions that might adversely effect the National Estate.

Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act)

The definition of environment in the EPBC Act states that ‘environment’ includes:

- (a) ecosystems and their constituent parts, including people and communities;
- (a) natural and physical resources;
- (a) the qualities and characteristics of locations, places and areas; and
- (a) the social, economic and cultural aspects of a thing mentioned in paragraph (a), (b) or (c).

Under the EPBC Act the term environment covers not only the natural environment but also the built environment and human social environment. Thus Aboriginal heritage is included in the EPBC Act’s definition of environment. In relation to the protection of the environment from Commonwealth actions the Act states ‘the Commonwealth or a Commonwealth agency must not take inside or outside the Australian jurisdiction an action that has, will have or is likely to have a significant impact on the environment inside or outside the Australian jurisdiction’. Furthermore, it is also a penalty for a civilian or non-Commonwealth agency to carry out an action ‘that has, will have or is likely to have a significant impact on the environment’.