



fact sheet

ABORIGINAL CULTURE AND HERITAGE



New South Wales
Aboriginal Land Council

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Emergency Protection for Aboriginal sites in NSW

This Fact Sheet outlines ways that the Aboriginal community and Local Aboriginal Land Councils (LALCs) can use current laws to protect important cultural sites under immediate threat.

This is one of a series of Site Protection Fact Sheets which have been developed for LALCs and the Aboriginal community by the NSW Aboriginal Land Council (NSWALC).

Please Note: While all care has been taken in the preparation of these Fact Sheets, they are not a substitute for legal advice in individual cases. The information in this Fact Sheet is current as of 20 January 2011.

Emergency protection

There are a number emergency protection options under State and Federal laws which Aboriginal people can use to protect Aboriginal sites against immediate threats from development or other activities.

Applications can be made for more than one of the emergency protections outlined in this Fact Sheet at the same time.

Aboriginal groups should consider applying to various Departments and Ministers to protect sites. This may be a useful way to draw attention to sites under threat, including from the media.

Other legal options may also be available, and LALCs are encouraged to seek legal advice about these avenues. The Environmental Defenders' Office (EDO) can provide free legal advice on

such matters. The EDO can be contacted free of charge on 1800 626 239.

Stop Work Orders under the *National Parks and Wildlife Act 1974 (NSW)*

Anyone can request that the Director-General of the Department of Environment, Climate Change and Water (DECCW) issue a stop work order if an action is likely to significantly affect a recognised Aboriginal object or Aboriginal place.ⁱ The order can last up to 40 days, and can be extended for further 40 day periods.ⁱⁱ

Interim Protection Orders under the *National Parks and Wildlife Act 1974 (NSW)*

Anyone can lobby the NSW Minister for the Environment to make an Interim Protection Order that operate for up to 2 years to preserve areas of cultural significance.ⁱⁱⁱ

For more information on stop work orders and interim protection orders under the *National Parks and Wildlife Act* contact DECCW on 1300 361 967 or visit www.environment.nsw.gov.au.

Emergency declaration under *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth) (ATSIHP Act)*

Aboriginal and Torres Strait Islander peoples can request that the Federal Minister responsible for the ATSIHP Act, currently the Minister for Sustainability, Environment, Water, Population and Communities (SEWPC), make an emergency declaration protecting areas and objects that are under 'serious and immediate threat of injury or

desecration, or being used in a manner inconsistent with Aboriginal tradition'.^{iv}

This is only intended to be a last resort where State or Territory protections have been ineffective.

The declaration has effect for up to 30 days, but the Minister can extend it for a further 30 days.^v

For more information see NSWALC Fact Sheet 9 - *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)* or contact SEWPC on 02 6274 1111 or visit www.environment.gov.au.

Criminal offences

There are a number of criminal offences relating to the destruction of Aboriginal heritage, under the *National Parks and Wildlife Act 1974 (NSW)*.

These offences are intended to deter people from destroying or damaging objects and places under the protection of DECCW or the Minister for the Environment.

If a group believes that a person is about to commit an offence by harming Aboriginal heritage they should immediately contact DECCW on 1300 361 967.

Approved destruction of sites

Current laws in NSW do not generally recognise the rights of Aboriginal groups in NSW to refuse harm to Aboriginal sites (with some exceptions).

In NSW the Director-General of DECCW generally has the power to authorise damage to Aboriginal sites, through issuing permits called Aboriginal Heritage Impact Permits (or AHIPs).

However, there are processes in place which require that Aboriginal groups be consulted before these permits are issued.

For more information see NSWALC Fact Sheet 5 - Aboriginal Heritage Impact Permits (AHIPs)

Aboriginal groups can also apply to the Federal Minister for emergency protection under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)* where DECCW has decided to issue a permit, if the issue of the permit places a site under threat.

Challenging Part 3A development proposals

Certain laws, such as Part 3A of the *Environmental Planning and Assessment Act 1979 (NSW)*, may allow developments to harm a site without the need for a permit from DECCW.

There are generally limited opportunities for Aboriginal groups to have a say about Part 3A developments.

Approved Part 3A major projects can be appealed in the Land and Environment Court in limited circumstances. Contact the EDO's free advice line on 1800 626 239 for more information about appeals.

For more information on Part 3A developments and planning laws generally, see the NSWALC **Planning Fact Sheets**, or contact the NSW Department of Planning on (02) 9873 6111 or www.planning.nsw.gov.au.

Longer term protection

There are a number of different options available to Aboriginal groups and LALCs seeking **longer-term** protection for Aboriginal sites in NSW. These laws can help to protect a site from development or destruction, preserve and promote Aboriginal culture and heritage in the long term, and attract funding.

Most kinds of protection are free and Aboriginal groups are encouraged to apply for multiple protections over the same site.

More information

Visit the 'Culture and Heritage' pages of the NSWALC website at www.alc.org.au or contact the NSWALC Policy and Research Unit on 02 9689 4444.

The DECCW Country, Culture and Heritage Division can be contacted via the general information line on 1300 361 967.

ⁱ National Parks and Wildlife Act 1974 (NSW), s 91AA.

ⁱⁱ National Parks and Wildlife Act 1974 (NSW), s 91DD.

ⁱⁱⁱ National Parks and Wildlife Act 1974 (NSW), s 91A.

^{iv} Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth), s 9.

^v Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth), ss 9(2) & 9(3)