

Environmental Planning and Assessment Act Continued...

3. Part V

This section of the legislation governs the decision making process by State government (determining) authorities related to activity approval.

In the decision making process, under Section 111, it is the State government agencies' duty to consider environmental impacts; and then under Section 112, determine whether the level of impact is sufficient to require the preparation of an Environmental Impact Statement.

As mentioned in Part IV, 'environmental impacts' under the law should be taken to include Aboriginal sites and places. Furthermore, the Department of Planning New South Wales have developed a set of guidelines for interpretation of Section 112 which requires that Aboriginal Heritage is assessed as part of the process.

It should be noted here that the National Parks and Wildlife Service is a Part V authority under the Environmental Planning and Assessment Act. Hence, it is required to undertake assessment of the potential impacts of any activities it proposes on Aboriginal Heritage.

Other Relevant Legislation

Please note that this is not the sole legislation of relevance to Aboriginal Heritage Management in New South Wales. Other Acts include the Federal Aboriginal and Torres Strait Islander (Heritage Protection) Act and Australian Heritage Commission Act. Further State Acts include the New South Wales Heritage Act and the Local Government Act.

Further Information

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Aboriginal Sites and the Law



The two fundamental pieces of legislation that provide the primary context for Aboriginal Heritage Management are:

1. The National Parks and Wildlife Act and;
1. The Environmental Planning and Assessment Act.

National Parks and Wildlife Act

There are two key sections in the NP&W Act which are relevant to Aboriginal Heritage:

1. Section 84

This section provides protection for 'Aboriginal Places'. Aboriginal places have been defined by the Act as 'areas of cultural significance to the Aboriginal community'. Areas will only be regarded as an Aboriginal Place if the Minister is satisfied that sufficient evidence exists to conclude the area was or is of significance to the Aboriginal community.

2. Section 90

This section provides protection for all 'Aboriginal Relics'. Aboriginal relics have been defined by the Act as 'any material evidence of the indigenous occupation of New South Wales'. This protection is provided regardless of the level of significance (unlike Section 84). It is important to understand that due to the current wording of the legislation it is only an offence to damage or destroy an Aboriginal relic or place if it is done **knowingly**. Furthermore, the legislation does not set up any formal mechanisms for ensuring that areas with potential to contain Aboriginal sites or places are assessed prior to impact. It is the EP&A Act which fulfils this role.

Environmental Planning and Assessment Act

The primary function of the EP&A Act is that environmental impacts be considered in land use planning and decision making. The definition of 'environmental impacts' in New South Wales is understood to include Aboriginal Heritage.

There are three key sections (along with associated regulations, schedules and guidelines) in the EP&A Act which are relevant to Aboriginal Heritage.

1. Part III

Part III governs the preparation of the following three planning instruments:

1. State Environmental Planning Policies (SEPPs);
2. Regional Environmental Plans (REPs); and
3. Local Environmental Plans. (LEPs)



These planning instruments cover permissible uses and potential constraints on the land use. When assessing potential uses and constraints during the preparation of a planning instrument, guidelines produced by the Department of Planning New South Wales must be followed.

These guidelines specify that Aboriginal sites and places of significance should be assessed as part of the process. Once developed, the planning instruments, such as the LEPs, may specify the level of assessment required in relation to environmental assessment or more specifically Aboriginal heritage investigations for development applications.

2. Part IV

This section of the legislation governs the decision making process by local government (consent) authorities during a development application. Section 90, under Part IV, lists a number of impacts which must be considered before development approval is granted. Section 90 Subsection (1) 9b states that consideration must be given for 'the impact of that development on the environment (whether or not the subject of an environmental impact statement)'. It is legally understood that s90(1) 9b should be taken to include Aboriginal sites and heritage.