



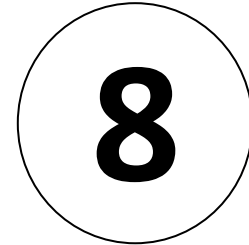
fact sheet

ABORIGINAL CULTURE AND HERITAGE



New South Wales
Aboriginal Land Council

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 February 2015.

Emergency protection

There are a number of 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.

If there is harm or potential harm to Aboriginal heritage, the NSW Office of Environment and Heritage should be immediately contacted on 02 9995 5000.

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 and can be contacted on 1800 626 239 (free call) or 02 9262 6989.

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

Anyone can request that the Chief Executive of the Office of Environment and Heritage (OEH) issue a stop work order if an action is likely to significantly affect an 'Aboriginal object' or 'Aboriginal place'.ⁱ The order can last up to 40 days, and can be extended for further 40 day periods.ⁱⁱ The OEH can be contacted on 02 9995 5000.

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

Anyone can request that the NSW Minister for the Environment make an Interim Protection Order that can 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 your local Environmental Protection Authority on 1300 361 967 or visit <http://www.environment.nsw.gov.au/publicregister/>.

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

Aboriginal and Torres Strait Islander peoples can request that the Federal Minister responsible for the ATSHP 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 the Department of the Environment on 02 6274 1111 or visit:

www.environment.gov.au.

Criminal offences

There are a number of criminal offences relating to the damage or 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 OEH or the Minister for the Environment.

Approved destruction of sites

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

In NSW the Chief Executive of OEH 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 OEH has decided to issue a permit, if the issue of the permit places a site under threat.

Challenging major development proposals

Certain laws, such as State significant development under Part 4 of the *Environmental Planning and Assessment Act 1979 (NSW)*, may allow developments to harm a site without the need to obtain an Aboriginal Heritage Impact Permit.

There are generally limited opportunities for Aboriginal groups to have a say about major developments, such as state significant development or state significant infrastructure.

Contact the Environmental Defender's Office (EDO) free advice line on 1800 626 239 for more information about appealing major developments.

For more information on major developments and planning laws generally, see the NSWALC **Planning Fact Sheets**, or contact the NSW Department of Planning and Infrastructure on 02 9228 6333 or visit www.planning.nsw.gov.au.

Note: The NSW Government is currently considering options on the best means to implement its planning reform program after a review process in 2011. For more information, please visit:

<http://www.planning.nsw.gov.au/>

Longer term protection

There are a number of options that may be available to protect Aboriginal sites in the **longer-term** – please refer to other NSWALC Site Protection Fact Sheets.

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 Programs Unit on 02 9689 4444.

The OEH can be contacted via the general information line on 02 9995 5000.

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 and s 91D.

^{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)