



Heritage compliance framework

Our shared heritage, places and objects

Department of Climate Change,
Energy, the Environment and Water



Acknowledgement of Country

Department of Climate Change, Energy, the Environment and Water acknowledges the Traditional Custodians of the lands where we work and live.

We pay our respects to Elders past, present and emerging.

This resource may contain images or names of deceased persons in photographs or historical content.

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Cover photo: Aerial photo of Kinchega woolshed and Kinchega shearers' quarters. John Spencer/DCCEEW

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Contents

Protecting heritage in New South Wales	1
Types of heritage	1
Legislation that protects heritage	3
Managing non-compliance with the Act	4
Compliance program	5
Heritage compliance policy	5
The role of authorised persons	5
Training of authorised persons	6
Heritage Council guidelines	6
Summary of legislation and harm offences under the Act	7
Notes to Tables 2–4 (excerpts from the Act)	11
More information	13
NSW Government guidelines, policies and legislation	13
Federal guidelines, policies and legislation	13

List of figures

Figure 1	Interchangeable compliance includes a number of measures that may be applied individually or concurrently and may commence at any time	4
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List of tables

Table 1	Legislation protecting heritage in New South Wales (current at the time of publication)	7
Table 2	Harm offences under the Act showing possible compliance responses – historic shipwrecks and archaeology places and relics	8
Table 3	Harm offences under the Act showing possible compliance responses – interim heritage orders	9
Table 4	Harm offences under the Act showing possible compliance responses – SHR listing	10

List of images

Image 1	View of Mount Yengo from the walking track, Yengo National Park. John Spencer/DCCEEW	3
Image 2	Old Government House, Parramatta. John Spencer/DCCEEW	6

Protecting heritage in New South Wales

The Department of Climate Change, Energy, the Environment and Water (the department) and the Heritage Council of NSW work together to protect and conserve our shared heritage places and objects for future generations and to tell the story of events, people, places and experiences that have shaped our state.

‘Places of cultural significance enrich people’s lives, often providing a deep and inspirational sense of connection to community and landscape, to the past and to lived experiences. They are historical records that are important expressions of Australian identity and experience. Places of cultural significance reflect the diversity of our communities, telling us about who we are and the past that has formed us and the Australian landscape. They are precious and irreplaceable.’

Australia International Council on Monuments and Sites (ICOMOS) 2013, *The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance*

Our heritage is rich and varied, including both tangible and intangible heritage values. It spans tens of thousands of years of Aboriginal culture and landscapes, and historic buildings, monuments, gardens, archaeological sites, shipwrecks, bridges, industrial structures, streetscapes, conservation precincts and intangible heritage.

The department and the Heritage Council acknowledge Aboriginal people as the traditional owners of the lands that comprise New South Wales. We work with Aboriginal people to identify, conserve and protect state-significant places and objects that have meaning for Aboriginal people. We work with communities across New South Wales to know, value and care for our valuable and diverse heritage.

Types of heritage

The *Heritage Act 1977* (the Act) provides protection for places, buildings, works, relics, moveable objects and precincts that are of significance to New South Wales.

Significance is a measure of the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the place or object.



Historic buildings and works such as the Sydney Opera House, Fort Denison and the Harbour Bridge, which are instantly recognisable symbols of Australia.



Natural heritage landscapes and features like Royal National Park and the Jenolan Caves Reserve in the Blue Mountains World Heritage Area.



Historic shipwrecks like the ill-fated vessel the *Buster*, which was washed onto Woolgoolga Beach 119 years ago and later unearthed by heavy seas and king tides.



Archaeological sites and relics such as Innes Ruins and the Sydney Cove West Archaeological Precinct at the Rocks, where construction phases date from 1797 to 1939.



Aboriginal heritage including the historic Mungo National Park, Willandra Lakes World Heritage Region, where evidence of Aboriginal occupation dates back 35,000 to 40,000 years.



Historic landscapes and precincts including the town of Braidwood, which is the first town on the east coast of Australia to be listed on the State Heritage Register (SHR).

Photos: Sydney Opera House at sunrise. K Quach/DCCEEW; Sunrise, Royal National Park. J Spencer/DCCEEW; *Buster* shipwreck. D Arthur/DCCEEW; Innes Ruins, Lake Innes Nature Reserve. J Spencer/DCCEEW; Mungo Lookout, Mungo National Park. J Spencer/DCCEEW; Downtown Braidwood. JP van Roon/DCCEEW

Legislation that protects heritage

Heritage in New South Wales is protected by both state and Commonwealth legislation (Table 1). The department enforces both the *National Parks and Wildlife Act 1974* and the Heritage Act. The *Compliance policy 2018*, a component of the department's Biodiversity Conservation & Science Compliance Program, sets out strategy and policy for managing compliance with Aboriginal cultural heritage provisions under the *National Parks and Wildlife Act 1974* for Aboriginal objects and places that are not listed as state-significant heritage under the Heritage Act.

The Act and the Heritage Regulation 2012 protect heritage by:

- promoting awareness and understanding of the state's heritage
- encouraging councils to identify and record locally significant heritage
- promoting the identification and listing of items on the SHR
- regulating activities and actions involving items on the SHR to minimise harm occurring (permits, exemptions and approvals)
- providing conservation tools for owners (heritage agreements and conservation management plans)
- providing grants, loans and tax and rate concessions to owners of items on the SHR
- providing civil processes to remedy non-compliance (restrictive, remedial, and restraining orders).



Image 1 View of Mount Yengo from the walking track, Yengo National Park.
John Spencer/DCCEEW

Managing non-compliance with the Act

Offences under the Act carry a maximum penalty of \$1.1 million and 6 months imprisonment. The Act outlines potential offences, including 24 that cause harm to heritage (Tables 2–4). It is an offence to fail to comply with the conditions of an approval, excavation permit, exemption or exception issued under the Act.

Non-compliance should be resolved at the lowest possible level to encourage self-reporting and voluntary compliance. There are a range of interchangeable compliance tools to resolve non-compliance (Figure 1). The attitude of the individual or corporation to the detection of a possible breach is a significant factor in determining the appropriate compliance response.

Prosecution may be the most appropriate response in instances where there is sufficient evidence and it would be likely to deter such behaviour in the future. Where appropriate, the matter may proceed in either the Land and Environment Court or the Local Court. In the Local Court, the maximum penalty imposed is \$22,000 or 3 months imprisonment (or both).

Orders restricting use and development may be imposed by the minister where the owner of an item is convicted of an offence under the Act involving demolition, damage or despoliation (removal of valuable parts) of that item. The minister may issue an order restricting the use and development of land for up to 10 years and may also make an order to resume or appropriate the land.

Depending on the nature and culpability of the potential offender, matters may escalate or de-escalate at any time. Most of the matters the department deals with fall within the voluntary and administrative levels, however where all voluntary and administrative options are exhausted, orders and litigation are used as a last resort.

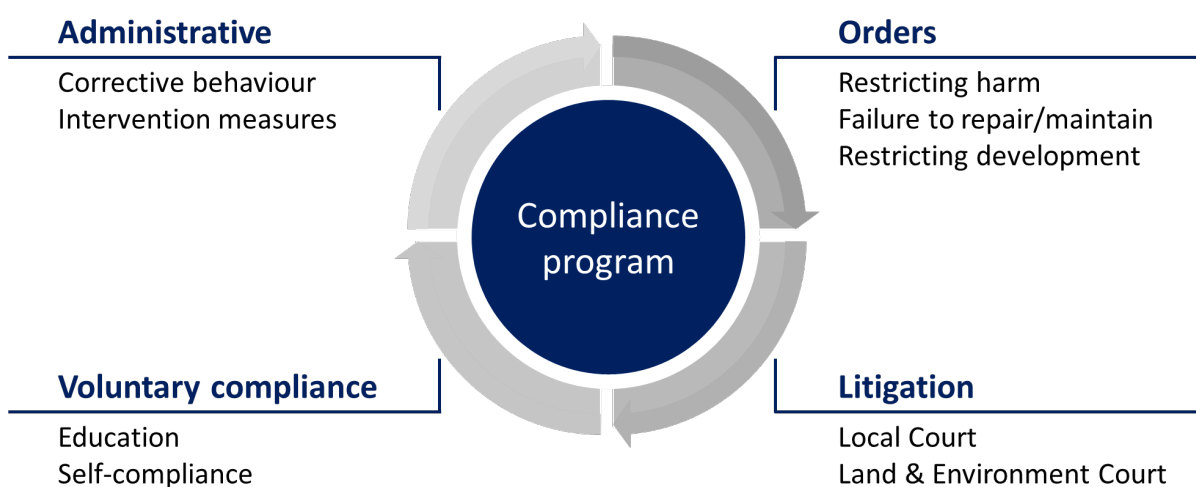


Figure 1 Interchangeable compliance includes a number of measures that may be applied individually or concurrently and may commence at any time

Compliance program

The development of a heritage compliance program encourages awareness of the Act, ensures a consistent approach to dealing with potential non-compliances and assures the community of New South Wales that compliance matters will be addressed efficiently and transparently.

The implementation of a strong heritage compliance program will ensure the protection of our most significant heritage into the future so we can continue to share and celebrate our heritage.

Heritage compliance policy

The *Heritage compliance policy* outlines the interchangeable compliance and enforcement options available to the department (Figure 1).

The policy:

- sets out the roles and responsibilities of key agencies
- explains the department's compliance approach to heritage conservation risks
- outlines how the department identifies the highest heritage conservation priorities across New South Wales
- explains the compliance responses available to the department where there is a failure in voluntary compliance
- guides authorised persons, the department, the Heritage Council and its delegates, and the Minister for Heritage in making consistent compliance decisions that drive effective heritage conservation outcomes.

The policy is not legally binding on the department or any other organisation. It reflects the department's approach to compliance programs and is intended to provide guidance to encourage a consistent, fair and transparent approach.

The role of authorised persons

The minister may authorise a person to conduct inspections of buildings, works, relics, moveable objects, and places. Authorisation allows the person to conduct inspections where the authorised person believes that the item or place is of state or local heritage significance.

An authorised person will obtain the consent of the occupier or person apparently in charge of works before entering.

It is an offence to obstruct, hinder, prevent or interfere with authorised persons carrying out their official duties.

Training of authorised persons

Authorised persons undergo training in interpreting legislation, interacting with the public, defensive tactics, investigative interviewing, and law enforcement.

Authorised persons must adhere to strict behavioural standards that uphold the values of the public service and give the public confidence in their impartiality, decision-making and professionalism.

Heritage Council guidelines

The department and the Heritage Council publish guidelines for the preparation of certain documents such as conservation management plans and applications for approvals. These documents are designed to assist people to better understand the requirements of the Act and Regulation and assist in streamlining these processes.

The Heritage Council also publishes a series of guidelines on conserving heritage items and places. These guidelines are referred to in the *Heritage compliance policy* as supporting documents.



Image 2 **Old Government House, Parramatta. John Spencer/DCCEEW**

Summary of legislation and harm offences under the Act

Table 1 Legislation protecting heritage in New South Wales (current at the time of publication)

Historic buildings and works	Natural heritage landscapes and features	Historic shipwrecks	Archaeological sites and relics, including moveable heritage	Aboriginal heritage	Historic landscapes and precincts
<i>Environment Protection and Biodiversity Conservation Act 1999 (Cth)</i>	<i>Environment Protection and Biodiversity Conservation Act 1999 (Cth)</i>	<i>Underwater Cultural Heritage (Consequential and Transitional Provisions) Act 2018 (Cth)</i>	<i>Protection of Moveable Cultural Heritage Act 1986 (Cth)</i>	<i>Environment Protection and Biodiversity Conservation Act 1999 (Cth)</i>	<i>Environment Protection and Biodiversity Conservation Act 1999 (Cth)</i>
Listed world or national heritage places	Listed world or national heritage places	Supersedes the <i>Historic Shipwrecks Act 1976 (Cth)</i>		Listed world or national heritage places	Listed world or national heritage places
<i>National Parks and Wildlife Act 1974 (NSW)</i>	<i>National Parks and Wildlife Act 1974 (NSW)</i>	<i>Heritage Act 1977 (NSW)</i>	<i>National Parks and Wildlife Act 1974 (NSW)</i>	<i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)</i>	<i>Environmental Planning and Assessment Act 1979 (NSW)</i>
If inside a national park	If inside a national park		If inside a national park		
<i>Heritage Act 1977 (NSW)</i>	<i>Heritage Act 1977 (NSW)</i>		<i>Heritage Act 1977 (NSW)</i>	<i>National Parks and Wildlife Act 1974 (NSW)</i>	<i>Heritage Act 1977 (NSW)</i>
				Regardless of location except <i>Heritage Act 1977 (NSW)</i> only when SHR listed	

Note: *Criminal Code Act 1995 (Cth)* and *Crime Act 1990 (NSW)* may also be applicable.

Table 2 Harm offences under the Act showing possible compliance responses – historic shipwrecks and archaeology places and relics

Possible compliance response	Historic shipwreck registration			Archaeology place and relic registration		
	Move shipwreck ¹	Damage shipwreck ²	Destroy Shipwreck ²	Disturb or excavate and to uncover or move relic ²	Disturb or excavate land containing relics ³	Notification of discovery ⁴
Advisory letters	Y	Y	Y	Y	Y	Y
Warning letter	Y	Y	Y	Y	Y	Y
Stop work order (s 79C)	N	N	N	N ⁵	N	N
Order restricting harm (s 136)	Y	Y	Y	Y	Y	N
Order to maintain or repair	N	N	N	N	N	N
Court order	Y	Y	Y	Y	Y	Y
Prosecution (local court)	Y	Y	Y	Y	Y	Y
Prosecution (Land & Environment Court)	Y	Y	Y	Y	Y	Y
Order restricting use or development	N	Y	Y	Y	Y	N

See below Table 4 for a key to the notes.

Table 3 Harm offences under the Act showing possible compliance responses – interim heritage orders

Possible compliance response	Demolish ⁶ and Damage or despoil ⁶	Move, damage or destroy relic ⁶	Excavate land to expose or move relic ⁶	Carry out development ⁶	Alter the building, work, relic or object ⁶	Display any notice or advertisement ⁶	Damage, destroy or remove any tree or vegetation ⁶
Advisory letters	Y	Y	Y	Y	Y	Y	Y
Warning letter	Y	Y	Y	Y	Y	Y	Y
Stop work order (s 79C)	Y	Y	Y	Y	Y	Y	Y
Order restricting harm (s 136)	N	N	N	N	N	N	N
Order to maintain or repair	N	N	N	N	N	N	N
Court order	Y	Y	Y	Y	Y	Y	Y
Prosecution (local court)	Y	Y	Y	Y	Y	Y	Y
Prosecution (Land & Environment Court)	Y	Y	Y	Y	Y	Y	Y
Order restricting use or development	Y	Y	Y	Y	Y	N	N

See below Table 4 for a key to the notes.

Table 4 Harm offences under the Act showing possible compliance responses – SHR listing

Possible compliance response	Demolish ⁶ and Damage or despoil ⁶	Move, damage or destroy relic ⁶	Excavate land to expose or move relic ⁶	Carry out development ⁶	Alter the building, work, relic or object ⁶	Display any notice or advertisement ⁶	Damage, destroy or remove any tree or vegetation ⁶	Failure to maintain and repair ⁷	Failure to comply with an order ⁸
Advisory letters	Y	Y	Y	Y	Y	Y	Y	Y	Y
Warning letter	Y	Y	Y	Y	Y	Y	Y	Y	Y
Stop work order (s 79C)	Y	Y	Y	Y	Y	Y	Y	N	N
Order restricting harm (s 136)	N	N	N	N	N	N	N	N	N
Order to maintain or repair	N	N	N	N	N	N	N	Y	N
Court order	Y	Y	Y	Y	Y	Y	Y	Y	Y
Prosecution (local court)	Y	Y	Y	Y	Y	Y	Y	Y	Y
Prosecution (Land & Environment Court)	Y	Y	Y	Y	Y	Y	Y	Y	Y
Order restricting use or development	Y	Y	Y	Y	Y	N	N	Y	Y

See below for a key to the notes.

Notes to Tables 2–4 (excerpts from the Act)

1. A person must not move, damage or destroy any historic shipwreck otherwise than in accordance with a historic shipwrecks permit. [Act s 51(1)]
2. A person must not disturb or excavate any land knowing or having reasonable cause to suspect that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed unless the disturbance or excavation is carried out in accordance with an excavation permit. [Act s 139(1)]
3. A person must not disturb or excavate any land on which the person has discovered or exposed a relic except in accordance with an excavation permit. [Act s 139(2)]
4. A person who is aware or believes that he or she has discovered or located a relic (in any circumstances, and whether or not the person has been issued with a permit) must:
 - a. within a reasonable time after he or she first becomes aware or believes that he or she has discovered or located that relic, notify the Heritage Council of the location of the relic, unless he or she believes on reasonable grounds that the Heritage Council is aware of the location of the relic, and
 - b. within the period required by the Heritage Council, furnish the Heritage Council with such information concerning the relic as the Heritage Council may reasonably require. [Act s 146]
5. Yes if listed on the SHR or subject to an interim heritage order.
6. When an interim heritage order or listing on the State Heritage Register applies to a place, building, work, relic, moveable object, precinct, or land, a person must not do any of the following things except in pursuance of an approval granted by the approval body under Subdivision 1 of Division 3:
 - a. demolish the building or work
 - b. damage or despoil the place, precinct or land, or any part of the place, precinct or land
 - c. move, damage or destroy the relic or moveable object
 - d. excavate any land for the purpose of exposing or moving the relic
 - e. carry out any development in relation to the land on which the building, work or relic is situated, the land that comprises the place, or land within the precinct
 - f. alter the building, work, relic or moveable object
 - g. display any notice or advertisement on the place, building, work, relic, moveable object or land, or in the precinct
 - h. damage or destroy any tree or other vegetation on or remove any tree or other vegetation from the place, precinct or land. [Act s 57(1)]
7. The owner of a building, work or relic listed or within a precinct listed on the State Heritage Register must ensure that the building, work or relic is maintained and repaired to standards that are not less than the minimum standards imposed by the regulations. [Act s 119(1)]

8. A person shall not fail to comply with an order made by the Minister under s 121(1) (b) or (c), or that order as altered or varied by the Minister under s 121(3), while that order is in force. [Act s 122]

More information

NSW Government guidelines, policies and legislation

- [Compliance policy 2018](#)
- [Heritage compliance policy](#)
- [Heritage Act 1977](#)
- [Heritage Regulation 2012](#)
- [Environmental Planning and Assessment Act 1979](#)
- [National Parks and Wildlife Act 1974](#)

Federal guidelines, policies and legislation

- [Environment Protection and Biodiversity Conservation Act 1999](#)
- [Protection of Moveable Cultural Heritage Act 1986](#)
- [Aboriginal and Torres Strait Islander Heritage Protection Act 1984](#)
- [Underwater Cultural Heritage \(Consequential and Transitional Provisions\) Act 2018](#)
- [Historic Shipwrecks Act 1976 \(superseded\)](#)