Recent amendments to the Aboriginal heritage provisions contained in the National Parks and Wildlife Act 1974 (NPW Act) introduced new offences for harming Aboriginal objects (see fact sheet 1).

The new strict liability offence for harming Aboriginal objects has a number of defences: compliance with the conditions of an Aboriginal Heritage Impact Permit (AHIP), due diligence (see fact sheet 2), or that an activity was a low impact activity listed in the National Parks and Wildlife Regulation 2009.

It is important to note that the due diligence and low impact activity defences do not apply to situations where you already know there is an Aboriginal object nor to Aboriginal Places.

The activities listed below are those considered less likely to harm Aboriginal objects. Some activities only qualify as low impact activities if they occur on disturbed land. Others may occur on either disturbed or undisturbed land. It is also important to note the defence does not apply to culturally modified trees such as scarred trees.

If your activity is included in this list you have a defence and you are not required to go through the due diligence process. The low impact activity defence does not authorise harm to known Aboriginal objects. If, in carrying out a listed activity, you become aware that your activity is (or is likely to) harm Aboriginal objects, you must immediately cease your activity, modify it so that harm is avoided, or apply for an AHIP before proceeding further.

The following low impact activities are prescribed in the Regulation as a defence against the strict liability offence.
Low impact activities on disturbed land * | Low impact activities on any land (disturbed or undisturbed)

**Infrastructure**

- Maintenance of existing infrastructure:
  - roads, fire and other trails and tracks
  - utilities such as above or below ground electrical infrastructure, or water or sewerage pipelines

**Farming and land management**

- Cropping and leaving paddocks fallow
- Construction of water storage works (such as farm dams and water tanks)
- Construction of fences
- Construction of irrigation infrastructure, groundwater bores or flood mitigation works
- Construction of erosion control or soil conservation works (such as contour banks)
- Construction and maintenance of groundwater monitoring bores

- Maintenance of the following existing infrastructure:
  - grain, fibre or fertiliser storage areas
  - water-storage works, irrigation infrastructure, groundwater bores or flood mitigation works
  - fences
  - erosion control or soil conservation works.

Vegetation removal:

- removal of isolated, dead or dying vegetation, but only if there is minimal disturbance to the surrounding ground surface.

Environmental rehabilitation work including:

- temporary silt fencing
- tree planting
- bush regeneration and weed removal.

Grazing of animals

**Mining exploration and surveying activities**

- Costeaning
- Bulk sampling
- Drilling
- Seismic surveying

Geological mapping

- Surface geological surveys
- Subsurface geophysical surveys

Sampling and coring using hand-held equipment

**Exempt and complying development**

- An activity that comprises exempt development or was the subject of a complying development certificate issued under the Environmental Planning and Assessment Act 1979

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* Disturbed land is defined in the Regulation as described below.

### What is disturbed land?

The Regulation defines disturbed land to mean land that has been the subject of a human activity that has changed the land’s surface, resulting in changes that remain clear and observable. It includes the following examples of activities which may disturb land:

- soil ploughing
- construction of rural infrastructure (such as dams and fences)
- construction of roads, trails and tracks (including fire trails and tracks and walking tracks)
- clearing of vegetation
- construction of buildings and erection of other structures
- construction and installation of utilities and other similar services (such as above or below ground electrical infrastructure, water or sewerage pipelines, stormwater drainage and other similar infrastructure)
- substantial grazing involving the construction of rural infrastructure
- construction of earthworks associated with anything referred to above.
### Low impact activities on disturbed land *

**Infrastructure**

- Maintenance of existing infrastructure:
  - roads, fire and other trails and tracks
  - utilities such as above or below ground electrical infrastructure, or water or sewerage pipelines

**Farming and land management**

- Cropping and leaving paddocks fallow
- Construction of water storage works (such as farm dams and water tanks)
- Construction of fences
- Construction of irrigation infrastructure, groundwater bores or flood mitigation works
- Construction of erosion control or soil conservation works (such as contour banks)
- Construction and maintenance of groundwater monitoring bores

- Maintenance of the following existing infrastructure:
  - grain, fibre or fertiliser storage areas
  - water-storage works, irrigation infrastructure, groundwater bores or flood mitigation works
  - fences
  - erosion control or soil conservation works.

**Vegetation removal:**

- removal of isolated, dead or dying vegetation, but only if there is minimal disturbance to the surrounding ground surface.

**Environmental rehabilitation work including:**

- temporary silt fencing
- tree planting
- bush regeneration and weed removal.

**Grazing of animals**

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### Low impact activities on any land (disturbed or undisturbed)

**Infrastructure**

- Maintenance of existing infrastructure:
  - roads, fire and other trails and tracks
  - utilities such as above or below ground electrical infrastructure, or water or sewerage pipelines

**Farming and land management**

- Cropping and leaving paddocks fallow
- Construction of water storage works (such as farm dams and water tanks)
- Construction of fences
- Construction of irrigation infrastructure, groundwater bores or flood mitigation works
- Construction of erosion control or soil conservation works (such as contour banks)
- Construction and maintenance of groundwater monitoring bores

- Maintenance of the following existing infrastructure:
  - grain, fibre or fertiliser storage areas
  - water-storage works, irrigation infrastructure, groundwater bores or flood mitigation works
  - fences
  - erosion control or soil conservation works.

**Vegetation removal:**

- removal of isolated, dead or dying vegetation, but only if there is minimal disturbance to the surrounding ground surface.

**Environmental rehabilitation work including:**

- temporary silt fencing
- tree planting
- bush regeneration and weed removal.

**Grazing of animals**

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### Exempt and complying development

- An activity that comprises exempt development or was the subject of a complying development certificate issued under the *Environmental Planning and Assessment Act 1979*

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