New provisions in the National Parks and Wildlife Act 1974 (NPW Act) relating to Aboriginal Heritage Impact Permits (AHIPs) commenced on 1 October 2010. An AHIP can be issued by the Director General of the Department of Environment, Climate Change and Water (DECCW) under Part 6 of the NPW Act where harm to an Aboriginal object or Place cannot be avoided. The changes allow for AHIPs to be transferred, varied, surrendered, revoked or suspended.

**How have AHIPs changed?**

Before the changes to the NPW Act, two permits were needed for the majority of activities involving Aboriginal objects and Aboriginal Places: one for the potential impact of the initial excavation work (Section 87), and a second for the impact on known (and likely) objects due to the activity itself, such as disturbance from earthworks (Section 90). A single permit can now be issued in relation to Aboriginal objects and Places, or types or classes of Aboriginal objects and Places (new Section 90).

The changes to the NPW Act are complemented by the Code of practice for archaeological investigation of Aboriginal objects in NSW (the Code) that sets out the requirements for archaeological investigation where an application for an AHIP is likely to be made (www.environment.nsw.gov.au/licences/archinvestigations.htm).

Any excavation that can be carried out in accordance with the Code will not need an AHIP. However, excavations that are not consistent with the Code, or in areas where the Code does not apply, will need an AHIP in order to have a defence to prosecution for any harm to Aboriginal objects or Places.

**How do I apply for an AHIP?**

Any person applying for an AHIP will need to:

- prepare a cultural heritage assessment report that meets the requirements in the National Parks and Wildlife Regulation 2009
- complete an Aboriginal community consultation process that meets the requirements in the Regulation as described in Aboriginal cultural heritage consultation requirements for proponents 2010 (www.environment.nsw.gov.au/licences/consultation.htm)
- complete the application form and send with supporting information and payment to the nearest DECCW regional office.
What if I have a permit that was granted before 1 October 2010?

An AHIP issued before 1 October 2010 automatically comes under the new system, and the permit holder must continue to comply with the conditions of the original AHIP. The new requirements will apply, including the new offences, defences and exemptions (see fact sheets 1 and 3).

Under the new system, an AHIP holder can apply to the Director General of DECCW to transfer, vary or surrender their AHIP as outlined below.

If I have prepared an application using the old form, can I still submit my application?

To submit your application you need to use the new application form.

Can AHIPs be transferred and what is the process?

A person can apply to transfer an AHIP to another person. The current AHIP holder must consent to the transfer in writing, which is done by signing the AHIP transfer application form, providing any required information and sending the completed form (signed by both the current and proposed AHIP holder) and payment to the nearest DECCW regional office.

Can AHIPs be varied?

A variation includes the substitution, omission or amendment of an existing condition, or attaching a new condition. An AHIP holder can apply to DECCW to vary their AHIP conditions at any time. DECCW can also vary an AHIP to correct typographical errors or to resolve an inconsistency between the conditions of the AHIP.

To apply for a variation the AHIP holder must complete the AHIP variation application form, provide any required information to support the application, and send the completed form and payment to the nearest DECCW regional office.

Depending on the variation, consultation may be required in accordance with Aboriginal cultural heritage consultation requirements for proponents 2010 (www.environment.nsw.gov.au/resources/cultureheritage/commconsultation/09781ACHconsultreq.pdf). If the changes amount to a new activity rather than variation of an existing activity, a new AHIP application may be required. For example, a new application will be required if the AHIP is to cover a new area of land.

Can I surrender my AHIP?

An AHIP holder can apply to DECCW to surrender their AHIP. There is no refund of fees where an AHIP is surrendered. Since an AHIP is a defence to prosecution for certain offences under the NPW Act, an AHIP holder should consider surrendering their AHIP only when they have stopped all actions that might harm Aboriginal objects or Places.

DECCW can impose conditions on the surrender of an AHIP and it is an offence not to comply with those conditions. The conditions can include any that are attached to the AHIP before it was surrendered or new conditions. Surrender is only effective after it has been approved by DECCW.

The AHIP holder must fill in the AHIP surrender application form, provide any required information and send the completed form and payment to the nearest DECCW regional office.

Can an AHIP be suspended or revoked?

Situations where DECCW may suspend or revoke an AHIP include where:

• the holder of the AHIP has obtained the AHIP improperly
• conditions of the AHIP have been contravened
• actions under the AHIP have been completed.

DECCW will not suspend or revoke an AHIP without first notifying the AHIP holder that it intends to do so and the reasons why, inviting them to provide reasons why the AHIP should not be suspended or revoked and considering the objections given by the AHIP holder.

DECCW can impose conditions on an AHIP suspension or revocation which must be complied with. They can include conditions that the AHIP was subject to before it was suspended or revoked, or new conditions. Fees are not refundable on the suspension or revocation of an AHIP.

What happens if a condition is not complied with?

If a condition of an AHIP is not complied with by any person the AHIP holder is guilty of an offence. Similarly, if a condition of an AHIP surrender, suspension or revocation is not followed by any person the AHIP holder is guilty of an offence (see fact sheet 3).

When is an AHIP a defence?

Under the NPW Act an AHIP can be offered as a defence to prosecution for harming Aboriginal objects or Places. The AHIP is a defence provided that both:

• the harm was authorised by the AHIP
• the conditions of the AHIP were not contravened.

How long does DECCW take to determine an application?

When an AHIP is granted, or a change is made to an existing AHIP, DECCW will endeavour to process the application within 60 days and notify the applicant of its decision.

DECCW can request further information in writing to support an application; in this case the processing time is stopped until the information is provided.

An application for which DECCW does not make a determination within 60 days is deemed to be refused, which means that the applicant has the right to challenge the decision in the Land and Environment Court. However, DECCW can continue to process the application after 60 days and grant or refuse the AHIP application. Any questions regarding processing of an application should be directed to DECCW.

What if I am not satisfied with a decision?

A person who has applied for an AHIP, has an AHIP or used to have an AHIP can appeal a decision made by DECCW within 21 days. The types of decisions that can be appealed are a decision to refuse a permit, a decision about a condition, or a decision to suspend or revoke a permit. All appeals are dealt with by the Land and Environment Court.
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