Agreement in Principle

Mr FRANK SARTOR (Rockdale—Minister for Climate Change and the Environment, and Minister Assisting the Minister for Health (Cancer)) [10.07 a.m.]: I move:

That this bill be now agreed to in principle.

The amendments presented in the National Parks and Wildlife Amendment Bill 2010 are designed to improve the enforcement and operation of the National Parks and Wildlife Act 1974 and related legislation administered by the Department of Environment, Climate Change and Water. The amendments relate to Aboriginal cultural heritage regulation, management of Aboriginal owned parks, reserve management, wildlife licensing and improvements to the enforceability of this legislation. The Aboriginal cultural heritage amendments are the more significant amendments in the bill. These amendments offer the first steps in the reform and modernisation of Aboriginal cultural heritage regulation in New South Wales, which have remained largely unchanged for more than 30 years.

The Government has committed to a broad reform process and will consider new stand-alone legislation in New South Wales to protect Aboriginal cultural heritage. The proposal for new stand-alone legislation will be developed by a working party comprised of representatives from both government and community groups, within a two-year period. It is important that we move to stand-alone legislation to protect Aboriginal heritage and to remove it from what is really an Act more concerned about the protection of flora and fauna in our national parks. In the meantime, these amendments are an important first step to address enforceability issues and to bring the offences and penalties relating to Aboriginal cultural heritage in line with other environment protection legislation.

The bill introduces a new two-tiered system for Aboriginal cultural heritage penalties. The first tier of penalties is for the two most serious offences where a person knowingly harms or desecrates an Aboriginal object or harms or desecrates an Aboriginal place. The new increased penalties for tier one offences will address instances such as that which occurred during a recent prosecution in the Land and Environment Court. The defendants pleaded guilty to deliberately damaging a significant Aboriginal midden on their property. Prior to damaging the midden the defendants rang the local National Parks office to find out the maximum fine for knowingly damaging Aboriginal objects. When they found out how low the fine was they decided to blatantly break the law by relocating the midden and then commenced development work at the site.

While the defendants pleaded guilty and were convicted and fined, each defendant was fined only $400. In sentencing, the Land and Environment Court noted that the maximum fine for the offence was only $5,500 for an individual, which was much lower than other environmental offences that can attract fines of up to $5 million. The court took this as a signal that Aboriginal cultural heritage offences are considered by Parliament to be less serious than other environmental offences. This legislation redresses this historic anomaly in our laws and brings them more in line with other States, such as Queensland and Victoria, where the maximum penalties for harming Aboriginal cultural heritage can be up to $1 million for corporations.

The second tier of offences that attracts a lower penalty imposes strict liability. For these offences, the prosecutor is only required to prove the act of harm; there is no requirement to prove knowledge or intent. The main defence for the strict liability harm Aboriginal object offence is due diligence. Due diligence involves the taking of reasonable and practicable measures to determine whether an activity will harm Aboriginal objects and whether an application for a permit should be sought. Maximum penalties apply for offences by individuals where the offence is committed in aggravated circumstances. This is defined as a second or subsequent offence or where a person has acted for financial gain. Lower penalties—for individuals only—will apply where there are no aggravating circumstances.

The Department of Environment, Climate Change and Water, together with an interagency working group, has developed a due diligence code of practice in order to provide detailed guidance on the steps people should take in the due diligence process. Industry-specific codes of practice that deal with due diligence for Aboriginal cultural heritage can be considered for adoption under the regulation and will also confer a due diligence defence. The due diligence defence does not apply to the strict liability offence of harm to an Aboriginal place as Aboriginal places are culturally significant sites which are publicly notified through the *Government Gazette*, the Department of Environment, Climate Change and Water website, and signage at the location.

In New South Wales there are presently over 60 declared Aboriginal places which are assessed for their special cultural significance to Aboriginal people before declaration by the Minister and protected under the National Parks and Wildlife Act 1974. Appropriate exemptions and defences for emergencies, bush fire hazard reduction work, the carrying out of Aboriginal cultural activities, and low impact activities have also been included in the bill and proposed regulations.

In addition to the offences and penalties amendments, the bill contains amendments to provide greater clarity

and certainty to applicants for Aboriginal cultural heritage impact permits. A single, more flexible Aboriginal heritage impact permit will replace the current dual permit system. There will no longer be a requirement to obtain a permit when surveying for Aboriginal objects if the activity is undertaken in accordance with an archaeological code to be prescribed by the regulations. These new procedures will reduce the red tape associated with the management of Aboriginal cultural heritage. There will now be clear and definite heads of consideration for the processing of Aboriginal heritage impact permit applications. This will provide applicants with more certainty as to how their application will be assessed.

Provisions for the transfer, variation, suspension, revocation and surrender of permits have also been included. Consultation requirements with Aboriginal people relating to permit applications will now be statutory requirements prescribed by the regulation. This will give certainty to both applicants for permits and Aboriginal communities about the consultation process. The existing policy guideline has recently been updated and it further explains these regulation requirements.

The proposed Aboriginal heritage amendments in this bill will deliver important wins for business in red tape reduction through a streamlined and flexible permit process that will reduce cost and save time. Amendments are proposed to assist the operational efficiency and effectiveness of Aboriginal-owned parks. In New South Wales, around one-third of the parks estate is subject to formal joint management arrangements with Aboriginal people. One very innovative type of joint management involves the nine parks that have been handed back to Aboriginal owners and leased to the Government for management as a reserve under part 4A of the National Parks and Wildlife Act 1974.

In order to continue the success of these part 4A parks, machinery amendments are required to provide clarity around issues relating to constitution and procedure of boards of management, lease variation, exclusion from liability for board members acting in good faith, and the application of plans of management for the reserve. Another important amendment relating to part 4A reserves will be changes that allow for a park of a different reserve category to be added to an existing part 4A park. This will ensure that the most appropriate reserve category can be designated for the additional land.

The bill also contains a number of provisions relating to the administration of wildlife management and licensing under the National Parks and Wildlife Act 1974. Amendments have been included to clarify directions that can be given in relation to protected fauna. There is a proposed new offence for the sale of untagged, protected native plants. The bill also allows the Department of Environment, Climate Change and Water to recover costs incurred in providing public health and building services in national parks such as Kosciuszko National Park. Such charges will be at similar levels to local government charges. Charges will be levied on commercial operators within the park only in order to recover the department's costs for municipal and associated services. The charges will not affect park entry fees.

The bill also includes minor amendments relating to the adjustment of road boundaries in parks. These amendments are required to improve the management and administrative arrangements relating to roads and boundary adjustments in national parks and to remove ambiguity in the current legislation. The proposed amendments will provide for the adjustment of park boundaries that adjoin public roads so as to align the boundary on paper with the actual roads as surveyed on the ground. The amendments will enable the Minister for Climate Change and the Environment to use gazettal notices to include within the park the land removed from the road corridor on paper and then exclude from the park the land that becomes part of the road corridor. These road adjustments will be vested with the same road authority that currently manages the road.

The bill also includes minor amendments to the wildlife management provisions including streamlining the licensing requirements for kangaroo chillers, the removal of defunct aviary registration certificates, extending the duration of directions relating to protected fauna from 24 hours to 28 days, and requiring tags for protected flora to stay with the plant throughout the supply chain. The National Parks and Wildlife Act 1974 contains a wide range of provisions for the management of national parks and other reserves, and for wildlife management and the conservation of threatened species and Aboriginal heritage. The proposals in the bill bring the compliance and enforcement of these provisions into line with existing and more modern provisions, such as those contained in the Protection of the Environment Operations Act 1997.

Proposed amendments include introducing remediation directions to repair damage to reserved lands, threatened species, endangered ecological communities or their habitats, Aboriginal objects and Aboriginal places; strengthening the effectiveness of interim protection orders; and extending the statute of limitations period to two years from when an offence came to the attention of an authorised officer, consistent with other compliance regimes. The remediation direction power will allow measures to be taken soon after an offence occurs, rather than under a court order as part of a prosecution. This will allow for quicker remediation that will allow habitats to regenerate and prevent further degradation such as weed infestation. The proposed amendments will streamline the administration of legislation, reduce red tape, provide consistency with similar environmental legislation, and improve regulatory effectiveness. I commend the bill to the House.

For the information of members, I table the consultation draft of the National Parks and Wildlife Regulation 2010 and the revised consultation draft of the document entitled "Due Diligence Code of Practice for the Protection of

Aboriginal Objects in NSW".

Documents tabled.

Copies of these documents will be available from the Legislative Assembly Procedure Office from today. There will be the opportunity for additional targeted consultation with key stakeholders on the draft regulation and draft code prior to the bill being debated. If there are changes to these documents I will update the Parliament.