Second Reading

The Hon. MICHAEL VEITCH (Parliamentary Secretary) [8.24 p.m.], on behalf of the Hon. John Robertson: I move:

That this bill be now read a second time.

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, the 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 has remained largely unchanged for more than 30 years.

The Government has announced a broad reform process and consideration of new standalone legislation in New South Wales to protect Aboriginal cultural heritage. The proposal for new standalone legislation will be developed within a two-year period by a working party comprised of representatives from both government and community groups. In the meantime, the bill's amendments are an important first step to address enforceability issues and 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 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 it was they decided to blatantly break the law by relocating the midden and they then commenced development work on 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 for other environmental offences, which 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, which attracts a lower penalty, imposes strict liability. For these offences, the prosecutor is required only 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 that 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 that 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 70 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, bushfire 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 costs and save time. Amendments are proposed to assist the operational efficiency and effectiveness of Aboriginal-owned parks. In New South Wales, about one-third of the parks estate is subject to formal joint management arrangements with Aboriginal people. One very innovative type of joint management are 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 Aboriginal-owned 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 bill provides 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. These 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 makes minor amendments to the wildlife management provisions including streamlining the licensing requirements for kangaroo chillers, 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. The bill also introduces remediation directions to repair damage to reserved lands, threatened species, endangered ecological communities or their habitats, Aboriginal objects and Aboriginal places. It strengthens the effectiveness of interim protection orders and extends the statute of limitations period to two years from when an offence came to the attention of an authorised officer. This is 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 bill will streamline the administration of legislation, reduce red tape, provide consistency with similar environmental legislation, and improve regulatory effectiveness.

I will now focus on the issues that have emerged since debate on this bill in the other place. As a result of the continuing consultations with Aboriginal and other stakeholders, the Government will propose six further amendments to the bill in this place. The Government will propose a further amendment to the bill relating to requirements for consultation on any proposed regulations that seek to include or exclude certain matters from the definition of "harm" to Aboriginal objects and places. The Government has agreed to this amendment now also requiring the notification and public exhibition of any such regulations, and consultation on them with the Aboriginal Cultural Heritage Advisory Committee prior to their being made. The Government will also propose a

further amendment to clarify the reference in the current bill to "financial gain" as part of the "circumstances of aggravation" relating to Aboriginal heritage offences. This amendment replaces the term "financial gain" with that of "commercial activity" to distinguish commercial activities and their consequences from the non-commercial activities of individuals.

In consultation on the bill since it was debated in the other place, the Government has also responded to concerns from some stakeholders that the power in the bill to provide additional defences to Aboriginal heritage offences is seen by them as being too wide. While the Government considers that flexibility is needed to enable workable solutions to be found to any issues that may arise during implementation of the new Aboriginal heritage offence provisions, it now proposes an amendment that limits the power to prescribe additional defences by regulation. The Government agrees to limit any such additional defences to only low-impact acts or omissions, and to retain the requirement for consultation on any changes by regulation to those activities with the Aboriginal Cultural Heritage Advisory Committee.

The Government will also propose a further amendment relating to the minimum standards proposed for codes of practice that may be prepared for certain activities or industries. The Government has now agreed that minimum standards should be in place before new codes of practice are adopted by the regulations. This is subject to a further amendment proposed by the Government for a savings provision that allows that the minimum standards do not apply to two existing codes that have been developed for private forestry operations. This is so the current codes relating to private native forestry and to the establishment of plantations can continue for the time being in their current form. These codes have taken considerable time to negotiate with the forest industries sector. It is important to note here that these codes will then be subject to the new minimum standards requirements when they are revised as part of their respective statutory reviews. The Government is committed to the further upgrading of these codes over time so that the due diligence standards as now provided for in the bill can be progressively maintained. Finally, the Government will also propose an amendment to the bill to allow the removal of unnecessary regulation-making powers in the Lord Howe Island Act. This was an issue raised in debate on the bill in the other place, and it is rectified by this further proposed amendment. I commend the bill to the House.