

National Parks and Wildlife Amendment Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *National Parks and Wildlife Act 1974* (“the Principal Act”):

- (a) to include a provision stating the objects of the Act, and
- (b) to remove the distinction between land reserved and dedicated under the Act (all such land will in future be reserved), and
- (c) to standardise the processes for the reservation of different categories of land (land will now be reserved by the Governor by notice published in the Gazette), and
- (d) to specify management principles that are to apply to each type of reserved land, and
- (e) to standardise provisions relating to the preparation and public exhibition of plans of management, and
- (f) to move provisions relating to state game reserves, wildlife districts and protected archaeological areas as those provisions are no longer used, and
- (g) to remove provisions relating to wildlife management areas, and
- (h) to rename state recreation areas as state conservation areas, and
- (i) to require the concurrence of certain Ministers to the reservation or classification of land in certain categories under the Act, and
- (j) to remove provisions enabling the declaration of wilderness areas and define wilderness area as land reserved under the Act and declared to be a wilderness area under the *Wilderness Act 1987*, and
- (k) to rename wild and scenic rivers as wild rivers, and
- (l) to rename relics as Aboriginal objects, and
- (m) to enable the Minister to administer certain interests relating to land reserved under the Act, and
- (n) to expand the range of permissible uses for which existing buildings, and modified natural areas, in certain reserves can be leased or licensed subject to specified requirements, and
- (o) to enable the granting of easements, rights of way or licences to enable access to certain landlocked land, and
- (p) to alter provisions relating to the Advisory Council and advisory committees, and
- (q) to enable the licensing of the cultivation of protected native plants (including threatened species) and the picking of cultivated plants in accordance with flora management plans, and
- (r) to make changes to various offence provisions in the Act and to increase the level of penalties for various offences, and
- (s) to protect certain sensitive information relating to the location of threatened species, populations or ecological communities and Aboriginal objects and places, and
- (t) to make other miscellaneous amendments.

The Bill also makes related amendments to the *Forestry and National Park Estate Act 1998*, the *Freedom of Information Act 1989* and the *National Park Estate (Southern Region Reservations) Act 2000*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *National Parks and Wildlife Act 1974* set out in Schedules 1–5.

Clause 4 is a formal provision giving effect to the amendments to the *Forestry and National*

Park Estate Act 1998, the Freedom of Information Act 1989 and the National Park Estate (Southern Region Reservations) Act 2000 set out in Schedule 6.

Schedule 1 Amendment of National Parks and Wildlife Act 1974 relating to classification and management of land

Part 1 Principal amendments

Reservation of land

Currently under the Principal Act, land within national parks, historic sites, regional parks and state recreation areas is “reserved” and land within nature reserves, karst conservation reserves or Aboriginal areas is “dedicated”. **Schedule 1 [23]** (proposed Division 1 of Part 4) removes the distinction between reserved and dedicated land and provides for all proposed such classifications of land to be reserved under the Act. The Part also standardises the processes for the reservation of land by requiring all such classifications of land to be effected by the Governor by notice published in the Gazette. (At present, some land is reserved or dedicated by proclamation of the Governor and some by the Minister by notice published in the Gazette.)

All the existing limitations over reservation of particular classifications of land and disallowance and revocation provisions have been retained and will continue to apply to the new reservation process.

The following modifications have been made to the process for reservation:

- (a) the Governor is not to reserve Crown-timber lands under the Principal Act, and the Minister is not to enter into a conservation agreement in relation to such land, without the concurrence of the Minister administering the *Forestry Act 1916*,
- (b) the Minister is to review the status of land reserved as a state conservation area every 5 years (**Schedule 1 [27]**, proposed section 47M),
- (c) the Governor will be able to reserve land within a state conservation area as a national park or nature reserve, but only with the concurrence of the Minister administering the mining legislation and not while there is a mining interest in force with the respect to the land (**Schedule 1 [26]** and **[27]**),
- (d) the Director-General will only be able to declare a river or part of a river to be a wild river with the concurrence of the Minister administering the *Water Management Act 2000* and the Minister administering the *Mining Act 1992* (**Schedule 1 [37]**) if the declaration will impact on the carrying out of functions under those Acts.

Schedule 1 [20]–[22] contain amendments to the functions of the Director-General of National Parks and Wildlife and the functions of the National Parks and Wildlife Service to reflect the changes to the reservation and management of land under the Principal Act.

Management principles and plans of management

Schedule 1 [23] (proposed Division 2 of Part 4) specifies management principles for each of the categories of reserved land.

Schedule 1 [51] specifies the matters to be taken into account when preparing plans of management for various categories of land managed under the Principal Act and deals with the content of those plans (proposed section 72AA).

Schedule 1 [53] inserts new provisions into the Principal Act relating to the public exhibition (proposed section 73A) and adoption, amendment and cancellation of all plans of management (proposed section 73B). This will standardise the existing processes relating to plans of management. The persons or bodies who or which currently have responsibility for preparing plans of management for different categories of land are not changed nor are the requirements to consult, or obtain the consent of, specific persons or agencies. (**Schedule 1 [49]** proposed definition of *responsible authority*).

Schedule 1 [53] (proposed section 73C) enables the Minister, at the request of a person or body responsible for preparing a plan of management, to make minor alterations to the plan

without the need for public consultation, but only after considering any comments made by the appropriate advisory committee.

Schedule 1 [5], [54] and [55] extend the current requirements relating to plans of management for submerged lands to the intertidal zone, defined as the area between mean high water mark and mean low water mark.

Schedule 1 [49], [50] and [52] contain related amendments.

Changes to classifications of land

Schedule 1 [23] (proposed section 30A) lists the different classifications of land reservations under the Principal Act. There is a classification of “state conservation area” that has been included which replaces the existing classification of state recreation area.

Schedule 1 [30] removes provisions relating to the dedication of state game reserves. Those provisions are not currently used.

Schedule 1 [34] and [35] remove provisions relating to the declaration of wilderness areas. All wilderness areas will now be declared under the *Wilderness Act 1987*.

Schedule 1 [36] provides that rivers or parts of rivers will now be declared to be wild rivers rather than, as at present, wild and scenic rivers.

Schedule 1 [39] removes provisions relating to the declaration of protected archaeological areas. Those provisions are not currently used.

Schedule 1 [41] removes provisions relating to wildlife districts. Those provisions are not currently used.

Schedule 1 [42] removes provisions relating to wildlife management areas.

Schedule 1 [43]–[47] provide that conservation agreements may be entered into by the Minister with public authorities having control over Crown lands or lands of the Crown.

Aboriginal objects

Schedule 1 [1] defines an Aboriginal object. This term will replace the term “relic” in the Principal Act. **Schedule 1 [11]** removes the current definition of relic.

Leases, licences, easements and other interests affecting reserved land

Schedule 1 [56] provides that the Minister may grant a lease of land within a national park, historic site, state conservation area, regional park or karst conservation reserve (other than Aboriginal land) to enable the adaptive reuse of an existing building or structure for any purpose. The Minister may grant a licence of land within one of those reserves for any purpose if it is a modified natural area and any individual licence does not exceed 7 consecutive days.

Schedule 1 [2] contains a definition of adaptive reuse and **Schedule 1 [8]** contains a definition of modified natural area. (The amendments will overcome restrictions arising from certain court decisions including *Packham v Minister for Environment* (1993) 31 NSWLR 65.)

Such a lease or licence may only be granted if the purposes for which it is granted and the land and buildings in respect of which it is granted are identified in the relevant plan of management for the land. In the case of leases for more than 5 years (including any option to renew), the proposal must be advertised for public comment. The Minister is to have regard to conservation and heritage values when determining to grant such a lease or licence.

Schedule 1 [57] provides that the Minister, in certain circumstances, may grant an easement, right of way or licence over land reserved under the Principal Act to enable access to land completely or partially surrounded by the reserve.

Schedule 1 [58] (proposed section 187) enables the Minister to take over the administration of certain existing interests under the *Forestry Act 1916*, the *Crown Lands Act 1989*, the *Crown Lands (Continued Tenures) Act 1989* or the *Western Lands Act 1901*.

Schedule 1 [58] (proposed section 188) enables the Minister to grant a new lease or licence under the Principal Act to replace certain authorisations in force under the *Forestry Act 1916*, the *Crown Lands Act 1989*, the *Crown Lands (Continued Tenures) Act 1989* or the *Western Lands Act 1901* for the purpose of enabling the continued operation of broadcasting or telecommunications facilities. Such a lease or licence may also be granted in respect of such facilities lawfully constructed under Commonwealth legislation.

Definitions and other related amendments

Schedule 1 [3], [4], [6], [7], [9], [10], [12]–[19] amend the definition provisions in the Principal

Act in relation to the amendments detailed above.

Schedule 1 [24], [25], [28], [29], [31]–[33], [38], [40], [43] and [48] contain other related amendments.

Part 2 Consequential amendments

Part 2 of **Schedule 1** contains amendments consequential to those amendments made by Part 1.

Schedule 2 Amendment of National Parks and Wildlife Act 1974 relating to Advisory Council and advisory committees

Schedule 2 [2] changes the functions of the National Parks and Wildlife Advisory Council. **Schedule 2** [5] changes the membership of the Council so that it will now consist of 17 members appointed by the Minister and having specified qualifications. **Schedule 2** [9] provides that the Minister may appoint a Chairperson and Deputy Chairperson of the Council from a panel of members nominated by the Council. **Schedule 2** [12] changes the term of office of members of the Council from 5 years to 4 years. **Schedule 2** [1], [6]–[8] and [10] contain consequential amendments.

Schedule 2 [3] provides for the Director-General to divide the State into administrative regions and for the constitution of an advisory committee for each administrative region. Advisory committees can also be constituted for other specific purposes. The functions of advisory committees are specified. **Schedule 2** [11] and [12] amend provisions dealing with the composition of advisory committees and the term of office of members.

Schedule 2 [4] removes provisions dealing with the Aboriginal Cultural Heritage (Interim) Advisory Committee and provides instead for the constitution and functions of an Aboriginal Cultural Heritage Advisory Committee. **Schedule 2** [13]–[18] contain consequential amendments.

Schedule 3 Amendment of National Parks and Wildlife Act 1974 relating to licensing and offences

Destruction of Aboriginal objects and places and heritage impact permits

Schedule 3 [2] amends section 90 of the Principal Act which contains an offence of knowingly destroying, defacing or damaging Aboriginal objects and Aboriginal places without the consent of the Director-General of National Parks and Wildlife. The element of knowledge will be removed from the offence and a defence relating to the taking of reasonable precautions included.

Schedule 3 [1] and [3]–[8] rename consents granted by the Director-General under section 90 of the Principal Act that allow a person to destroy, damage and otherwise interfere with Aboriginal objects and places to heritage impact permits. Such permits may not be issued in respect of Aboriginal objects and Aboriginal places listed on the State Heritage Register without the consent of the Director of the Heritage Office.

Schedule 3 [9] enables a court to direct a person to mitigate damage to or restore an Aboriginal object or an Aboriginal place in appropriate circumstances when finding the person guilty of an offence referred to in section 90 of the Principal Act.

Stop work orders and interim protection orders

Schedule 3 [10] and [11] extend the current provisions relating to the issuing of stop work orders so as to enable them to be issued in relation to Aboriginal objects and Aboriginal places and to other items of cultural heritage situated on land reserved under the Principal Act. An offence of failing to comply with such orders is included.

Schedule 3 [12] expands the class of persons that must comply with the interim protection orders and increases the penalties for non-compliance.

Offences, penalties and proceedings for offences

Schedule 3 [13], [14], [20]–[33], [38], [39], [41] and [42] increase the penalties for most

offences under the Principal Act and include additional defences for some of those offences. **Schedule 3 [44]** and **[45]** contain consequential amendments.

Schedule 3 [16] omits an offence of possessing more than 19 birds that are protected fauna without appropriate authorisation. Section 101 of the Principal Act remains unamended and contains an offence of buying, selling or having possession of protected fauna (that are not exempt from the operation of the section) without appropriate authorisation.

Schedule 3 [43] provides that directors and other persons concerned in the management of corporations that commit offences against the Principal Act or the regulations are taken to be guilty of those offences unless they can show that they did not know of the commission of the offences or they were not in a position of influence or, if they were, that they tried to prevent the offence.

Licences under Forestry Act 1916

Schedule 3 [19] varies the restrictions on the issue of certain licences under the *Forestry Act 1916* for the removal of protected native plants and forest materials from State forests, timber reserves or Crown land.

Licensing of picking, growing, import or export of certain plants

Schedule 3 [34] provides that an authorised officer may only issue a licence authorising the picking of a plant of a threatened species if the plant has been cultivated in accordance with a licence issued under the Principal Act.

Schedule 3 [35] removes a reference that enables licences to be issued to grow plants of any threatened species. Such licences will only be able to be issued in respect of threatened species of plants that are listed under the Principal Act as protected native plants.

Schedule 3 [36] (proposed section 132A) enables an authorised officer to issue an import or export licence to import or export protected native plants into or out of the State.

Schedule 3 [17] and **[36]** enable licences issued under the Principal Act for the picking, growing, import and export of plants to be issued for different classes of plants. **Schedule 3 [46]** substitutes Schedule 13 which specifies protected native plants in order to divide the Schedule into different classes of plants and to make amendments to the current list of protected native plants.

Schedule 3 [37] makes it a condition of a licence to pick a protected native plant in the wild that it be carried out in accordance with any relevant flora plan of management in force under the Principal Act. **Schedule 3 [18]** enables the Director-General of National Parks and Wildlife to prepare flora plans of management.

Additional offences relating to reserved land and fauna

Schedule 3 [15] enables an authorised officer to give a direction to a person to stop feeding protected fauna or to stop an activity that is causing or likely to cause distress to protected fauna. Certain circumstances are specified in which a direction may not be issued. It is an offence to fail to comply with such a direction.

Schedule 3 [40] creates an offence of removing water (except in certain circumstances), or removing or damaging vegetation, rock, soil and the like, or damaging objects or places of cultural value on land reserved or acquired under the Principal Act. A court convicting a person of such an offence may order the damage to be mitigated or restoration work to be carried out.

Schedule 4 Miscellaneous amendments to National Parks and Wildlife Act 1974

Schedule 4 [1] includes a provision stating the objects of the Principal Act. **Schedule 4 [2]** contains a consequential amendment.

Schedule 4 [3]–[7] enable payments into and out of the National Parks and Wildlife Fund established under the Principal Act for the purposes of the management of land by the National Parks and Wildlife Reserve Trust.

Schedule 4 [8] provides that the Director-General of National Parks and Wildlife may give notice to the Minister that specified documents in the possession of the National Parks and Wildlife Service relating to the location of threatened species, populations or ecological communities or Aboriginal objects, or the cultural values of an Aboriginal place or Aboriginal

object, should be withheld in the public interest. Before giving such a notice in relation to an Aboriginal place or Aboriginal object, the Director-General must consult with Aboriginal people who have an interest in the object or place. An amendment to Schedule 1 to the *Freedom of Information Act 1989* provides that such a notice is an exempt document for the purposes of that Act.

Schedule 4 [9] and [10] contain savings and transitional provisions.

Schedule 5 Amendments to National Parks and Wildlife Act 1974 by way of statute law revision

Schedule 5 contains amendments by way of statute law revision.

Schedule 6 Amendment of other Acts

Schedule 6.1 and **6.3** extend the operation of provisions in the *Forestry and National Park Estate Act 1998* and the *National Park Estate (Southern Region Reservations) Act 2000* to enable the Minister to take over the administration of certain existing interests under the *Crown Lands (Continued Tenures) Act 1989*. A validation is also included in relation to certain actions taken under the existing provisions.

Schedule 6.2 amends the *Freedom of Information Act 1989* to classify as exempt documents under that Act notices referred to in the amendment outlined in Schedule 4 [8] above.