



New South Wales

Wilderness Amendment (Private Property Rights) Bill 2000

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 *Wilderness Act 1987* in relation to wilderness proposals in order to preserve private property rights.

Under the Act as currently in force, when a person submits a proposal to the Director-General of National Parks and Wildlife that an area of land be identified as wilderness, declared a wilderness area or added to an existing wilderness area, the Director-General is obliged to notify only the owner of the land of any proposal received in relation to the land. The Director-General must consider the proposal and advise the Minister on the proposal within two years.

The amendments proposed by the Bill will modify the procedure the Director-General must follow when considering whether land should be identified as wilderness (whether in response to a proposal or by way of an investigation instigated by the Director-General). Before the Director-General considers or assesses a proposal, the consent of any owner, lessee, mortgagee or chargee of the

land, and of any person having the benefit of a positive covenant over it, will be required. These consents will lapse when two years have expired, so that if the land has not by then been identified as wilderness, new consents will be required.

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 the date of assent, except for section 4 and Schedule 2, which commence on 1 January 2001.

Clause 3 is a formal provision giving effect to the amendments to the *Wilderness Act 1987* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Wilderness Act 1987* set out in Schedule 2.

Schedule 1 Amendments

Consents

Schedule 1 [1] inserts a definition of *appropriate self-reliant recreation* into section 2 for the purposes of the Act. The expression is used in sections 6 (1) (c) and 9 (c) of the Act.

Schedule 1 [2], [3], [5] and [6] make amendments that require the consent of the owner, lessee, mortgagee or chargee of the land, and of any person having the benefit of a positive covenant over it, before the Director-General of National Parks and Wildlife:

- (a) considers a proposal for the identification of land as wilderness, for the declaration of land as a wilderness area or for the addition of land to existing wilderness areas, or
- (b) undertakes investigation of land to ascertain its suitability for those purposes, or
- (c) identifies an area of land as wilderness.

In addition, proposed section 5 (5) (inserted by Schedule 1 [3]) requires the Director-General to send to a party consenting to investigation of land, or a proposal in relation to land, a notice setting out the rights of that party to withhold consent to identification of the land as wilderness.

Time limits

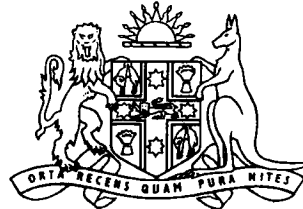
Schedule 1 [4] amends the Act to limit the time within which land, or a proposal in relation to land, can be investigated. The time limit starts when the Director-General first receives a proposal, or obtains the necessary consent to investigate the land for its suitability, and ends two years later. If a proposal had not been finally dealt with by the Director-General within the two-year period, the consent will again need to be obtained before further consideration of the proposal or investigation of the land can continue.

Transitional provisions

Schedule 1 [7] inserts into the Act a Schedule containing transitional provisions, including a provision to the effect that the two-year periods prescribed by section 5A that limit the time within which the consent under section 5 or 7 of a person having an interest in land remains in force will, in relation to investigations that have already commenced, begin at the commencement of the proposed Act.

Schedule 2 Further amendments

This Schedule provides for the repeal of sections 5 (1) (b) and (4), 5A (2) and 7. The effect is that, on and from 1 January 2001, the only proposals for identification of land as wilderness that the Act will require to be investigated will originate in the National Parks and Wildlife Service.



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New South Wales

Wilderness Amendment (Private Property Rights) Bill 2000

No. , 2000

A Bill for

An Act to amend the *Wilderness Act 1987* with respect to the procedure for wilderness proposals; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Wilderness Amendment (Private Property Rights) Act 2000</i> .	3 4
2 Commencement	5
(1) This Act commences on the date of assent, except as provided by subsection (2).	6 7
(2) Section 4 and Schedule 2 commence on 1 January 2001.	8
3 Amendment of Wilderness Act 1987 No 196	9
The <i>Wilderness Act 1987</i> is amended as set out in Schedule 1.	10
4 Further amendment of Wilderness Act 1987 No 196	11
The <i>Wilderness Act 1987</i> is further amended as set out in Schedule 2.	12

Schedule 1 Amendments

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(Section 3)

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[1] Section 2 Definitions

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Insert in alphabetical order in section 2 (1):

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appropriate self-reliant recreation means:

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(a) walking, or

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(b) horse riding, or

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(c) mountain bike riding, or

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(d) any other low-impact recreational activity that may be undertaken by individuals, or

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(e) any activity that is promoted by the Director as an educational activity, whether for individuals or organised groups, under section 5 (1) (c).

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[2] Section 2 (4)

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Insert after section 2 (3):

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(4) A reference in this Act to a person who has a relevant interest in any land is a reference to any of the following:

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(a) the owner, if:

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(i) the land is the subject of a conservation agreement under the *National Parks and Wildlife Act 1974*, or

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(ii) the land is owned by a person other than the Crown or a statutory authority,

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(b) the tenant or lessee, if the land is subject to a residential tenancy agreement or other lease,

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(c) the mortgagee or chargee, if the land is subject to a mortgage or charge,

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(d) a person entitled to the benefit of any positive covenant to which the land is subject.

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[3] Section 5 Functions of Director and Service	1
Insert after section 5 (2):	2
(3) The Director must not begin to investigate an area of land in accordance with subsection (1) (a) unless the Director has first obtained consent in writing, from each person who has a relevant interest in the land, to the investigation.	3 4 5 6
(4) The Director must not begin to consider or assess a proposal in accordance with subsection (1) (b) unless the proposal is accompanied by the consent required by section 7 (2).	7 8 9
(5) On receipt of a consent referred to in subsection (3) or (4), the Director is to send to the consenting person a statement in writing indicating the rights of that person under section 6 (3).	10 11 12
[4] Section 5A	13
Insert after section 5:	14
5A General time limit for creation of wilderness areas	15
(1) If land that the Director has investigated in accordance with section 5 (1) (a) has not been declared by the Minister under section 8 to be a wilderness area or part of a wilderness area within 2 years after obtaining the consent required by section 5 (3), further investigation cannot continue unless the consent required by section 5 (3) is again obtained.	16 17 18 19 20 21
(2) If land the subject of a proposal being considered and assessed by the Director in accordance with section 5 (1) (b) has not been declared by the Minister under section 8 to be a wilderness area or part of a wilderness area within 2 years after the proposal was made, the consideration and assessment of the proposal cannot continue unless the consent required by section 7 (2) is again provided.	22 23 24 25 26 27 28
[5] Section 6 Identification of wilderness	29
Insert after section 6 (2):	30
(3) The Director must not identify an area of land as wilderness without first obtaining the written consent of each person who has a relevant interest in the land.	31 32 33

[6] Section 7	1
Omit the section. Insert instead:	2
7 Wilderness proposals	3
(1) Any person, body or organisation (including a statutory authority) may submit to the Director a written proposal that a specified area of land:	4
(a) be identified as wilderness, or	5
(b) be declared to be a wilderness area, or	6
(c) be added to an existing wilderness area.	7
(2) The proposal must be accompanied by the written consent to the proposal of each person who has a relevant interest in the land.	8
(3) The Director must consider the proposal and must:	9
(a) if the proposal is that an area of land be identified as wilderness, identify the land as wilderness or reject the proposal, or	10
(b) if the proposal is that an area of land be declared to be a wilderness area or added to a wilderness area, advise the Minister in relation to the proposal.	11
[7] Schedule 1	12
Insert after section 30:	13
Schedule 1 Savings and transitional provisions	14
1 Provisions consequent on enactment of Wilderness Amendment (Private Property Rights) Act 2000	15
(1) In this clause, the <i>amending Act</i> means the <i>Wilderness Amendment (Private Property Rights) Act 2000</i> .	16
(2) The Director must not continue, after the commencement of the amending Act, to investigate an area of land in accordance with section 5 (1) (a) unless the Director has obtained the consents required by section 5 (3).	17
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Wilderness Amendment (Private Property Rights) Bill 2000

Schedule 1 Amendments

- (3) The Director must not continue, after the commencement of the amending Act, to consider or assess a proposal made before that commencement in accordance with section 5 (1) (b) unless the Director has obtained the consents required by section 5 (4). 1
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- (4) Section 5A (1) extends to apply to an investigation that commenced before the commencement of the amending Act, but so applies as though the 2-year period prescribed by that subsection began at the commencement of the amending Act. 5
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- (5) Section 5A (2) extends to apply to any consideration or assessment that commenced before the commencement of the amending Act, but so applies as though the 2-year period prescribed by that subsection began at the commencement of the amending Act. 9
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- (6) Section 6 (3) extends to land that had been investigated under section 5 (1) (a) or (b) before the commencement of the amending Act, but that has not been identified as wilderness before that commencement. 14
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Schedule 2 Further amendments

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(Section 4)

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[1] Section 5 Functions of Director and Service

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Omit section 5 (1) (b) and (4).

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[2] Section 5 (5)

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Omit “or (4)”.

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[3] Section 5A General time limit for creation of wilderness areas

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Omit section 5A (2).

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[4] Section 7 Wilderness proposals

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Omit the section.

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