



New South Wales

National Parks and Wildlife Amendment Bill 2021

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 Act*) and regulations made under the Act as follows—

- (a) to streamline processes for preparing plans of management for national parks and reserves,
- (b) to enable the Minister to approve priority conservation actions and visitor infrastructure projects that are not provided for or not consistent with a plan of management, in certain circumstances,
- (c) to enable the Minister to create biodiversity credits for management actions carried out on land reserved or acquired under the Act, which are taken to be biodiversity credits under the biodiversity offsets scheme established by the *Biodiversity Conservation Act 2016*, Part 6, Division 4, subject to the modification and exclusion of provisions of that Act for biodiversity credits created under the Act,
- (d) to enable the Minister, or for certain land, an Aboriginal Land Council, to create, acquire, hold, sell or otherwise deal with carbon sequestration rights in land reserved or acquired under the Act, if doing so is consistent with the objects of the Act,
- (e) to establish a corporate non-profit entity to receive tax deductible donations which can be applied to the conservation and management of national parks,
- (f) to provide for the identification of relevant conservation values when land is declared an asset of intergenerational significance,

- (g) to enable the location of land declared an asset of intergenerational significance, and other information in relation to that land, to be kept confidential when considered necessary for conservation purposes,
- (h) to provide for penalties for offences against land declared an asset of intergenerational significance,
- (i) to enable the use of digital images and data for compliance and enforcement actions relating to vehicles entering or using a park,
- (j) to provide for a power to make regulations about monitoring and reporting on the ecological health of parks.

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.

Schedule 1 Amendment of National Parks and Wildlife Act 1974 No 80

Schedule 1.1[1], [2], [3], [5], [6], [13], [33] and [36] update references to refer to the Secretary, persons employed in the Department and the Department of Planning, Industry and Environment consequent on administrative changes.

Schedule 1.1[4] defines *carbon sequestration right, committed land, deal, Department, DPC Secretary* and *Secretary*.

Schedule 1.1[7] makes a consequential amendment to reflect the repeal of the *Rural Fires Act 1997*, section 47(1)(d).

Schedule 1.1[8] updates references to refer to the Secretary and the Secretary of the Department of Premier and Cabinet consequent on administrative changes.

Schedule 1.1[9]–[12] remove redundant references to certain licences and a wildlife management area.

Schedule 1.1[15] inserts proposed sections 81AA and 81AB. Proposed section 81AA allows the Minister to approve conservation actions or infrastructure projects for visitor management or conservation on land in certain circumstances. Proposed section 81AB sets out the process by which the Minister may approve an action or project under proposed section 81AA. **Schedule 1.1[14]** makes a consequential amendment to provide that the requirement the Minister must not undertake operations in relation to lands to which an adopted plan of management relates does not prevail over a project or action approved under proposed section 81AA.

Schedule 1.1[16] inserts proposed Parts 5A and 5B. Proposed Part 5A provides for the creation of biodiversity credits for management actions carried out on land reserved or acquired under the Act, and for the credits to be acquired, held, retired, sold or otherwise dealt with or traded in under the biodiversity offsets scheme established under the *Biodiversity Conservation Act 2016*, Part 6. The Minister may create the credits in relation to proposed management actions that meet certain requirements, including that the actions are likely to deliver biodiversity outcomes that are greater than the outcomes from actions typically implemented on the land in the previous 5 years. A national parks biodiversity assessment report must be prepared by an accredited person in accordance with the biodiversity assessment method established under the *Biodiversity Conservation Act 2016*. The Minister may make a statement of commitment which sets out matters, including the number of biodiversity credits created for the land the subject of the statement of commitment.

Credits created under proposed Part 5A are taken to be biodiversity credits under the *Biodiversity Conservation Act 2016*, Part 6, subject to the exclusions and modifications set out in proposed Part

5A, Division 3. Regulations may make necessary modifications to the operation of a provision of the *Biodiversity Conservation Act 2016* and provide for matters that are dealt with by regulations made under that Act.

Proposed Part 5B defines *carbon sequestration* and *carbon sequestration right*. The Minister may create and deal with carbon sequestration rights in land acquired, reserved or dedicated under the Act, other than certain Aboriginal land. The Minister may also do anything incidental to or in connection with creating and dealing with carbon sequestration rights. The Minister may exercise the functions in relation to land only if the Minister is satisfied that exercising the functions is consistent with the objects of the Act and has consulted any trust or local council that has care, control and management of the land. Regulations may be made to prescribe other types of carbon sequestration, carbon sequestration rights or other functions or activities that the Minister may exercise or take in relation to carbon sequestration rights. **Schedule 1.1[26]** also allows for regulations to be made about dealings with carbon sequestration rights.

Schedule 1.1[17] updates references in Part 6 to refer to the Secretary of the Department of Premier and Cabinet consequent on administrative changes.

Schedule 1.1[18] inserts proposed Part 7, which establishes the National Parks and Wildlife Conservation Trust as a body corporate with the corporate name of the National Parks and Wildlife Conservation Trust of New South Wales. The Trust is a statutory body representing the Crown and is subject to the control and direction of the Minister, except in relation to payments from the Public Fund. A Board of the Trust is established for the purpose of supporting and promoting the protection and enhancement of certain lands through the use of gifts received by the Public Fund.

The functions of the Trust include establishing and maintaining the Public Fund, inviting and encouraging gifts of money and property to the Public Fund, using money and property received by the Fund to support and promote its object, assessing and analysing lands for potential acquisition by payments from the Public Fund and investing money held in the Public Fund. The Trust is exempt from the *Duties Act 1997* in relation to the acquisition, leasing and disposal of land by the Trust for the purposes of, or under, the Act. The Trust is required to comply with the matters set out in the *Income Tax Assessment Act 1997* of the Commonwealth in relation to its registration as an environmental organisation within the meaning of that Act.

Schedule 1.1[19]–[21] and [24] update provisions relating to payments into and out of the National Parks and Wildlife Fund (the *Fund*) to reflect the establishment of the proposed biodiversity credit and carbon sequestration schemes. Amounts paid into the Fund for the transfer or retirement of biodiversity credits, other than surplus amounts for the credits, must be applied to management actions required under the statement of commitment for the relevant land.

Schedule 1.1[22], [27] and [28] make typographical corrections.

Schedule 1.1[23] creates a regulation-making power to allow for payments to be made out of the Fund for costs, charges, expenses, money or fees prescribed by the regulations.

Schedule 1.1[25] inserts proposed Part 12A, which relocates and amends former section 188H. The proposed Part provides that the Minister may declare land to be an environmental or cultural asset of intergenerational significance. The declaration must set out the environmental and cultural values of the declared land and include a map of the land. However, if the Minister is satisfied the disclosure of certain information may place the land or its environmental and cultural values at risk, certain information or maps may be omitted from the declaration. The regulations may make provisions about action that may be taken for the management of declared land. It is an offence for a person to interfere with, damage, harm or disturb an environmental or cultural value of declared land. **Schedule 1.1[37]** makes a consequential amendment to omit section 188H.

Schedule 1.1[29] inserts a regulation-making power in relation to the development and implementation by the Secretary of a program for the monitoring and reporting of matters relating to the ecological health of parks. **Schedule 1.1[30]** makes clear that this power extends to

regulations about requirements relating to the design of the program, the implementation of the program, including a requirement that the program be implemented to the greatest extent practicable, and reporting on the outcomes of the program.

Schedule 1.1[31] provides that an offence for causing harm to an environmental or cultural value of declared land under proposed section 153I is an executive liability offence for which a director of a corporation that commits an offence and certain other individuals may be personally liable.

Schedule 1.1[32] omits a reference to the Secretary of the Department of Industry, Skills and Regional Development, consequent on administrative changes.

Schedule 1.1[34] and [35] enable the Secretary to authorise work to be carried out for the maintenance or improvement of an access road to which the *Forestry Revocation and National Park Reservation Act 1996*, section 9 applies, and enables the Minister to determine a width for a road to which that provision applies to be excluded from reservation under the Act by exclusion order.

Schedule 1.1[38] inserts proposed sections 197A and 197B. Proposed section 197A provides for the use of images from approved cameras in proceedings for offences relating to vehicles entering or using national parks and other land, including that certain matters are prima facie evidence for the proceedings. Proposed section 197B makes it an offence for a person who obtains information in the exercise of a function relating to the use or operation of an approved camera to copy, use or disclose the information except in specified circumstances, including disclosure to specified law enforcement officials.

Schedule 1.1[39] inserts savings and transitional provisions.

Schedule 1.2[1] defines *committed Part 4A land*.

Schedule 1.2[2]–[5] update the functions of the National Parks and Wildlife Advisory Council, regional advisory committees and the Karst Management Advisory Committee.

Schedule 1.2[6] inserts proposed section 71BFA, which allows an Aboriginal Land Council to create, acquire, hold, sell or otherwise deal with carbon sequestration rights in relation to reserved or dedicated lands vested in the Aboriginal Land Council. The Aboriginal Land Council may also do anything incidental to or in connection creating or dealing with carbon sequestration rights. The Aboriginal Land Council may exercise the functions in relation to land only if satisfied exercising the functions is consistent with the objects of the Act. The Aboriginal Land Council must also only exercise the functions in relation to land with the agreement of the board of management for the land. The Secretary may exercise the functions on behalf of the Aboriginal Land Council at the request of the Aboriginal Land Council. The regulations may prescribe other functions or activities that the Aboriginal Land Council may take in relation to carbon sequestration rights.

Schedule 1.2[7] amends section 73A to provide that the period within which representations must be made, in relation to a plan of management, is a period of not less than 28 days. The responsible authority for a plan of management must provide the plan and representations received in relation to the plan to the appropriate regional advisory committee. The responsible authority is also required to provide the plan to the Karst Management Advisory Committee if the plan relates to land that contains significant karst environments. After the period of time for making representations has passed, the appropriate regional advisory committee must consider the plan and provide advice to the responsible authority for land reserved or dedicated under Part 4A, or otherwise, to the Minister. **Schedule 1.2[10]** makes a consequential amendment.

Schedule 1.2[8] amends section 73B to provide for the actions the Minister may take in relation to a plan of management. **Schedule 1.2[9]** makes a consequential amendment.

Schedule 1.2[11] defines *appropriate Aboriginal Land Council* and *committed Part 4A land* for proposed Part 5A.

Schedule 1.2[13] inserts proposed section 82DA which provides that an Aboriginal Land Council may deal with biodiversity credits for management actions carried out on reserved or dedicated

lands vested in the Aboriginal Land Council. The Aboriginal Land Council may undertake actions incidental to or in connection with the dealings with the biodiversity credit. A function under the proposed section in relation to biodiversity credits may be carried out only with the agreement of the board of management for the land. The Secretary may exercise the functions on behalf of the Aboriginal Land Council, at the request of the Aboriginal Land Council.

Schedule 1.2[12] and [14]–[30] amend proposed Part 5A, to ensure biodiversity credits that relate to land reserved or dedicated under Part 4A that is the subject of a statement of commitment reflect the role of the Aboriginal Land Council as initial holders of the credit, and the role of the board of management for the land as the authority responsible for carrying out management actions in relation to biodiversity credits on the land.

Schedule 1.2[31] requires amounts paid from the Fund for biodiversity credits in relation to land reserved or dedicated under Part 4A to be paid to the board of management for the land.

Schedule 1.2[32] and [33] provide that an amount, including a surplus amount, received for the transfer or retirement of a biodiversity credit in relation to land reserved or dedicated under Part 4A must be applied to that land.

Schedule 1.2[34] inserts Part 3 into Schedule 1A. The proposed Part revokes certain dedications and reservations of State forests and Crown lands, and reserves the lands as the Gardens of Stone State Conservation Area, part of the Gardens of Stone National Park and part of the Wollemi National Park. The Part has effect despite provisions under the Act, the *Forestry Act 2012* and the *Crown Land Management Act 2016* providing for different procedures for revocation of dedicated or reserved land and for the reservation of land. Provision is made for an adjustment of description of the land in certain circumstances.

Schedule 2 Amendment of National Parks and Wildlife Regulation 2019

Schedule 2[1] and [3] remove the definitions of *Secretary*, *DPC Secretary* and *Department* from the *National Parks and Wildlife Regulation 2019 (the Regulation)* because the Bill inserts the definitions.

Schedule 2[2] inserts proposed Part 6A and 6B. Proposed Part 6A provides for the membership and procedure of the Board of the National Parks and Wildlife Conservation Trust established under proposed Part 7 of the Act, including the skills and experience required for persons to be appointed by the Minister. The procedures of the Board include procedures requiring the disclosure of a member's direct or indirect pecuniary interest in a matter considered by the Board that appears to raise a conflict of interest.

Proposed Part 6B applies provisions of the *Biodiversity Conservation Regulation 2017* relating to a public register of biodiversity credits with a modification that provides that a reference to a biodiversity stewardship site is taken to include a reference to committed land.

Schedule 2[4] and [5] update cross-references.

Schedule 2[6] makes a consequential amendment to the Regulation to reference the environmental or cultural values of land, consistent with the insertion of proposed Part 12A into the Act.

Schedule 2[7] replaces the word “diminish” in certain provisions with the phrase “put at risk”, consistent with proposed amendments to the Act.

Schedule 2[8] inserts proposed clause 87A to prescribe an offence under clause 10G as a *vehicle entry offence* within the meaning of the Act, proposed section 197A(3).

Schedule 3 Amendment of other Acts and instruments

Schedule 3.1[1] inserts a note into the *Biodiversity Conservation Act 2016*, Part 6 stating that biodiversity credits created under the Act are taken to be biodiversity credits under that Act.

Schedule 3.1[2] requires a register of biodiversity credits kept under the *Biodiversity Conservation Act 2016*, section 9.7 to include information relating to biodiversity credits taken to be biodiversity credits under the Act, Part 6.

Schedule 3.2[1] corrects a typographical error in the *Biodiversity Conservation Regulation 2017*.

Schedule 3.2[2] amends the *Biodiversity Conservation Regulation 2017* to require the public register of biodiversity credits to include the contact details of the National Parks and Wildlife Service for biodiversity credits created under the Act.

Schedule 3.2[3] and [4] amend the *Biodiversity Conservation Regulation 2017* to require that the public register of biodiversity credits includes the contact details of the appropriate Aboriginal Land Council, within the meaning of the Act, proposed Part 5A for biodiversity credits created under the Act.

Schedule 3.3 updates an amendment under the *Government Sector Finance Legislation (Repeal and Amendment) Act 2018* to reflect amendments made by the *Government Sector Finance Act 2018*, consequent on the repeal of the *Annual Reports (Statutory Bodies) Act 1984*.