

Explanatory note

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

Overview of Bill

The object of this Bill is to make amendments to the National Parks and Wildlife Act 1974 (the NPW Act) as follows:

- (a) to provide generally for opportunities for sustainable tourist use and enjoyment of lands reserved under the NPW Act (reserved lands),
- (b) to clarify and rationalise the provisions of the NPW Act dealing with the leasing and licensing of reserved land,
- (c) to provide that reserved land that is within a wilderness area may be licensed for use in certain limited circumstances,
- (d) to recategorise certain reserved land from its current reservation to another type of reservation,
- (e) to make other miscellaneous amendments.

This Bill also amends the Wilderness Act 1987 to provide that certain commercial activities may be undertaken in wilderness areas (such as bush walking, cycling, canyoning, cross country skiing and canoeing).

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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.

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

Amendments relating to sustainable visitor and tourist use and enjoyment of reserved lands

The NPW Act currently provides that reserved land is to be managed in accordance with principles set out in Division 2 of Part 4 of that Act. It is generally a management principle for all categories of reserved lands (other than Aboriginal areas and nature reserves) that there be provision for sustainable visitor use and enjoyment that is compatible with the conservation of the land's natural and cultural values. (For example, for the management of national parks, see section 30E (2) (e) of the NPW Act.)

Schedule 1 [4] amends various sections of the NPW Act that set out the management principles for the various categories of reserved land (other than Aboriginal areas and nature reserves) to clarify that the management principles for those lands includes the provision for sustainable tourist use and enjoyment of those lands.

Schedule 1 [1] amends section 5 (1) of the NPW Act to provide a definition of the term sustainable, where used in relation to visitor or tourist use and enjoyment of land, based on the principles of ecologically sustainable development. (Those principles (already defined in section 5 (1) of the Act) are described in section 6 (2) of the Protection of the Environment Administration Act 1991.)

Schedule 1 [5] inserts proposed section 30K (2) (g) and (h) into the NPW Act to provide for two additional management principles for land reserved under that Act as an Aboriginal area. The first being the provision for sustainable visitor or tourist use and enjoyment that is compatible with the Aboriginal area's natural and cultural values and the cultural values of the Aboriginal people. The second being provision for sustainable use (including adaptive reuse) of any buildings or structures or modified natural areas having regard to the Aboriginal area's natural and cultural values and the cultural values of the Aboriginal people.

Schedule 1 [2] amends various sections of the NPW Act to take account of the expanded management principles.

Amendments relating to leases and licences of reserved land

Schedule 1 [17] and [19] omit sections 151, 151AA and 151B of the NPW Act and insert instead proposed Division 1 (proposed section 150A), Division 2 (proposed sections 151–151E) and Division 3 (proposed sections 151F and 151G) into Part 12 of the NPW Act to clarify and rationalise the provisions of that Act dealing with the

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leasing and licensing of reserved land. (The remaining current sections of Part 12 of the NPW Act are renumbered where appropriate and also placed in proposed Division 3.)

Proposed section 150A contains definitions for the purposes of Part 12 of the NPW Act.

Proposed section 151 contains the general power of the Minister administering the NPW Act (the Minister) to lease or licence any land reserved under the NPW Act. The Minister must not grant a lease or licence of land reserved under Part 4A of the NPW Act (Aboriginal land) contrary to the terms of the lease of the land to the Minister under that Part.

Proposed section 151A sets out the purposes for which reserved land may be leased or licensed. In general, a lease or licence of reserved land (other than a nature reserve) may only be granted for certain specified general purposes, certain purposes related to the sustainable visitor or tourist use and enjoyment of reserved land or for the adaptive reuse of an existing building or structure or the use of a modified natural area. (Currently section 151B of the NPW Act provides for leases of land for such adaptive reuse purposes and licensing the occupation and use of modified natural areas.) The proposed section also provides that a lease or licence of land within a nature reserve may only be granted for a purpose that is consistent with the relevant management principles for nature reserves set out in section 30J of the NPW Act.

Proposed section 151B sets out matters that the Minister must consider before granting a lease or licence of reserved land. The Minister must be satisfied that:

(a) the purpose for which the lease or licence is granted is compatible with the natural and cultural values of:

(i) the land to be leased or licensed, and

(ii) reserved land in the vicinity of that land, and

(b) the lease or licence provides for the sustainable and efficient use of natural resources, energy and water, and

(c) in relation to any lease or licence that authorises the erection of a new building or structure on the land or the modification of an existing building or structure on the land—the authorised development or activity is appropriate in relation to the built form and scale of the building or structure, including its bulk, height, footprint, setbacks and density.

The proposed section also provides that in determining whether the Minister is satisfied in relation to any of those matters, the Minister is to have regard to assessment criteria adopted by the Director-General of the Department of Environment, Climate Change and Water (the Director-General).

Proposed section 151C provides that a lease or licence may be granted subject to conditions. The proposed section also provides that it is a condition of every lease or licence of land granted under proposed section 151 that the lessee or licensee must ensure that the provisions of the NPW Act, the regulations and the plan of management relating to the land are complied with.

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Proposed section 151D contains special provisions that apply in relation to leases and

licences of land within karst conservation reserves.

Proposed section 151E contains special provisions that apply in relation to leases and licences of Aboriginal land reserved under Part 4A of the NPW Act. Such leases or licences may only be granted with the concurrence of the relevant board of management for the land concerned. Also, such leases or licences must not be granted contrary to the terms of the lease of the land from the relevant Aboriginal Land Council or Councils to the Minister under Part 4A of the NPW Act.

Proposed section 151F requires a public consultation process to be undertaken in relation to certain proposals for leases and licences of reserved land.

Proposed section 151G requires the Minister to refer certain proposals for leases and licences of reserved land to the National Parks and Wildlife Advisory Council for advice and authorises the Minister to consult with that Council, the Aboriginal Cultural Heritage Advisory Committee and the Karst Management Advisory Committee in other circumstances.

Schedule 1 [11], [12], [14]–[16], [18], [20], [22], [23] and [28] make consequential amendments.

Schedule 1 [6] and [8] also make consequential amendments by omitting sections 47GC and 47U of the NPW Act (relating to the power of state conservation area trusts and regional park trusts to grant leases and licences of land within state conservation areas and regional parks) as under the proposed provisions the Minister may lease or licence state conservation area land and regional park land.

Schedule 1 [3] makes an amendment to enable the Minister to delegate the exercise of any of the Minister's functions under the NPW Act (other than the power of delegation) to a state conservation area trust or regional park trust.

Amendments relating to leases and licences of land in wilderness areas

Section 153A (b) of the NPW Act provides that certain licences or franchises relating to trade and other commercial activities must not be granted under section 152 of that Act in respect of land that is within a wilderness area. Schedule 1 [24] omits the paragraph to allow such licences and franchises to be granted.

Schedule 1 [27] inserts a proposed clause into Schedule 3 to the NPW Act (Savings, transitional and other provisions) to enable existing plans of management to be appropriately altered after the commencement of Schedule 1 [24]. The proposed clause provides that a licence may be granted under section 152 in relation to a wilderness area (and operations under such a licence may be undertaken in the wilderness area) even if an existing plan of management prohibits commercial activities in that area. However, the clause also provides that nothing in the provision affects any other prohibition or restriction in such a plan of management. (So, for example, a prohibition in an existing plan of management against all mountain biking in a specified wilderness area would still have effect to prohibit commercial mountain biking in that wilderness area.)

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Amendments relating to recategorisation of land reserved under the NPW Act

Schedule 1 [25] inserts proposed Schedule 1 into the NPW Act to recategorise certain reserved land from its current reservation to another type of reservation.

Part 1 (General provisions) of the proposed Schedule contains provisions consequent on the recategorisation of land by the Schedule (whether under the proposed provisions or provisions enacted later) and Part 2 contains the provisions that specifically recategorise the land.

In summary, the recategorisations by Part 2 of the proposed Schedule are as follows:

(a) the reservation of part of the Corramy State Conservation Area as a state conservation area is revoked and the land is reserved as a regional park to be

known as Corramy Regional Park,

(b) the reservation of Limeburners Creek Nature Reserve as a nature reserve is revoked and the land is reserved as a national park to be known as Limeburners Creek National Park,

(c) the reservation of Sea Acres Nature Reserve as a nature reserve is revoked and the land is reserved as a national park to be known as Sea Acres National Park,

(d) the reservation of part of the Macquarie Nature Reserve as a nature reserve is revoked and the land is reserved as a historic site to be known as Roto House Historic Site.

Miscellaneous amendments

Schedule 1 [7] inserts a savings and transitional provision into section 47MA of the NPW Act to provide that when land that is a state conservation area or part of a state conservation area is reserved as a national park or nature reserve or as part of a national park or nature reserve under that section, any plan of management that applied to the land immediately before that reservation continues to apply to the land. Schedule 1 [9] and [10] make law revision amendments to make the language of the NPW Act consistent.

Schedule 1 [13] makes an amendment to provide that a proposed amendment or alteration to a plan of management is to be placed on public exhibition for a period of at least 45 days (rather than 90 days as is the case with initial plans of management).

Schedule 1 [21] amends section 152 of the NPW Act. That section provides that:

(a) the Director-General may grant licences to carry on trades, businesses or occupations within national parks and historic sites, and

(b) the Minister may grant franchises for the sale of goods and services, the provision of public transportation and the supply of other facilities and amenities within national parks and historic sites.

The amendment provides that such licences and franchises may be granted in respect of all other categories of reserved land.

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Schedule 1 [26] allows regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 2 Amendment of Wilderness Act 1987

No 196

Section 9 (c) of the Wilderness Act 1987 (Management principles for wilderness areas) provides that a wilderness area is to be managed so as to permit opportunities for appropriate self-reliant recreation.

Schedule 2 amends that provision to make it clear that appropriate self-reliant recreation may be of a commercial nature.