

FIRST PRINT

NATIONAL PARKS AND WILDLIFE (ABORIGINAL OWNERSHIP) AMENDMENT BILL 1994

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the National Parks and Wildlife Act 1974 (the 1974 Act) to make provision for:

- (a) the recognition by Parliament that certain specified lands reserved or dedicated under the 1974 Act are of special cultural significance to Aboriginal persons; and
- (b) following negotiations to be conducted between the Minister for the Environment and one or more Local Aboriginal Land Councils or the New South Wales Aboriginal Land Council, the revocation of the reservation as a national park or historic site or of the dedication as a nature reserve under the 1974 Act of those lands to enable them to be vested, subject to any native title rights and interests (within the meaning of the Native Title Act 1993 of the Commonwealth) existing in relation to the lands, in an Aboriginal Land Council or Councils; and
- (c) the leasing of those lands to the Minister by the Aboriginal Land Council or Councils; and
- (d) the reservation or dedication of those lands as a national park, historic site or nature reserve; and
- (e) the care, control and management of the park, site or reserve to be vested in a board of management.

Consequential amendments to the 1974 Act and savings and transitional provisions are proposed.

Consequential amendments are also proposed to the Aboriginal Land Rights Act 1983. These proposed amendments enable Aboriginal Land Councils to enter into the proposed arrangements, make it clear that land may vest in more than one Local

National Parks and Wildlife (Aboriginal Ownership) Amendment 1994

Aboriginal Land Council and make provision for the vesting of land, in the event of the dissolution of a Local Aboriginal Land Council, in accordance with the proposed amendments to the 1974 Act.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on the date of assent.

Clause 3 is a formal provision that gives effect to Schedules 1 and 2 which amend the 1974 Act.

Clause 4 is a formal provision that gives effect to Schedule 3 which amends the Aboriginal Land Rights Act 1983.

SCHEDULE 1—PRINCIPAL AMENDMENTS

Schedule 1 (1) proposes the insertion of a new Part, Part 4A—Aboriginal Land, containing sections 71A–71ZC.

The proposed Part provides that the terms “Aboriginal”, “Aboriginal Land Council”, “Local Aboriginal Land Council” and “New South Wales Aboriginal Land Council” have the same meanings as in the Aboriginal Land Rights Act 1983. The term “traditional Aboriginal owners” is defined to mean those Aboriginal persons named, in the register kept in accordance with the proposed Part, as the traditional owners of the land.

The proposed Part contains a statement recognising the special cultural significance to Aboriginal persons of certain lands reserved or dedicated under the Act and for the revocation of the reservation or dedication of those lands to enable them:

- (a) to be vested in a Local Aboriginal Land Council or Councils whose members have a close association with the lands or in the New South Wales Aboriginal Land Council; and
- (b) to be leased by that Aboriginal Land Council or Councils to the Minister; and
- (c) to be then reserved or dedicated in accordance with the proposed Part.

The revocation of the present reservation or dedication and the vesting, leasing and reservation or dedication referred to above are subject to any native title rights and interests (within the meaning of the Native Title Act 1993 of the Commonwealth) existing in relation to the lands concerned immediately before the revocation of the present reservation or dedication and does not extinguish or impair any such rights and interests.

Provision is made for the recognition by Parliament that certain reserved or dedicated lands are of special cultural significance to Aboriginal persons. Land is stated to be of cultural significance to Aboriginal persons if the land is significant in terms of the traditions, observances, customs, beliefs or history of Aboriginal persons. This is the same concept as is employed in the Aboriginal Land Rights Act 1983. The reserved or dedicated lands identified as being of special cultural significance to Aboriginal persons are listed in proposed Schedule 4. These lands are:

National Parks and Wildlife (Aboriginal Ownership) Amendment 1994

Mungo National Park
Mootwingee Historic Site, Mootwingee National Park and Coturaundee Nature Reserve
Mount Grenfell Historic Site
Mount Yarrowyck Nature Reserve

The proposed Part enables the Minister to enter into negotiations with a Local Aboriginal Land Council or Councils or with the New South Wales Aboriginal Land Council on its own behalf or that of a group of Aboriginal persons that the Minister considers have a close association with the particular lands. The aim of the negotiations is to ascertain whether an Aboriginal Land Council or Councils wish to have a park, site or reserve listed in proposed Schedule 4, freed from its existing reservation or dedication under the Act but subject to native title, vested in the Aboriginal Land Council or Councils in return for a lease of the lands by the Aboriginal Land Council or Councils to the Minister and subsequent reservation or dedication of the lands under the Act as a park, site or reserve.

If the Minister receives an indication that an Aboriginal Land Council or Councils do wish to proceed on this basis, the Minister is authorised to negotiate the terms of a proposed lease with the Aboriginal Land Council or Councils.

A lease under the proposed Part must contain certain terms that are specified in the proposed Part. These terms include requirements that the lease must cover the whole of the lands vested in the Aboriginal Land Council or Councils and must be for a term of 30 years with unlimited successive renewals of 30 years each if each party agrees.

Provision is made for the insertion of a term in the lease acknowledging that the Aboriginal Land Council or Councils hold the land on behalf of the traditional Aboriginal owners.

Provision is made that care, control and management of the lands is to be vested in a board of management.

The lease must also make provision for the Director-General of National Parks and Wildlife to exercise his or her functions on and with respect to the lands (for example, regarding staffing, administration and enforcement of regulations). These functions are to be exercised subject to any plan of management for the lands and to directions given by the board of management.

Traditional Aboriginal owners, and any other Aboriginal persons (with the consent of the Aboriginal Land Council or Councils in which the land is vested) are entitled (subject to the 1974 Act and any plan of management in force for the land) to enter and use the land for hunting or fishing for, or the gathering of, traditional foods for domestic purposes and ceremonial and religious purposes within the bounds of Aboriginal tradition.

Interests granted under the 1974 Act or other Acts and existing at the date of the lease are to be protected.

The lease must contain a term guaranteeing the public access to the lands subject to the plan of management, the 1974 Act and the regulations under that Act.

The Aboriginal Land Council or Councils are precluded from dealing with the lands in specified ways and other dealings that are permitted require the Minister's consent.

National Parks and Wildlife (Aboriginal Ownership) Amendment 1994

Other lease terms to be covered include provision for the Minister to consult with the Aboriginal Land Council or Councils in which the land is vested concerning regulations. Compliance with any special requirements that may apply if the lands are listed as, or as part of, a World Heritage property are covered as are requirements for the Minister to use the Minister's best endeavours to implement a National Parks and Wildlife Service plan concerning Aboriginal employment and for the lease parties to meet at least once every 5 years to review and, if necessary, adjust lease requirements.

The Minister and the Aboriginal Land Council or Councils may agree on insertion of such other lease terms, not inconsistent with the 1974 Act or regulations under it, as they consider appropriate.

The proposed Part provides for the Minister to pay rent under any lease entered into out of money appropriated by Parliament for this purpose. The manner of calculating the rent is specified. Any rent paid by the Minister is to be carried into a separate account in the National Parks and Wildlife Fund maintained under the 1974 Act and is to be disbursed for the benefit of, and in accordance with any plan of management for, the land concerned.

The proposed Part makes provision for the arbitration of disputes between the Director-General of National Parks and Wildlife and the board of management for a park, site or reserve or between the Minister or Director-General and an Aboriginal Land Council or Councils concerning matters arising under the proposed Part.

The proposed Part provides that, on completion of the lease negotiations, the Minister must cause specified documents to be laid before each House of Parliament within a specified time. The documents to be laid before each House are the lease prepared as the result of the negotiations and a notification that:

- revokes the existing reservation or dedication under the Act of the lands that are the subject of the lease; and
- vests the lands in the Aboriginal Land Council or Councils that are leasing the land to the Minister subject to any existing native title rights and interests in relation to the lands and any other existing interests under the 1974 Act; and
- reserves or dedicates the lands.

The proposed Part provides that, if either House of Parliament passes a resolution disallowing the notification, no further action is to be taken at that time with respect to the matter. An option to enable the matter, with or without amendments, to be re-submitted at a later date is provided.

If no resolution disallowing the proposal embodied in the documents is passed, provision is made that the proposal may lawfully be carried into effect. The Minister is required, within a specified time, to cause the notification to be published in the Gazette. On publication of the notification, the current reservation or dedication of the lands is revoked, the lands vest in the Aboriginal Land Council or Councils named as lessor or lessors in the lease laid before the Houses of Parliament, (but subject to any native title rights and interests existing in relation to the lands and any existing registered interest in the lands) the lease takes effect and its term commences to run, and the lands are reserved as a national park or historic site or dedicated as a nature reserve.

Proposed Part 4A also contains provisions dealing with various matters that are of general application. These matters include the management of the lands by the Director-General of National Parks and Wildlife pending establishment of a board of management, the role of the staff of the National Parks and Wildlife Service, the

National Parks and Wildlife (Aboriginal Ownership) Amendment 1994

protection of existing interests relating to the lands and the application of existing regulations to the lands.

Provision is made for the establishment of a board of management for land reserved or dedicated under the proposed Part. The board is to have at least 9, but no more than 13, members. The majority of the members are to be nominated by the lessor or lessors of the land. One member is to be appointed by the Minister to represent the council or councils for the area comprising, or adjoining, the land concerned. One member is to be an officer of the National Parks and Wildlife Service and one member is to be appointed by the Minister to represent local conservation interests. One person is to be appointed by the Minister to represent owners, lessees and occupiers of land adjoining or in the vicinity of the reserved or dedicated land.

The functions of a board are to prepare a plan of management for reserved or dedicated land, to exercise care, control and management of it and to supervise payments from the National Parks and Wildlife Fund with respect to the land. In the exercise of its functions, a board is subject to the Minister's control and direction but the Minister may not give directions concerning the contents of certain documents or advice prepared or given by the board or any decision of the board that is not inconsistent with the 1974 Act or any plan of management for the reserved or dedicated land.

The board of management is required to keep proper accounts and records as to its operations in the manner specified by the proposed Part.

The proposed Part also provides that certain provisions of the 1974 Act that are inapplicable to lands reserved or dedicated under proposed Part 4A do not apply. These provisions cover such matters as advisory committees, reservation and dedication procedures, the naming of parks, sites and reserves and the transfer of property and staff where trustees are involved.

Provision is made in proposed Part 4A for the naming of parks, sites or reserves reserved or dedicated under the Part and for the amendment of the names of parks, sites or reserves listed in proposed Schedule 4 in appropriate circumstances.

No form of assurance, other than publication of the notification, is necessary to vest title to the lands in the Aboriginal Land Council or Councils. No consideration or stamp duty is payable by the Aboriginal Land Council or Councils to the Crown in relation to the vesting. Provision is made for the entry by the Registrar-General of particulars of the vesting and the lease.

The opportunity exists to re-negotiate certain lease provisions towards the end of each 30 years.

The terms of a lease may be varied only by agreement of the parties or an Act of Parliament. A lease does not expire at the end of its term. The Minister holds over under the lease until such time as the lease is renewed or replaced or is brought to an end by 12 months' written notice to the Minister from the Aboriginal Land Council or Councils in which the lands concerned are vested.

If the only Local Aboriginal Land Council in which reserved or dedicated lands are vested is dissolved or if all the Local Aboriginal Land Councils in which one parcel of lands are vested are dissolved, the lands are vested in the traditional Aboriginal owners recorded in the register kept under the proposed Part until such time as a new Aboriginal Land Council or Councils are constituted for the land concerned.

National Parks and Wildlife (Aboriginal Ownership) Amendment 1994

Proposed Schedule 4, in which the lands of special cultural significance to Aboriginal persons are listed, may be amended only by an Act of Parliament.

Schedule 1 (2) inserts proposed Schedule 4 (Lands of special cultural significance to Aboriginal persons). The content of the proposed Schedule has been described above.

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF NATIONAL PARKS
AND WILDLIFE ACT 1974**

Consequential amendments are made to the 1974 Act to reflect and complement the changes envisaged by proposed Part 4A. Provision is made for the National Parks and Wildlife Advisory Council to advise the Minister as to the terms of a draft lease negotiated with an Aboriginal Land Council and for the Minister to enter into leases under Part 4A as a corporation sole.

Appropriate savings and transitional provisions are also included.

**SCHEDULE 3—CONSEQUENTIAL AMENDMENT OF ABORIGINAL LAND
RIGHTS ACT 1983**

Schedule 3 (1) proposes amendment of section 12 of the Aboriginal Land Rights Act 1983, relating to the functions of Local Aboriginal Land Councils, to enable such Councils to negotiate the acquisition and lease of specified land reserved or dedicated under the 1974 Act.

Schedule 3 (2) proposes amendment of section 23 of the Principal Act, relating to the functions of the New South Wales Aboriginal Land Council, to enable that Council to negotiate the acquisition and lease of specified land reserved or dedicated under the 1974 Act and to make recommendations concerning the listing, in Schedule 4 to the 1974 Act, of additional lands of special cultural significance to Aboriginal persons.

Schedule 3 (3) proposes that section 38 of the Principal Act be amended to make it clear that land dealt with under Part 4A of the 1974 Act may vest in more than one Local Aboriginal Land Council as a joint tenancy.

Schedule 3 (4) proposes that section 40B of the Principal Act be amended to formally grant power to enable leases to be executed and land to be reserved or dedicated as required by the 1974 Act.

Schedule 3 (5) proposes that section 58A of the Principal Act be amended to make it clear that, on dissolution of a Local Aboriginal Land Council, land vested in it under Part 4A of the 1974 Act does not vest in the New South Wales Aboriginal Land Council but vests in accordance with that Part.

FIRST PRINT

**NATIONAL PARKS AND WILDLIFE (ABORIGINAL
OWNERSHIP) AMENDMENT BILL 1994**

NEW SOUTH WALES



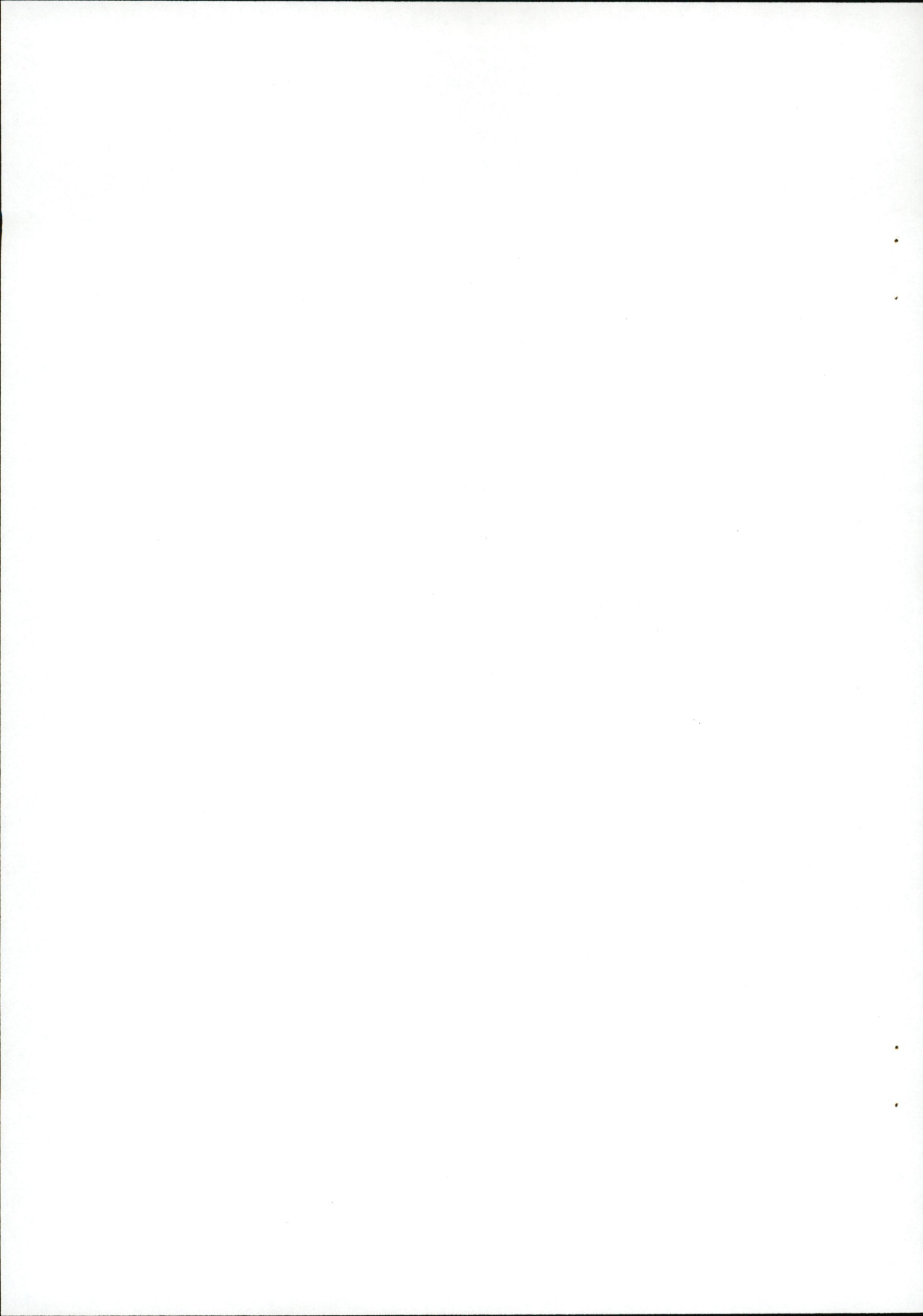
TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of National Parks and Wildlife Act 1974 No. 80
4. Consequential amendment of Aboriginal Land Rights Act 1983 No. 42

SCHEDULE 1—PRINCIPAL AMENDMENTS

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF NATIONAL PARKS
AND WILDLIFE ACT 1974

SCHEDULE 3—CONSEQUENTIAL AMENDMENT OF ABORIGINAL LAND
RIGHTS ACT 1983



**NATIONAL PARKS AND WILDLIFE (ABORIGINAL
OWNERSHIP) AMENDMENT BILL 1994**

NEW SOUTH WALES



No. , 1994

A BILL FOR

An Act to amend the National Parks and Wildlife Act 1974 to enable the revocation of the reservation or dedication under that Act of certain land of Aboriginal cultural significance and the vesting of that land in an Aboriginal Land Council or Councils subject to native title and subject to a lease in favour of the Minister and subsequent reservation or dedication of the leased land; to make consequential amendments to the Aboriginal Land Rights Act 1983; and for other purposes.

National Parks and Wildlife (Aboriginal Ownership) Amendment 1994

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the National Parks and Wildlife (Aboriginal Ownership) Amendment Act 1994.

5 **Commencement**

2. This Act commences on the date of assent.

Amendment of National Parks and Wildlife Act 1974 No. 80

3. The National Parks and Wildlife Act 1974 is amended as set out in Schedules 1 and 2.

10 **Consequential amendment of Aboriginal Land Rights Act 1983 No. 42**

4. The Aboriginal Land Rights Act 1983 is amended as set out in Schedule 3.

SCHEDULE 1—PRINCIPAL AMENDMENTS

15 (Sec. 3)

(1) Part 4A:

After Part 4, insert:

PART 4A—ABORIGINAL LAND

Definitions

20 71A. In this Part:

“Aboriginal”, “Aboriginal Land Council”, “Local Aboriginal Land Council” and “New South Wales Aboriginal Land Council” have the same meanings as they have in the Aboriginal Land Rights Act 1983;

25 “board of management” means a board of management constituted under section 71M;

“native title” or “native title rights and interests” has the same meaning as it has in the Native Title Act 1993 of the Commonwealth;

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

“traditional Aboriginal owners”, in relation to land, means those Aboriginal persons named or otherwise identified in the register kept in accordance with this Part as the traditional owners of the land. 5

Purpose of Part

71B. (1) The purpose of this Part is to provide for the recognition of the special cultural significance to Aboriginal persons of certain lands reserved or dedicated under this Act and for the revocation of the reservation or dedication of those lands to enable those lands: 10

- (a) to be vested in one or more Local Aboriginal Land Councils whose members have a close association with the lands or in the New South Wales Aboriginal Land Council; and 15
- (b) to be leased by the Aboriginal Land Council or Councils to the Minister; and
- (c) to be then reserved or dedicated in accordance with this Part.

(2) The revocation of the present reservation or dedication and the vesting, leasing and reservation or dedication referred to in subsection (1) are subject to any native title rights and interests existing in relation to the lands immediately before the revocation of the present reservation or dedication and do not extinguish or impair them. 20
25

Recognition of cultural significance of certain lands to Aboriginal persons

71C. (1) Parliament recognises that certain lands reserved or dedicated under this Act are of special cultural significance to Aboriginal persons. Land is of cultural significance to Aboriginal persons if the land is significant in terms of the traditions, observances, customs, beliefs or history of Aboriginal persons. 30

(2) The lands comprising the national parks, historic sites and nature reserves listed in Schedule 4 are identified as of special cultural significance to Aboriginal persons. 35

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

Negotiations by Minister with Aboriginal Land Councils

71D. (1) The Minister may enter into negotiations with:

- 5 (a) one or more Local Aboriginal Land Councils whose members have a close association with any of the lands comprising the national parks, historic sites and nature reserves listed in Schedule 4; or
- 10 (b) the New South Wales Aboriginal Land Council on behalf of one or more Local Aboriginal Land Councils referred to in paragraph (a); or
- 15 (c) the New South Wales Aboriginal Land Council on its own behalf or on behalf of a group of Aboriginal persons who the Minister considers have a close association with any of the lands comprising the national parks, historic sites and nature reserves listed in Schedule 4.

20 (2) The Minister may enter into negotiations with one Local Aboriginal Land Council whose members have a close association with lands comprising a park, site or reserve in respect of which members of one or more other Local Aboriginal Land Councils have a close association only if the members of each of those Councils consent to the Minister negotiating with that Local Aboriginal Land Council.

25 (3) The negotiations are to be conducted with a view to ascertaining whether the Local Aboriginal Land Council or Councils or the New South Wales Aboriginal Land Council wish to have a park, site or reserve listed in Schedule 4 freed from its present reservation or dedication under this Act and vested in the Aboriginal Land Council or Councils but

30 subject to native title in return for:

- (a) a lease of the lands formerly comprising the park, site or reserve to the Minister by the Aboriginal Land Council or Councils; and
- 35 (b) the reservation or dedication of the lands as a park, site or reserve under this Part.

(4) If, during negotiations with the Minister, an Aboriginal Land Council indicates or Councils indicate that they wish the lands to be vested in the Local Aboriginal Land Council or Councils or the New South Wales Aboriginal Land

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

Council on the basis set out in subsection (3), the Minister may enter negotiations with the Aboriginal Land Council or Councils in which it is proposed the lands be vested as to the terms of the proposed lease between the Council or Councils and the Minister. 5

(5) If both a Local Aboriginal Land Council or Councils and the New South Wales Aboriginal Land Council on its own behalf indicate that they wish lands comprising a park, site or reserve to be vested in them, the Minister is to give preference to the wishes of the Local Aboriginal Land Council or Councils. 10

Terms of lease between Aboriginal Land Council and Minister

71E. (1) A lease of lands under this Part must make provision for the following: 15

- (a) the lease of the whole of the lands vested in the Aboriginal Land Council or Councils to the Minister subject to native title;
- (b) a term of 30 years; 20
- (c) the renewal of the lease for a further term of 30 years with no limitation on the number of times the lease may be so renewed provided each party consents to any such renewal;
- (d) the manner in which the lease is to be renewed; 25
- (e) a term permitting the replacement of the lease, in accordance with this Part, with a new lease;
- (f) a term acknowledging that the care, control and management of the lands is to be vested in a board of management established under this Act; 30
- (g) a term acknowledging that the Aboriginal Land Council or Councils in which the lands are vested hold the lands on behalf of the traditional Aboriginal owners of the lands;
- (h) a term acknowledging that the Service and the officers, employees and contractors of the Minister, the Director-General and the Service are (subject to any plan of management in force with respect to the lands and to any directions given and supervision and 35

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- 5 oversight exercised by the board of management for
the lands) entitled to exercise on and with respect to
the lands any power, authority, duty or function
conferred or imposed on any of them by this Act, the
regulations or any other instrument under this Act;
- 10 (i) a term acknowledging that the traditional Aboriginal
owners of the lands, and any other Aboriginal persons
who have the consent of the Aboriginal Land Council
or Councils in which the lands are vested, are entitled
(subject to this Act and the plan of management in
force with respect to the lands) to enter and use the
lands for hunting or fishing for, or the gathering of,
15 traditional foods for domestic purposes and for
ceremonial and religious purposes to the extent that
entry or use is in accordance with Aboriginal tradition
governing the rights of those persons with respect to
the lands;
- 20 (j) a term acknowledging that the Aboriginal Land
Council or Councils in which the lands are vested and
its employees, contractors and agents must comply
with all provisions of this Act, the regulations and any
plan of management in force with respect to the lands,
including provisions concerning the protection of
25 animals, trees, timber, plants, flowers and vegetation;
- 30 (k) a term acknowledging that the lease is subject to any
existing interest within the meaning of section 39 and
any licence issued under Part 9 and any lease, licence,
franchise or easement granted under Part 12 that affects
the lands, or any part of the lands, and that is current at
the date of the vesting of the lands in the Aboriginal
Land Council or Councils;
- 35 (l) the grant, extension or extinguishment of any interest,
licence, lease, franchise or easement of a kind referred
to in paragraph (k) subject to the requirements of this
Act and, in the case of an extension or extinguishment,
to any document under which the interest, licence,
lease, franchise or easement was granted;

National Parks and Wildlife (Aboriginal Ownership) Amendment 1994

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (m) a term acknowledging that the public generally has (subject to any plan of management in force with respect to the lands) a right of access to the lands in accordance with this Act and the regulations; 5
- (n) a term acknowledging that the lands, or any part of the lands, may not be the subject of any sale, exchange, disposal or mortgage and providing that, to the extent to which the lands may be dealt with, any such dealing must only be with the prior written consent of the Minister. 10
- (2) A lease under this Part must also make provision for the following:
- (a) a term requiring the Minister to consult with the Aboriginal Land Council or Councils in which the lands are vested prior to the making, amending or repealing of any regulations in respect of the lands; 15
- (b) a term requiring that consultations concerning the operation of the lease are to involve the Director-General and the board of management for the lands; 20
- (c) compliance by the parties with any requirements that arise in consequence of the lands, or any part of the lands, being situated in an area that is listed as an item of cultural heritage or natural heritage of outstanding universal value in accordance with: 25
- (i) the World Heritage Properties Conservation Act 1983 of the Commonwealth; and
- (ii) The Convention for the Protection of the World Cultural and Natural Heritage that has been adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization, being the convention a copy of the English text of which is set out in the Schedule to the Commonwealth Act referred to in subparagraph (i). 30
- (3) As a condition of a lease under this Part, the Minister must undertake to use the Minister's best endeavours to implement the Aboriginal Employment and Training Plan 1991–1996 published by the National Parks and Wildlife 35 40

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

Service in October 1991 and, in particular, the timetable set out in that Plan. The Minister must report to Parliament from time to time on progress achieved in implementing the Plan.

5 (4) A lease under this Part must include a condition requiring the parties to meet at least once every 5 years to discuss whether any conditions of the lease (other than a condition relating to the term of the lease) require variation. If either party fails to agree to a variation proposed by the
10 other, the disagreement is to be arbitrated in accordance with this Part.

(5) The lease may make provision for such other matters, not inconsistent with this Act or the regulations, as the Minister and the Aboriginal Land Council or Councils
15 consider appropriate.

Rent payable under lease

71F. (1) The Minister is to pay (out of money to be provided by Parliament and, subject to that appropriation) rent under any lease entered into with an Aboriginal Land
20 Council or Councils under this Part.

(2) The rent is to be a sum, calculated for the term of the lease, that compensates the Aboriginal Land Council or Councils for the fact that it or they do not have the full use and enjoyment of the lands the subject of the lease.

25 (3) In fixing the amount of the rent, the parties are to have regard to the following matters:

- 30 (a) the nature, size and location of the lands vested in the Aboriginal Land Council or Councils and the nature of the infrastructure and improvements, if any, on the lands;
- (b) the nature of the ownership rights in the lands that are vested in the Aboriginal Land Council or Councils;
- (c) the terms of this Act and the lease relating to the lands;
- 35 (d) the extent to which the special cultural significance of the lands to Aboriginal persons restricts the use that may be made of the lands under the lease;
- (e) the arrangements contained in this Act and the lease for the care, control, management and development of the lands;

National Parks and Wildlife (Aboriginal Ownership) Amendment 1994

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (f) the amount of rent payable under leases of lands adjoining or in the vicinity of the lands the subject of the lease;
- (g) the amounts realised on recent sales of freehold or leasehold land adjoining or in the vicinity of the lands the subject of the lease. 5
- (4) If the parties are unable to agree on the rent to be paid, the rent is to be fixed by the Valuer-General on the bases of the matters referred to in this section and any other matters that the Valuer-General notifies to the parties and considers to be relevant. The decision of the Valuer-General as to the rent is final. 10
- (5) The rent is payable by the Minister, on annual rests, to the credit of the separate account in the Fund referred to in section 138 (1A) for payment out in connection with the national park, historic site or nature reserve which is the subject of the lease concerned. 15
- Arbitration of disputes**
- 71G. (1) Any dispute between the Director-General and a board of management or between the Minister or Director-General and an Aboriginal Land Council or Councils concerning matters arising under this Part (other than matters in respect of which a direction has been given to the Director-General by a board of management in accordance with this Part) is to be arbitrated by a panel of 3 arbitrators. 20
- (2) One of the 3 arbitrators is to be appointed by the Director-General, one by the board of management for the lands concerned and the third by agreement between the other 2 or, failing such agreement, by the Chief Judge of the Land and Environment Court. 25
- (3) The procedures to apply to an arbitration are to be determined by the panel of arbitrators. 30
- Tabling of notification and lease**
- 71H. (1) On completion of the negotiations and preparation of a draft lease that is acceptable to the Minister and the Aboriginal Land Council or Councils in which the land is to be vested, the Minister must cause to be laid before each House of Parliament the lease and notification specified in subsections (3) and (4). 35
- 40

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

5 (2) The documents are to be laid before each House of Parliament within 14 sitting days of that House after the date on which the relevant Aboriginal Land Council or Councils provide the Minister with a written certification that the draft lease is acceptable to the Council or Councils.

10 (3) The lease to be laid before each House of Parliament in accordance with this section is a lease prepared as the result of the negotiations that has been executed in escrow by the Minister and the relevant Aboriginal Land Council or Councils.

(4) The notification to be laid before each House of Parliament in accordance with this section is a notification:

15 (a) revoking the reservation as a national park or historic site or the dedication as a nature reserve of the lands that are the subject of the lease referred to in subsection (3); and

20 (b) vesting those lands in the relevant Aboriginal Land Council or Councils that are to lease the lands to the Minister (and, if more than one, as joint tenants), subject to any native title rights and interests that exist in relation to the lands concerned immediately before the revocation of the present reservation or dedication and subject to any existing interest within the meaning of section 39, any licence issued under Part 9 and any lease, licence, franchise or easement granted under Part 25 12 that is current and affects the lands, or any part of the lands; and

30 (c) reserving or dedicating those lands as a national park, historic site or nature reserve, subject to any native title and any existing interest, lease, licence, franchise or easement referred to in paragraph (b).

Disallowance of proposal by Parliament

35 71I. (1) If either House of Parliament passes a resolution of which notice has been given within 15 sitting days of that House after the lease and notification referred to in section 71H have been laid before it under that section and the resolution disallows the notification, no further action is to be taken in the matter.

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(2) Nothing in this section prevents the Minister, at some later time, causing to be laid before each House of Parliament in accordance with this Part a lease and a notification that has previously been tabled, either with or without amendments. 5

Proposal to be carried out if not disallowed

71J. (1) If no resolution of a kind referred to in section 71I is or can be passed, it is lawful for the proposal embodied in the documents referred to in section 71H (3) and (4) to be carried out in accordance with this section. 10

(2) The Minister must, within 28 days after the last date on which the notification referred to in section 71H (4) might have been disallowed, cause the notification to be published in the Gazette.

(3) Publication of the notification more than 28 days after the required date does not affect its validity. 15

(4) On publication of the notification:

(a) the existing reservation as a national park or historic site; or

(b) the existing dedication as a nature reserve, 20

of the lands described in the notification is revoked. This subsection has effect despite anything else in this Act.

(5) On publication of the notification, the lands described in the notification vest, by virtue of the notification and the operation of this section, in the Aboriginal Land Council or Councils (and, if more than one, as joint tenants) named as lessor or lessors in the lease laid before Parliament under section 71H for an estate in fee simple without the necessity for any further assurance, but subject to any native title rights and interests that exist in relation to the lands concerned 25
immediately before the revocation of the present reservation or dedication and subject to any existing interest within the meaning of section 39, any licence issued under Part 9 and 30
any lease, licence, franchise or easement granted under Part 12 that is current and affects the lands, or any part of the 35
lands.

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

5 (6) On publication of the notification, the lease laid before Parliament under section 71H takes effect and the lease is taken to have been executed on, and its term commences to run from, the date of publication.

10 (7) On publication of the notification, the lands described in the notification are, despite the fact that the lands are vested in the Aboriginal Land Council or Councils, reserved as a national park or historic site or dedicated as a nature reserve in accordance with this Part, subject to any native title and any existing interest, lease, licence, franchise or easement referred to in subsection (5).

Consequences of publication of notification

15 71K. On publication under section 71J of the notification referred to in section 71H (4):

- 20 (a) the lands described in the notification are reserved as a national park or historic site or dedicated as a nature reserve for the purposes of this Act; and
- 25 (b) the Director-General, pending the establishment of a board of management for the park, site or reserve, continues to have the care, control and management of the lands and may exercise on and with respect to those lands any power, authority, duty or function conferred or imposed on the Director-General by this Act, the regulations or any other instrument under this Act; and
- 30 (c) the Service and the officers, employees and contractors of the Minister, the Director-General and the Service may (subject to any plan of management in force with respect to the lands and to any directions given and supervision and oversight exercised by the board of management for the lands) exercise on and with respect to those lands any power, authority, duty or function conferred or imposed on any of them by this Act, the regulations or any other instrument under this Act; and
- 35 (d) any regulations that, immediately before that publication, applied to the lands continue to apply and may be amended and repealed accordingly; and

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (e) any plan of management that, immediately before that publication, applied to the lands continues to apply and may be amended, altered or cancelled accordingly; and
- (f) any existing interest within the meaning of section 39 and any licence issued under Part 9 and any lease, licence, franchise or easement granted under Part 12 that affects the lands, or any part of the lands, and that is current at the date of the notification continue to have effect and may be terminated or otherwise dealt with in accordance with this Act or the document under which they were granted; and 5 10
- (g) any fee, rent or other sum that is payable under or with respect to any existing interest, licence, lease, franchise or easement referred to in paragraph (f) continues to be payable in the same manner, and to the same payee, as was required prior to publication of the notification; and 15
- (h) any declaration made under Division 3 of Part 4 or under the Wilderness Act 1987 with respect to the lands, or any part of the lands, continues in force and may be varied or revoked accordingly. 20

Register of traditional Aboriginal owners

71L. (1) The Aboriginal Land Council or Councils in which lands are vested under this Part must record in a register the names of the traditional Aboriginal owners of the land. 25

(2) A person or group of persons who consider that his, her or their names have been wrongly placed on or omitted from the register may request the Aboriginal Land Council or Councils concerned to rectify the register. 30

(3) If the Aboriginal Land Council or Councils decline to rectify the register as requested, the person or group of persons making the request may appeal against that decision to the Land and Environment Court, which may: 35

- (a) order the Aboriginal Land Council or Councils to rectify the register; or
- (b) decline to order that the register be rectified; or

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(c) make such other order as to the Court appears appropriate.

5 (4) Such an appeal is to be made within the time and in the manner provided by the rules of the Court.

(5) In deciding such an appeal, the Court has the functions and discretions of an Aboriginal Land Council or Councils under this section.

10 (6) A decision of the Court on an appeal is final and is to be given effect to as if it were the decision of the Aboriginal Land Council or Councils.

Boards of management

15 71M. (1) There is to be a board of management for each national park, historic site and nature reserve reserved or dedicated under this Part.

(2) A board of management is to consist of at least 9, but no more than 13, members of whom:

20 (a) the majority are to be persons nominated by the lessor or lessors of the lands comprised within the park, site or reserve; and

(b) one is to be a person appointed by the Minister to represent the council or councils (if any) for the area comprising, or adjoining, the park, site or reserve; and

25 (c) one is to be an officer of the Service for the time being appointed by the Director-General for the purposes of this section; and

30 (d) one is to be a person appointed by the Minister from a panel of persons nominated by a group concerned in the conservation of the region in which the park, site or reserve is located to represent conservation interests; and

35 (e) one is to be a person appointed by the Minister on the nomination of owners, lessees and occupiers of land adjoining or in the vicinity of the park, site or reserve to represent those owners, lessees and occupiers.

(3) The members of the board of management are to appoint one of the persons referred to in subsection (2) (a) as the chairperson of the board of management.

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(4) A meeting of a board of management has a quorum only if a majority of the members present are persons referred to in subsection (2) (a).

(5) The regulations may make provision with respect to the constitution and procedure of a board of management including the declaration of pecuniary interests by members. 5

Functions of boards of management

71N. (1) The board of management for a national park, historic site or nature reserve has the following functions: 10

(a) the preparation of plans of management for the park, site or reserve;

(b) the care, control and management of the park, site or reserve;

(c) the supervision of payments from the Fund with respect to the park, site or reserve. 15

(2) A board of management must exercise its functions in accordance with any plan of management in force with respect to the national park, historic site or nature reserve for which it is established. 20

(3) In the exercise of its functions, a board of management is subject to the control and direction of the Minister.

(4) Despite subsection (3), the Minister may not give directions to a board of management in relation to:

(a) the contents of any report, advice, information or recommendation that is to be or may be made or given by the board; or 25

(b) any decision of the board, that is not inconsistent with this Act and the plan of management for the national park, historic site or nature reserve, relating to the care, control and management of Aboriginal heritage and culture on the park, site or reserve. 30

(5) In the exercise of its functions with respect to the care, control and management of a park, site or reserve for which no plan of management is in force a board of management is to consult with and have regard to the advice of the Director-General. 35

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued***Board of management to keep accounts**

5 71O. (1) A board of management must cause proper accounts and records to be kept in relation to all of its operations.

(2) A board of management must prepare financial statements for each financial year in accordance with section 41B (1) of the Public Finance and Audit Act 1983.

10 (3) The financial statements must be submitted for verification and certification to an auditor who is a registered company auditor within the meaning of the Corporations Law.

15 (4) The financial statements must be prepared and submitted to the auditor not later than 6 weeks after the end of the financial year to which they relate.

(5) A board of management must furnish to the Minister the audited financial statements and a certificate of the auditor, in a form prescribed by the regulations, not later than 4 months after the end of each financial year.

20 Certain provisions not to apply to lands reserved or dedicated under this Part

25 71P. (1) Division 2 of Part 3 (Advisory committees) and sections 33–36, 46, 47, 49 (1), (2) and (4)–(6), 51 and 58 do not apply to lands reserved as a national park or historic site or dedicated as a nature reserve under this Part.

(2) Subsection (1) does not limit section 71K.

Application of certain provisions to lands reserved under this Part

30 71Q. Sections 37–44 apply to and in respect of lands reserved as a national park or historic site under this Part in the same way as they apply to and in respect of lands reserved as a national park or historic site under Part 4.

Application of certain provisions to lands dedicated under this Part

35 71R. (1) Sections 39, 43 and 44 apply to and in respect of lands dedicated as a nature reserve under this Part in the same way as they apply to and in respect of lands reserved as a national park or historic site under Part 4.

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(2) Sections 52–55 apply to lands dedicated as a nature reserve under this Part in the same way as they apply to lands dedicated as a nature reserve under Part 4.

Name of park, site or reserve

5

71S. (1) The notification referred to in section 71H (4) must assign a name to a national park, historic site or nature reserve reserved or dedicated under this Part.

(2) The name assigned under subsection (1) must be the name recommended by the Aboriginal Land Council or Councils in which the park, site or reserve is, or is proposed to be, vested and may be the same name as, or a different name from, that of the park, site or reserve as listed in Schedule 4.

10

(3) The Governor may, on the recommendation of the Aboriginal Land Council or Councils in which the park, site or reserve is vested, by proclamation published in the Gazette:

15

(a) alter the name of a park, site or reserve reserved or dedicated under this Part; and

20

(b) amend Schedule 4 by omitting the former name of the park, site or reserve and by inserting instead the new name of the park, site or reserve.

(4) Section 12 (1) of the Geographical Names Act 1966 does not apply to the name assigned under this Part (or that name as altered or amended in accordance with this Part) to a park, site or reserve vested in an Aboriginal Land Council or Councils. The name assigned to such a park, site or reserve, or the name as so altered or amended, is, for the purposes of the Geographical Names Act 1966, the geographical name of the place to which it relates.

25

30

(5) If, before the reservation or dedication under this Part of a park, site or reserve listed in Schedule 4, the name of the park, site or reserve is altered pursuant to the publication of a proclamation under section 36 or 51, that proclamation or another proclamation published in the Gazette may amend Schedule 4 by omitting the former name of the park, site or reserve and by inserting instead the new name of the park, site or reserve.

35

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued***No consideration payable by Aboriginal Land Council on vesting of lands**

5 71T. (1) No consideration is payable to the Crown by an Aboriginal Land Council or Councils in relation to the vesting in the Council or Councils of lands pursuant to the publication of a notification under section 71J.

10 (2) No stamp duty under the Stamp Duties Act 1920 is payable by an Aboriginal Land Council or Councils in relation to any such vesting.

Dating of lease

15 71U. On publication of a notification under section 71J, the Minister must cause the date of publication of the notification to be inserted in the lease as:

(a) the date of execution of the lease; and

(b) the date of the commencement of the term of the lease.

Registrar-General to enter particulars of vesting in register

20 71V. (1) On publication of a notification under section 71J, there must be lodged at the Land Titles Office:

(a) all title documents held by the Director-General in relation to the lands referred to in the notification; and

(b) the lease completed in accordance with section 71U.

25 (2) On lodgment of those documents at the Land Titles Office, the Registrar-General must enter in the appropriate register particulars of the vesting of the lands in the Aboriginal Land Council or Councils and the lease of those lands to the Minister.

30 (3) Following registration of the particulars referred to in subsection (2), the Registrar-General must deliver the title documents to the Aboriginal Land Council or Councils.

Re-negotiation of certain lease terms at 30 year intervals

35 71W. (1) At least 5 years before the expiry of each 30 year term of a lease under this Part, the Director, on behalf of the Minister, and the Aboriginal Land Council or Councils in which the lands are vested must consider whether or not any one or more of the terms of the lease should be amended to enable the lease to operate more effectively.

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(2) If it is agreed that any such term or terms do require amendment, the Director and the Aboriginal Land Council or Councils must negotiate on and prepare the required amendments at least 2 years before the expiry of the then current term of the lease. 5

(3) Any amendments prepared in accordance with subsection (2) and agreed to by the Aboriginal Land Council or Councils must be presented to the Minister for approval at least 18 months before the expiry of the then current term of the lease. 10

(4) If the amendments are approved by the Minister, a new lease must be prepared incorporating the amended terms.

(5) At least 6 months before the expiry of the then current term of the lease, the new lease should, if at all possible, be executed in escrow by the Minister and the Aboriginal Land Council or Councils in which the lands are vested. 15

(6) A lease executed under subsection (5) takes effect, in substitution for the previous lease between the Minister and the Aboriginal Land Council or Councils, on the expiration of the term of the previous lease. 20

(7) If it is agreed by the Director and the Aboriginal Land Council or Councils that no term or terms of the lease require amendment, the lease between the parties continues to operate for a further term of 30 years, commencing on the expiration of the current term of the lease, in accordance with its terms and the requirements of this Part. 25

(8) The times specified by this section for the consideration of the terms of the lease, the negotiation and preparation of amendments, the presentation of the amendments to the Minister and the execution of the lease may be varied by the agreement of the parties or in accordance with section 71Y but only to the extent provided for in that section. 30

Dating and registration of new lease 35

71X. (1) The Minister must cause the date on which a new lease takes effect under section 71W (6) to be inserted in the new lease as:

- (a) the date of execution of the new lease; and

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(b) the date of the commencement of the term of the new lease.

5 (2) The Aboriginal Land Council or Councils in which the lands are vested must cause all title documents held by the Aboriginal Land Council or Councils in relation to the lands referred to in the new lease to be lodged at the Land Titles Office to enable the new lease to be lodged for registration and the Registrar-General to enter in the appropriate register
10 particulars of the new lease.

(3) Following registration of the particulars referred to in subsection (2), the Registrar-General must return the title documents to the Aboriginal Land Council or Councils.

Variation or termination of lease

15 71Y. A lease under this Part may be varied only by the agreement of the parties, not inconsistent with this Act, or by an Act of Parliament.

Holding over under lease

20 71Z. (1) A lease under this Part does not expire by effluxion of time except as otherwise provided by this Part.

(2) On the expiry of the then current term of a lease under this Part, the Minister holds over under the lease until such time as the lease is renewed or replaced or is brought to an end by 12 months' notice in writing to the Minister from the
25 Aboriginal Land Council or Councils in which the lands the subject of the lease are vested.

(3) The 30 year term of a lease that renews or replaces a lease whose term has expired runs from the date of execution of the new lease by the Minister.

Dissolution of Local Aboriginal Land Council

30 71ZA. If lands are vested under this Part:

- (a) in one Local Aboriginal Land Council and that Council is dissolved; or
35 (b) in more than one Local Aboriginal Land Council and each of the Councils in which the lands are vested is dissolved,

the lands are on and from the date of dissolution vested in the traditional owners of the lands recorded in the register kept in

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

accordance with this Part until a new Aboriginal Land Council or Councils are constituted for the area or areas that constituted or included the area or areas of the dissolved Aboriginal Land Council or Councils. On constitution of the new Aboriginal Land Council or Councils, the lands vest in that Council or those Councils.

5

Amendment of Schedule 4 (Lands of special cultural significance to Aboriginal persons)

71ZB. References to lands comprising a national park, historic site or nature reserve may be omitted from or inserted in Schedule 4 only by an Act of Parliament.

10

Review of Part

71ZC. (1) The Minister is to review the operation of this Part to determine whether the policy objectives of the Part remain valid and whether the terms of the Part remain appropriate for securing those objectives.

15

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the National Parks and Wildlife (Aboriginal Ownership) Amendment Act 1994.

20

(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

(2) Schedule 4:

25

After Schedule 3, insert:

SCHEDULE 4—LANDS OF SPECIAL CULTURAL SIGNIFICANCE TO ABORIGINAL PERSONS

(Secs. 71C (2), 71S (3), 71ZB)

Mungo National Park
Mootwingee Historic Site, Mootwingee National Park and
Coturaundee Nature Reserve
Mount Grenfell Historic Site
Mount Yarrowyck Nature Reserve

30

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
NATIONAL PARKS AND WILDLIFE ACT 1974**

(Sec. 3)

(1) Section 23 (**Functions and duties of Council**):

- 5 (a) From section 23 (1) (a), omit “areas, and to”, insert instead “areas, to”.
- (b) In section 23 (1) (a), after “wilderness areas”, insert “and to the terms of proposed leases under Part 4A”.

(2) Section 31:

10 Omit the section, insert instead:

Care, control and management of parks and sites

31. (1) The Director-General has the care, control and management of all national parks and historic sites except as provided by subsection (2).

- 15 (2) On the establishment of a board of management for a national park or historic site reserved under Part 4A, the care, control and management of the park or site is vested in the board of management.

(3) Section 45 (**Provisions respecting animals in parks and sites**):

20 After section 45 (5), insert:

- 25 (6) This section does not prevent a traditional Aboriginal owner on whose behalf the lands of a national park or historic site are vested in an Aboriginal Land Council or Councils under Part 4A or any other Aboriginal person who has the consent of that Aboriginal Land Council or Councils from taking or killing animals for domestic purposes or for ceremonial or religious purposes (other than endangered fauna and other animals protected by the plan of management for the park or site) within the park or site.

(4) Section 48:

30 Omit the section, insert instead:

Care, control and management of nature reserves

- 35 48. (1) The Director-General has the care, control and management of all nature reserves except as provided by subsection (2).

National Parks and Wildlife (Aboriginal Ownership) Amendment 1994

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
NATIONAL PARKS AND WILDLIFE ACT 1974—*continued*

- (2) On the establishment of a board of management for a nature reserve dedicated under Part 4A, the care, control and management of the reserve is vested in the board of management. 5
- (5) Section 56 (**Provisions respecting animals in nature reserves**):
After section 56 (6), insert:
- (7) Without limiting subsection (6), this section does not prevent a traditional Aboriginal owner on whose behalf the lands of a nature reserve are vested in an Aboriginal Land Council or Councils under Part 4A or any other Aboriginal person who has the consent of that Aboriginal Land Council or Councils from taking or killing animals for domestic purposes or for ceremonial or religious purposes (other than endangered fauna and other animals protected by the plan of management for the reserve) within the reserve. 10 15
- (6) Section 57 (**Restrictions as to timber, vegetation, plants etc. in nature reserves**):
After section 57 (6), insert: 20
- (7) Without limiting subsection (6), this section does not prevent a traditional Aboriginal owner on whose behalf the lands of a nature reserve are vested in an Aboriginal Land Council or Councils under Part 4A or any other Aboriginal person who has the consent of that Aboriginal Land Council or Councils from gathering food for domestic purposes or for ceremonial or religious purposes (including protected native plants but not including plants protected by the plan of management for the reserve) within the reserve. 25
- (7) Section 72 (**Plans of management**): 30
- (a) After section 72 (1A), insert:
- (1B) A plan of management for a national park, historic site or nature reserve reserved or dedicated under Part 4A is to be prepared by the board of management for the park, site or reserve concerned in consultation with the Director-General. 35
- (1C) Subsection (1B) does not require a plan of management to be prepared if an existing plan of management is in force when the national park, historic site or nature reserve is reserved or dedicated under Part 4A. 40

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
NATIONAL PARKS AND WILDLIFE ACT 1974—*continued*

5 However, any such existing plan must be reviewed by the board of management for the park, site or reserve concerned within 2 years after the park, site or reserve is reserved or dedicated under Part 4A and may be amended, altered or cancelled in accordance with this section.

10 (1D) Without limiting subsection (1) (c), in the case of a national park, historic site or nature reserve for which a plan of management is not in force when the park, site or reserve is reserved or dedicated under Part 4A, a plan of management is to be prepared by the board of management for the park, site or reserve within 2 years after that date.

15 (1E) After a plan of management has been prepared by a board of management, the board must give notice in a form approved by the Minister that the plan of management has been prepared and must, in that notice:

20 (a) specify the address where copies of the plan of management may be inspected; and

 (b) specify the address to which representations in connection with the plan of management may be forwarded.

25 (1F) Any person interested may, within 1 month or such longer period as may be specified in the notice, make representations to the board of management in connection with the plan of management.

30 (1G) The board of management is, on the expiration of the period specified in the notice for making representations, to submit the plan of management to the Minister together with any representations forwarded to it.

 (1H) The Minister is to consider any representations forwarded to the board of management before adopting the plan of management.

35 (1I) The Minister may adopt the plan of management without alteration or with such alterations as the Minister thinks fit or may refer it back to the board of management for further consideration.

40 (1J) The Minister may, on the recommendation of the board of management for a park, site or reserve reserved or dedicated under Part 4A:

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
NATIONAL PARKS AND WILDLIFE ACT 1974—continued**

- (a) amend or alter the plan of management for the park, site or reserve from time to time; or
- (b) cancel the plan; or 5
- (c) cancel the plan and substitute a new plan.
- (1K) The provisions of sections 72 (2) and (4) and 74 apply to and in respect of an amendment or alteration referred to in subsection (1J) in the same way as they apply to or in respect of the plan of management for a park, site or reserve reserved or dedicated under Part 4A. 10
- (b) After section 72 (2), insert:
- (2AA) Without limiting subsection (2), a plan of management for a national park, historic site or nature reserve reserved or dedicated under Part 4A may provide for the use of the park, site or reserve for any community development purpose prescribed by the regulations. 15
- (c) Before section 72 (2A), insert:
- (2AB) Without limiting subsection (2), a plan of management for a national park, historic site or nature reserve reserved or dedicated under Part 4A may provide for the conduct of studies concerning the threat, if any, to endangered species of animals or plants posed by the exercise of rights to hunt or fish, or to gather traditional foods, by the traditional Aboriginal owners or other Aboriginal persons before any such rights are exercised, and for the regular monitoring of the exercise of those rights. 20
- 25
- (d) Omit “and” at the end of section 72 (4) (j1).
- (e) At the end of section 72 (4), insert:
- ; and 30
- (l) in the case of a national park, historic site or nature reserve reserved or dedicated under Part 4A, the need to maintain its national or international significance and to comply with the provisions of any relevant national or international agreement by which the State is bound. 35
- (8) **Section 75 (Adoption etc. of plan of management for national park or historic site):**
- After “site” in section 75 (1), insert “(other than a national park or historic site reserved under Part 4A)”. 40

National Parks and Wildlife (Aboriginal Ownership) Amendment 1994

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
NATIONAL PARKS AND WILDLIFE ACT 1974—*continued*

(9) Section 76 (**Adoption etc. of plan of management for nature reserve, state game reserve or karst conservation reserve**):

5 After “reserve” where firstly occurring in section 76 (1),
insert “(other than a nature reserve dedicated under Part
4A)”.

(10) Sections 79A and 79B:

After section 79, insert:

10 **Lapsing of plans of management**

79A. (1) A plan of management for a national park,
historic site or nature reserve reserved or dedicated under
Part 4A expires on the tenth anniversary of the date on which
it was adopted unless it is sooner cancelled under this Part.

15 (2) Not less than 6 months before a plan of management
expires, the board of management for the park, site or reserve
concerned must prepare a new plan of management to
replace it.

20 (3) The board of management is to have regard to a plan of
management that has expired until the new plan of
management comes into effect.

**Tabling and disallowance of plans of management for
lands reserved or dedicated under Part 4A**

25 79B. (1) A plan of management prepared for a national
park, historic site or nature reserve reserved or dedicated
under Part 4A is to be laid before each House of Parliament
within 14 sitting days (whether or not occurring during the
same session) after its preparation.

30 (2) Either House of Parliament may pass a resolution
disallowing a plan of management within 14 sitting days
after the plan is laid before it.

(3) On the passing of a resolution disallowing a plan of
management, the plan is cancelled.

35 (4) If a plan is cancelled by the passing of a resolution, the
board of management is to have regard to any expired plan it
replaces until a new plan of management is prepared.

National Parks and Wildlife (Aboriginal Ownership) Amendment 1994

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
NATIONAL PARKS AND WILDLIFE ACT 1974—*continued*

- (11) Section 81 (**Operations under plan of management**):
- (a) From section 81 (1), omit “subject to subsection (5)”, insert instead “subject to subsections (5) and (6)”. 5
- (b) After section 81 (5), insert:
- (6) If the Minister has adopted a plan of management for a national park, historic site or nature reserve reserved or dedicated under Part 4A, it is to be carried out and given effect to by the board of management for the park, site or reserve. 10
- (12) Section 84 (**Aboriginal places**):
- At the end of section 84, insert:
- (2) The Minister may not declare a place within land reserved or dedicated under Part 4A to be an Aboriginal place. 15
- (13) Section 117 (**Restriction on picking or possession of native plant**):
- After “refuge” in section 117 (2), insert “or in lands reserved or dedicated under Part 4A by a traditional Aboriginal owner on whose behalf the lands are vested in an Aboriginal Land Council or Councils under that Part or any other Aboriginal person who has the consent of that Aboriginal Land Council or Councils for purposes referred to in section 57 (7)”. 20
- (14) Section 138 (**Payments into the Fund**):
- (a) After “Act” in section 138 (1) (a), insert “including money provided for the expenses incurred or likely to be incurred by boards of management in connection with the preparation of plans of management for, and the care, control and management of, national parks, historic sites or nature reserves reserved or dedicated under Part 4A”. 30
- (b) After section 138 (1) (b), insert:
- (b1) rent paid by the Minister under section 71F;

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
NATIONAL PARKS AND WILDLIFE ACT 1974—*continued***

(c) After section 138 (1), insert:

5 (1A) Subject to subsections (2) and (3), any money paid into the Fund, including rent paid by the Minister under section 71F, in connection with a national park, historic site or nature reserve reserved or dedicated under Part 4A is to be carried into a separate account in the Fund.

10 (1B) Any money referred to in subsection (1A) may, pending its being paid out of the Fund, be invested with the Treasurer or in any manner in which trustees are for the time being authorised to invest trust funds.

(15) Section 139 (**Payments out of the Fund**):

After section 139 (4), insert:

15 (5) Any money in a separate account kept under section 138 (1A) in respect of a national park, historic site or nature reserve reserved or dedicated under Part 4A must be applied:

20 (a) in connection with that park, site or reserve (including in connection with the preparation of a plan of management for the park, site or reserve); and

(b) in accordance with the provisions of any plan of management for the park, site or reserve.

(16) Section 144B:

After section 144A, insert:

25 **Annual reports**

30 144B. The Service is to include a statement of its operations and expenditure in connection with a national park, historic site or nature reserve reserved or dedicated under Part 4A in each report it makes under the Annual Reports (Departments) Act 1985.

(17) Section 150 (**Minister to be corporation sole for certain purposes**):

In section 150 (1), after “functions under”, insert “Part 4A and”.

National Parks and Wildlife (Aboriginal Ownership) Amendment 1994

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
NATIONAL PARKS AND WILDLIFE ACT 1974—*continued***

(18) Schedule 3 (**Savings, transitional and other provisions**):

(a) Before clause 1, insert:

PART 1—GENERAL

5

Regulations

1. (1) The Governor may make regulations containing provisions of a saving or transitional nature consequent on the enactment of the following Acts:

National Parks and Wildlife (Aboriginal Ownership) Amendment Act 1994 10

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as: 15

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or 20

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. 25

PART 2—SPECIAL PROVISIONS

(b) Re-number clause 1 as clause 1A.

(c) After clause 22, insert:

Termination of appointment of members of certain advisory committees 30

23. (1) A member of an advisory committee constituted for any lands comprising the national parks, historic sites or nature reserves listed in Schedule 4 and holding office immediately before the publication of a notification under section 71J ceases to hold office on the date on which a lease of those lands takes effect by the operation of that section. 35

(2) No compensation is payable to any such member for or in respect of the termination of the member's appointment under this clause.

**SCHEDULE 3—CONSEQUENTIAL AMENDMENT OF
ABORIGINAL LAND RIGHTS ACT 1983**

(Sec. 4)

(1) Section 12 (**Functions of a Local Aboriginal Land Council**):

5 After section 12 (a), insert:

- (a1) to negotiate the acquisition and lease of lands comprising the national parks, historic sites or nature reserves listed in Schedule 4 to the National Parks and Wildlife Act 1974 in accordance with Part 4A of that Act; and
- 10

(2) Section 23 (**Functions of the Council**):

 After section 23 (c), insert:

- (c1) to negotiate on its own behalf or on behalf of one or more Local Aboriginal Land Councils or a group of Aboriginal persons the acquisition and lease of lands comprising the national parks, historic sites or nature reserves listed in Schedule 4 to the National Parks and Wildlife Act 1974 in accordance with Part 4A of that Act;
- 15
- (c2) to recommend to the Minister administering Part 4A of the National Parks and Wildlife Act 1974 the insertion in Schedule 4 to that Act of reference to particular lands reserved or dedicated under that Act that are of special cultural significance to Aboriginal persons;
- 20

(3) Section 38 (**Purchase, lease etc. of property**):

 After section 38 (4), insert:

- (5) Nothing in this Act prevents the vesting of land under Part 4A of the National Parks and Wildlife Act 1974 in more than one Local Aboriginal Land Council as a joint tenancy.
- 25

(4) Section 40B (**Lease, use etc. of land**):

(a) After section 40B (1), insert:

- (1A) Without limiting subsection (1), the New South Wales Aboriginal Land Council is authorised to lease lands that have been vested in it pursuant to Part 4A of the National Parks and Wildlife Act 1974 to the Minister administering that Act as required by that Part.
- 30
- 35

SCHEDULE 3—CONSEQUENTIAL AMENDMENT OF
ABORIGINAL LAND RIGHTS ACT 1983—*continued*

(b) After section 40B (4), insert:

(5) A Local Aboriginal Land Council is authorised (subject to the requirements of this section other than the requirement that the lease be approved by the New South Wales Aboriginal Land Council) to lease lands that have been vested in the Council pursuant to Part 4A of the National Parks and Wildlife Act 1974 to the Minister administering that Act as required by that Part. 5
10

(6) Nothing in this Act prevents lands that are the subject of a lease referred to in subsection (1A) or (5) being reserved as a national park or historic site or dedicated as a nature reserve as required by Part 4A of the National Parks and Wildlife Act 1974. 15

(5) Section 58A (**Dissolution of Regional or Local Aboriginal Land Councils**):

After section 58A (3), insert:

(3A) Despite subsection (3), land vested in a Local Aboriginal Land Council under Part 4A of the National Parks and Wildlife Act 1974 does not vest in the New South Wales Aboriginal Land Council on dissolution but vests in accordance with that Part. 20
