

FIRST PRINT

**WILDERNESS (PRIVATE PROPERTY RIGHTS) AMENDMENT
BILL 1992**

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

Any person may submit a proposal to the Director of National Parks and Wildlife that an area of land be identified as wilderness, declared a wilderness area or added to an existing wilderness area. At present, the Director is only obliged to notify the owner of the land of any proposal received in relation to the land. The Director must consider the proposal and advise the Minister on the proposal within 2 years.

The proposed Act modifies the procedure the Director must follow when considering land (whether in response to a proposal or by way of an investigation instigated by the Director). The procedure is modified:

- (a) by requiring the consent of any owner, lessee, mortgagee or chargee of the land, and any person having the benefit of a positive covenant over it, to be obtained before the Director considers or assesses a proposal, commences an investigation of land or identifies land as wilderness; and
- (b) by providing that, on the expiry of 2 years from the time the Director began considering the proposal or investigating the land, new consents will need to be obtained for an investigation, or the process of considering a proposal, to continue.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 gives effect to the Schedule of amendments to the Wilderness Act 1987.

Wilderness (Private Property Rights) Amendment 1992

SCHEDULE 1—AMENDMENTS

Consent

Schedule 1 (1), (3) and (4) make amendments that require the consent of the owner, lessee, mortgagee or chargee of the land, and any person having the benefit of a positive covenant over it, before:

- a proposal is considered for the identification of land as wilderness, for the declaration of land as a wilderness area or for the addition of land to existing wilderness areas; or
- the Director of National Parks and Wildlife undertakes investigation of land to ascertain its suitability for those purposes; or
- the Director of National Parks and Wildlife identifies an area of land as wilderness

Time limits

Schedule 1 (2) amends the Act to limit the time within which land, or a proposal in relation to land, can be investigated. The time limit starts when the Director first receives a proposal, or obtains the necessary consent to investigate the land for its suitability, and ends 2 years later. If a proposal has not been finally dealt with by the Director within the 2 year period, the consent will again need to be obtained before further consideration of the proposal or investigation of the land can continue.

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TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Wilderness Act 1987 No. 196

SCHEDULE 1—AMENDMENTS

**WILDERNESS (PRIVATE PROPERTY RIGHTS) AMENDMENT
BILL 1992**

NEW SOUTH WALES



No. , 1992

A BILL FOR

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

Wilderness (Private Property Rights) Amendment 1992

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Wilderness (Private Property Rights) Amendment Act 1992.

5 Commencement

2. This Act commences on the date of assent.

Amendment of Wilderness Act 1987 No. 196

3. The Wilderness Act 1987 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

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(Sec. 3)

(1) Section 5 (**Functions of Director and Service**):

After section 5 (2), insert:

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(3) The Director must not begin to investigate an area of land in accordance with subsection (1) (a) unless the Director has first obtained the written consent to the investigation of:

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(a) the owner, if the land is owned by a person other than the Crown or a statutory authority; and

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

(c) the mortgagee, chargee or person entitled to the benefit of a positive covenant, if the land is subject to a mortgage, charge or positive covenant.

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(4) The Director must not begin to consider or assess a proposal in accordance with subsection (1) (b) unless:

(a) the proposal is accompanied by the consent required by section 7 (2); or

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(b) in the case of a proposal made before the commencement of this subsection (but which the Director has not begun to consider or assess before that commencement) the consent referred to in section 7 (2) is subsequently provided.

(2) Section 5A:

After section 5, insert:

Wilderness (Private Property Rights) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

General time limit for creation of wilderness areas

- 5A. (1) If land that the Director has investigated in accordance with section 5 (1) (a) has not been declared by the Minister under section 8 to be a wilderness area or part of a wilderness area: 5
- (a) within 2 years after obtaining the consent required by section 5 (3); or
- (b) if the investigation began before the date of assent to the Wilderness (Private Property Rights) Amendment Act 1992, within 2 years after that date of assent, 10
- any such investigation cannot be continued unless the consent required by section 5 (3) is again obtained.
- (2) If land the subject of a proposal being considered and assessed by the Director in accordance with section 5 (1) (b) has not been declared by the Minister under section 8 to be a wilderness area or part of a wilderness area: 15
- (a) within 2 years after the proposal was made; or
- (b) if the consideration or assessment began before the date of assent to the Wilderness (Private Property Rights) Amendment Act 1992, within 2 years after that date of assent, 20
- the consideration and assessment of the proposal cannot continue unless the consent required by section 7 (2) is again provided. 25
- (3) Section 6 (**Identification of wilderness**):
- After section 6 (2), insert:
- (3) The Director must not identify an area of land as wilderness unless the Director has obtained the written consent to the identification of: 30
- (a) the owner, if the land is owned by a person other than the Crown or a statutory authority; and
- (b) the tenant or lessee, if the land is subject to a residential tenancy agreement or other lease; and
- (c) the mortgagee, chargee or person entitled to the benefit of a positive covenant, if the land is subject to a mortgage, charge or positive covenant. 35

Wilderness (Private Property Rights) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

(4) Section 7:

Omit the section, insert instead:

Wilderness proposals

- 5 7. (1) Any person, body or organisation (including a
statutory authority) may submit to the Director a written
proposal that a specified area of land:
- 10 (a) be identified as wilderness; or
(b) be declared to be a wilderness area; or
(c) be added to an existing wilderness area.
- (2) The proposal must be accompanied by the written
consent to the proposal of:
- 15 (a) the owner, if the land is owned by a person other than
the Crown or a statutory authority; and
(b) the tenant or lessee, if the land is subject to a
residential tenancy agreement or other lease; and
(c) the mortgagee, chargee or person entitled to the benefit
of a positive covenant, if the land is subject to a
mortgage, charge or positive covenant.
- 20 (3) The Director must consider the proposal and must:
- (a) if the proposal is that an area of land be identified as
wilderness, identify the land as wilderness or reject the
proposal; or
- 25 (b) if the proposal is that an area of land be declared to be
a wilderness area or added to a wilderness area, advise
the Minister in relation to the proposal.
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Wilderness (Private Property Rights) Amendment 1992

SCHEDULE 1—AMENDMENTS

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SCHEDULE 1—AMENDMENTS

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(Sec. 3)

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After section 5 (2), insert:

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(3) The Director must not begin to investigate an area of land in accordance with subsection (1) (a) unless the Director has first obtained the written consent to the investigation of:

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(a) the owner, if the land is owned by a person other than the Crown or a statutory authority; and

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(4) The Director must not begin to consider or assess a proposal in accordance with subsection (1) (b) unless:

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(a) the proposal is accompanied by the consent required by section 7 (2); or

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After section 5, insert:

Wilderness (Private Property Rights) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

General time limit for creation of wilderness areas

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(a) within 2 years after obtaining the consent required by section 5 (3); or

(b) if the investigation began before the date of assent to the Wilderness (Private Property Rights) Amendment Act 1992, within 2 years after that date of assent, any such investigation cannot be continued unless the consent required by section 5 (3) is again obtained. 10

(2) If land the subject of a proposal being considered and assessed by the Director in accordance with section 5 (1) (b) has not been declared by the Minister under section 8 to be a wilderness area or part of a wilderness area: 15

(a) within 2 years after the proposal was made; or

(b) if the consideration or assessment began before the date of assent to the Wilderness (Private Property Rights) Amendment Act 1992, within 2 years after that date of assent, 20

the consideration and assessment of the proposal cannot continue unless the consent required by section 7 (2) is again provided. 25

(3) Section 6 (**Identification of wilderness**):

After section 6 (2), insert:

(3) The Director must not identify an area of land as wilderness unless the Director has obtained the written consent to the identification of: 30

(a) the owner, if the land is owned by a person other than the Crown or a statutory authority; and

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Wilderness (Private Property Rights) Amendment 1992

SCHEDULE 1—AMENDMENTS—*continued*

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Omit the section, insert instead:

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