



PARLIAMENT OF NEW SOUTH WALES
LEGISLATIVE ASSEMBLY

No. 255

1992

REPORT OF THE
LEGISLATION COMMITTEE
UPON THE
NATIONAL PARKS AND WILDLIFE
(ABORIGINAL OWNERSHIP)
AMENDMENT BILL 1992

together with appendices 1 to 9
including the
Minutes of Proceedings of the Committee

Ordered to be printed 25 November 1992

REPORT

of Legislation Committee upon

- National Parks and Wildlife (Aboriginal Ownership)
Amendment Bill 1991 (No. 2)
- Aboriginal Land Rights (Aboriginal Ownership) Amendment
Bill 1991 (No. 2)
- National Parks and Wildlife (Aboriginal Ownership)
Amendment Bill 1992

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MEMBERS OF THE LEGISLATION COMMITTEE

Mr C W Markham, MP	Mr J R Small, MP
Mr J C Mills, MP	*Mr K M Yeadon, MP
†Mr A J Schultz, MP	Mr P J Zammit, MP (Chairman)

Appointed Votes and Proceedings No. 28, Entry 20, 14 November 1991.

*Appointed to replace Dr T A Metherell who resigned on 10 April 1992: Votes and Proceedings No. 28, Entry 28, 7 May 1992.

†Appointed 1 September 1992 vice Mr Photios discharged: Votes and Proceedings No. 33, Entry 31, 1 September 1992.

(Committee to report to Legislative Assembly by 25 November 1992, extensions granted Votes and Proceedings Nos. 2, Entry 15, 25 February 1992; 20, Entry 13, 9 April 1992, and 33, Entry 31, 1 September 1992.

STAFF

Mr L Gönye, M.A., Clerk to the Committee
Mr J B Jefferis, B.A., LL.B., Project Officer

CHAIRMAN'S FOREWORD

This is a report by the Legislation Committee upon the National Parks and Wildlife (Aboriginal Ownership) Amendment Bill 1992.

The Committee recommends a number of changes that affect central features of the legislation. Those amendments are seen by the Committee as crucial if the legislation is to satisfy the Government's objectives and fairly meet the needs of the Aboriginal community.

Those Government objectives are

- (i) the return of certain lands of special cultural significance to the Aboriginal community;
- (ii) to provide, through a Board of Management, for the Aboriginal community to have the principal responsibility for the management of those lands, in co-operation with the National Parks and Wildlife Service; and
- (iii) to retain the status of those lands as a national park, historic site or nature reserve with associated rights of access and enjoyment of them by the Australian community.

These objectives have given rise to difficult and contentious issues which have all been fully addressed by the Committee in its Report.

The Legislative Assembly granted the Committee leave to make a visit of inspection to Broken Hill, Mootwingee National Park and Historic Site, Uluru National Park, Kakadu National Park, Mt Grenfell Historic Site and Mt Yarrowyck Nature Reserve. The proceedings of these visits are detailed in the minutes.

In Broken Hill the Committee met with regional and district Officers of the National Parks and Wildlife Service. Those officers briefed the Committee on current NPWS operations in Mootwingee and Mungo National Parks and on the working arrangements that could be put in place to further the interests of the legislative proposals.

NPWS also arranged a trip for the Committee to Mootwingee National Park and Historic Site. The Committee held discussions with the Mutawintji Local Aboriginal Land Council as well as pastoralists in the neighbourhood of Mootwingee. These were an invaluable means of "grass roots" community consultation and helped both the interest groups and the Committee to gain a better grasp of the issues of concern.

In Broken Hill the Committee also took the opportunity to

take formal evidence from parties interested in the legislation. The hearings in Broken Hill were well attended and brought the institution of the Parliament closer to the communities affected by this legislation. Twenty three witnesses gave evidence. At Cobar and Armidale the Committee met with the local Aboriginal land councils. The Committee thanks those citizens of Western and Northern New South Wales for providing material invaluable to its deliberations.

In the Northern Territory the Committee held discussions with the traditional owners of Uluru and Kakadu National Parks, officers of the Australian National Parks and Wildlife Service, members of both the Northern Territory Legislative Assembly and Local Government and community and industry representatives. This provided the Committee with an opportunity to examine the operation of the analogous Commonwealth legislation. Equally, the visits gave the Committee a further chance to appreciate and admire Aboriginal culture. This could never have been gained by remaining in Macquarie Street.

The Committee wishes to record its thanks to all those people who took the trouble and interest to express their views to the Committee either through written submissions or formal evidence.

Paul Zammit, MP
Chairman

RECOMMENDATIONS

Recommendation 1: That the legislation proceed in accordance with the National Parks and Wildlife (Aboriginal Ownership) Amendment Bill 1992 set out in Appendix 6 to this Report. That Bill incorporates the amendments recommended by the Committee. Appendix 7 sets out, separately, for the purposes of the Sessional Orders, the amendments which the Legislation Committee considers should be proposed to the Committee of the Whole to implement the recommendations. [Ch 13, pp 58-59]

Recommendation 2: That the legislation provide for the land to vest in fee simple. [Ch 5, pp 22-25]

Recommendation 3: That where both a Local Aboriginal Land Council and the New South Wales Aboriginal Land Council seek a vesting of Schedule 4 lands that preference be given by the Minister to the Local Aboriginal Land Council. [Ch 3, pp 7-16]

Recommendation 4: That the renewal of any lease between the Lessor and the Minister be subject to the consent of both parties. In the event that the lease is not, on any occasion, renewed the legislation shall preserve the status of the land as a national park, historic site or nature reserve under the National Parks and Wildlife Act 1974. [Ch 5, pp 22-25]

Recommendation 5: That the names of the traditional owners of Schedule 4 lands be kept in a register maintained by the Aboriginal Land Council rather than by being identified in the lease document. [Ch 4, pp 17-21]

Recommendation 6: That any person or group of persons claiming to have been wrongly placed on or omitted from the register of traditional owners of land should have a right of appeal to the Land and Environment Court which should be empowered to give the necessary directions to the Aboriginal Land Council for rectification of the register. [Ch 4, pp 17-21]

Recommendation 7: That the Arbitration provisions form part of the Act rather than as a condition of the lease. Further, that they not extend to matters where the Director of the National Parks and Wildlife Service is subject to the direction or oversight of a board of management. [Ch 11, pp 47-52]

Recommendation 8: That, as a condition of the lease with the Aboriginal Land Council, the Minister 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 Service and in particular the timetable for the implementation of that Plan. Further, that he report to Parliament from time to time in regard to the progress achieved in implementing that Plan. [Ch 11, pp 47-52]

Recommendation 9: That where a notification is published more than 28 days after the required date it shall not affect the validity of that notification. [Ch 7, pp 28-30]

Recommendation 10: That the provisions of the Bill relating to existing interests be clarified by the Parliamentary Counsel. [Ch 7, pp 28-30]

Recommendation 11: That the name to be assigned by the Governor to a national park, historic site or nature reserve vested in an Aboriginal Land Council be assigned on the recommendation of that Aboriginal Land Council. [Ch 7, pp 28-30]

Recommendation 12: That the Bill be amended to exclude the operation of section 112 of the Geographical Names Act 1966 in relation to the naming of a park, site or reserve vested in an Aboriginal Land Council pursuant to the Bill. [Ch 7, pp 28-30]

Recommendation 13: That the exercise by a traditional Aboriginal owner of hunting and gathering rights be subject to the terms of the plan of management for the particular lands but not to the additional requirement of the approval of the Minister. [Ch 6, pp 26-27]

Recommendation 14: That the plan of management for a national park, historic site or nature reserve vested in an Aboriginal Land Council should make provision, in advance of the exercise of any traditional hunting and gathering rights, for studies to be conducted of the threat, if any, to endangered species of animals and plants posed by the exercise of those rights. Further, that the plan of management make provision for a regular and effective monitoring of the exercise of those rights. [Ch 6, pp 26-27]

Recommendation 15: That the Bill be amended to authorise a plan of management for a Schedule 4 area to provide for the use of that national park, historic site or nature reserve for any community development purposes prescribed by the regulations. [Ch 8, pp 31-33]

Recommendation 16: That the Board of Management for a national park, historic site or nature reserve vested in an Aboriginal Land Council consist of at least 9 but not more than 13 members of whom:

- the majority should be persons nominated by the lessor or lessors of the lands comprised within the park, site or reserve;
- one should be a person appointed by the Minister to represent the shire council or councils for the area comprising or adjoining the park, site or reserve;
- one should be an officer of the National Parks and Wildlife Service appointed by the Director for this purpose;
- one should 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

- one should be a person appointed by the Minister on the nomination of owners, lessees or occupiers of land adjoining or in the vicinity of the park, site or reserve to represent those owners, lessees or occupiers. [Ch 9, pp 34-40]

Recommendation 17: That the procedure to be followed at a meeting of a Board of Management be governed by the regulations subject to the requirement that a quorum shall not be constituted unless a majority of the members present at that meeting are persons who were appointed on the nomination of the lessor. [Ch 9, pp 34-40]

Recommendation 18: That section 72 of the National Parks and Wildlife Act 1974 be amended to make it clear that the board of management for a national park, historic site or nature reserve has the function, in consultation with the Director of the National Parks and Wildlife Service, of the preparation of plans of management for that park, site or reserve. [Ch 9, pp 34-40]

Recommendation 19: That section 14D(2) of the Bill be amended to exclude any direction by the Minister to a board of management in relation to the contents of any report, advice, information or recommendation by the board or in relation to any decision as to the care, control and management of Aboriginal heritage and culture. [Ch 9, pp 34-40]

Recommendation 20: That the legislation be amended to require each existing plan of management to be reviewed within 2 years of the commencement of the Act. [Ch 9, pp 34-40]

Recommendation 21: That draft plans of management for Schedule 4 areas be advertised and that interested members of the public be entitled to make submissions upon them. [Ch 9, pp 34-40]

Recommendation 22: That the Bill be amended to provide for the payment each year into the National Parks and Wildlife Fund of an amount sufficient to meet the estimated expenses to be incurred by each board of management in connection with the preparation of plans of management and in the care, control and management of a national park, historic site or nature reserve. [Ch 10, pp 41-46]

Recommendation 23: That the Bill make provision for the payment to an Aboriginal Land Council of an annual rent in return for any lease granted by it to the Minister such rent to be calculated on the basis of an amount to compensate the Council for its loss of the full use and enjoyment of the land. Further, that in the event of disagreement between the parties as to the amount of rent, the rent is to be determined by the Valuer General. Provision should be made for the rent to be paid into the National Parks and Wildlife Fund for use by the Board of Management in connection with the care,

control and management of the park, site or reserve in respect of which it was paid. [Ch 10, pp 41-46]

Recommendation 24: That the Bill be amended to provide for the auditing of the accounts of each Board of Management. [Ch 10, pp 41-46]

Recommendation 25: That the Aboriginal Land Council have custody of the title documents (other than the lease) of any lands vested in it. [Ch 7, pp 28-30]

Recommendation 26: That the lease between the Aboriginal Land Council and the Minister include a condition requiring the parties to meet at least once in every 5 years to discuss whether any of the conditions of the lease (other than a condition relating to the term of that lease) require variation. If the Lessee and Lessor fail to agree upon any variation of the lease proposed by either party the disagreement should be referred to arbitration in accordance with the provisions of the Bill. [Ch 11, pp 47-52]

Recommendation 27: That new section 71W be amended to provide, on the dissolution of a land council, for the Schedule 4 lands held by it to be transferred to the local Aboriginal Land Council or councils who subsequently incorporate the area of the dissolved council and that pending that incorporation, title to the Schedule 4 lands stand in the name of the traditional owners. [Ch 11, pp 47-52]

Recommendation 28: That section 23 of the Aboriginal Land Rights Act be amended to provide that a function of the New South Wales Aboriginal Land Council shall be to recommend to the Minister lands within any national park, historic site or nature reserve that it considers should be included in Schedule 4 as lands of special cultural significance to Aboriginal persons. [Ch 3, pp 7-16]

Recommendation 29: That in conformity with the Memorandum of Understanding Between the Premier and the Independent Members a provision be included in the Bill to require a review by the Minister of the operation of the legislation after 5 years to determine whether the policy objectives for that legislation remain valid and whether the form of the legislation remains appropriate for securing those objectives. Further that the Minister report to Parliament on the outcome of the review. [Ch 2, pp 3-6]

INTRODUCTION

On 1 May 1991, the National Parks and Wildlife (Aboriginal Ownership) Amendment Bill and the Aboriginal Land Rights (Aboriginal Ownership of Parks) Amendment Bill were introduced into the Legislative Assembly by Mr Moore, the then Minister for the Environment. These bills lapsed on dissolution of Parliament on 3rd May 1991.

On 2 July, 1991, Mr Moore introduced the National Parks and Wildlife (Aboriginal Ownership) Amendment Bill 1991 (No. 2) and the Aboriginal Land Rights (Aboriginal Ownership of Parks) Amendment Bill 1991 (No. 2). Debate was adjourned.

On resumption of debate on 14 November 1991, Mr Moore set out a number of changes that would be made to the legislation as a result of further consultation that had been carried out with the Aboriginal community and landholders. He said a new bill would be drafted and submitted to a Legislation Committee as a series of alternatives to the bills that were currently before the House. Debate was adjourned on a motion by Ms Allen. This was followed by the motion of Mr Moore, which was agreed to:

"That -

(a) The National Parks and Wildlife (Aboriginal Ownership) Amendment Bill (No. 2) and cognate bill be referred to a Legislation Committee.

(b) Such committee consist of Mr Markham, Dr Metherell, Mr Mills, Mr Photios, Mr Small and Mr Zammit.

(b) The committee report by 31st March, 1992."

The Committee met on 9 December, 1991 and elected Mr Zammit, MP as its Chairman. A further draft of the legislation was prepared by the Parliamentary Counsel incorporating the changes mentioned by the Minister and it consolidated both of the previous bills into one measure, the National Parks and Wildlife (Aboriginal Ownership) Amendment Bill 1992. The report of the Legislation Committee principally examines the legislative proposals in terms of the 1992 bill though, where it is necessary to do so, the report also comments upon the terms of the 1991 bills. The 1992 bill was introduced by the Minister into Parliament on 25 February 1992. The date by which the Committee was required to report was subsequently extended to 25 November 1992. On 10 March 1992 Dr Metherell resigned from Parliament. His position on the Committee was filled by Mr Yeadon. On 1 September 1992 Mr Photios was discharged from the Committee, and Mr A Schultz was appointed to the vacancy.

The proposal was advertised on 7 March 1992 and submissions

were sought from the public. A list of the submissions received is set out in Appendix 1.

The Legislation Committee conducted public hearings at Parliament House, Sydney on 11th June 1992; at the Broken Hill Council Chambers, Broken Hill on 12th July 1992 and at Parliament House, Sydney on 17th and 18th August 1992. The names of the witnesses at those hearings are set out in Appendix 2.

In association with its inquiry the Committee visited Mootwingee National Park and held discussions there with the Mootwingee Local Aboriginal Land Council and with various landholders of the area. An inspection was carried out of Mt Grenfell Historic Site and Mt Yarrowyck Nature Reserve. The Committee met with the local Aboriginal land councils for the Cobar and Armidale areas. It also inspected the Uluru and Kakadu National Parks and conducted discussions with the Boards of Management of those parks.

GOVERNMENT'S OBJECTIVES

The Government's objectives for this legislation are to be found in the Ministerial statements and speeches upon it, in the evidence given by the Minister before the Committee's Inquiry and in the legislation itself.

Mr T. J. Moore, the then Minister for the Environment, in his speech to Parliament at the Second Reading Stage of the legislation said the legislative measures would permit the vesting of a freehold title in Aborigines to national park areas that are of great cultural significance to Aboriginal people. In that speech the Minister said that since the earliest period of land dedication for the reservation of Aboriginal places in New South Wales the system had been dominated by European cultural ethics which had failed to recognise the sacred nature and culturally significant aspects of such sites. The Minister went on to say that although the Government had, by the Aboriginal Land Rights Act 1983, acknowledged the importance of Aboriginal land tenure in New South Wales, the Government had not entered into a revocation process that enabled Aboriginal citizens, through their land councils, to lay claim to areas that were of particular significance to them.

The Minister referred the Parliament to an Article that appeared in the Aboriginal Law Bulletin for February 1990.¹ He said that Article argued quite cogently for the sort of legislation that the Government had now introduced. It is of relevance to mention the contents of the Article as it clearly acted as one catalyst for Government action.

The Article stressed as a shortcoming of the Aboriginal Land Rights Act 1983 the failure to grant Aboriginal people ownership or control over their sacred sites. The Article was written against a background of Aboriginal concern with the management of the Mootwingee National Park. It spoke of the fact that all sacred sites at Mootwingee currently remained under the control of the National Parks and Wildlife Service and of the lack of a formal arrangement for Aboriginal control under the Mootwingee Plan of Management.

The Article supported the adoption of the Kakadu/Uluru model for National Parks, whereby the ownership of National Parks is granted to the relevant local Aboriginal land council and leased back to the Crown, guaranteeing Aboriginal involvement in the management of the park.

It argued that Aboriginal people must have title to the land and a fairly large majority on the board of management and not

¹ Aboriginal Law Bulletin, Vol 2 ALB No. 42, 1990.

just be consulted. It also underlined the need for the local Aboriginal land council to be given adequate resources to allow it to organise significant independent input.

The Minister, after referring to this Article, went on to crystallise the Government's attitude to this legislation as follows:

"This legislation is about acknowledgment; it is not about money. It is about responsible empowerment of Aboriginal people, within a co-operative community framework, providing for the future management of these areas..... This piece of legislation, together with its cognate bill, will provide a framework for a significant contribution from the New South Wales Government - a Liberal Party-National Party Government - taking a significant step to give rights to the Aboriginal community of New South Wales. It is a significant step in the national reconciliation process - a process about which the Premier recently wrote to the Prime Minister indicating the support of the New South Wales Government.

*It has given me great pleasure to introduce this legislation to the Parliament. It is a proposal that originated from my office. Much of the legislation was written by me, but the spirit of it comes from people like William Bates, or Badger Bates, the people from the land council and the local community out in western New South Wales. They first gave to me the germ of the idea that led to this legislation. It is particularly to those people - the ordinary Aboriginal men and women of New South Wales who feel a deep spiritual and cultural affinity with sites such as the four that are named in this legislation - that we say we wish to return ownership to them, acknowledging still the importance of these sites to all of us within the community and the need to conserve and preserve them for the future, while allowing responsible access to them in consultation with and management by the Aboriginal community, so that we can enjoy and understand the beauty of these places as well as their enormous significance to the local Aboriginal communities."*²

Further information relating to the Government's objectives can be found in a media release by Mr Moore dated 29 April 1991 in which he stated the legislation would return some of the State's national parks to the Aboriginal people.

In that media release Mr Moore described the new legislation as *"a far reaching philosophical framework, for reconciling past NPWS land dedication processes and the genuine cultural aspirations of the Aboriginal community in NSW"*. He said the new policy would help rectify what many in the Aboriginal community believed was a "Eurocentric" treatment in past National Park

² New South Wales Parliamentary Debates, 1 May, 1991 at page 2908.

dedications involving significant Aboriginal areas.

Mr Moore said the aim of the legislation was not to provide a significant flow of revenue to the Aboriginal people - that, he said, was already provided for under the Land Rights provisions, which provided revenue from land tax. He said the new legislation would recognise traditional Aboriginal ownership of the land; provide for the participation of the local Aboriginal people in the management of that land; and increase Aboriginal employment in the National Parks Service throughout NSW.

The Minister said the new legislation had been drawn from various models used in the Northern Territory, which was acknowledged as a sensible way of recognising the cultural significance of certain areas, while ensuring conservation.

Although the Minister's second reading speech and media release examined the reasons for a number of the principal provisions no attempt was made to provide the public with any thorough dissection of this complex legislation including its operational costs and benefits. No comparison was carried out of the merits of the schemes operating in other Australian States or Territories that had formed the basis for the legislation. The result was that members of the public who were not a party to direct discussions with the Minister were for the most part left to their own resources if they wished to analyse the complexities of the legislation and comment upon them.

The Regulation Review Committee in its Report to the New South Wales Parliament in March 1991 drew attention to the need for more formal procedures in regard to the development of principal legislation. That Committee found there was no formal government assessment procedure to test the merits and weaknesses of proposals for principal legislation prior to their introduction into Parliament. It found that Cabinet procedures did not cover the need for a consultation programme or of giving the public relevant notice of a proposal so that comments could be sought and evaluated. The Legislation Committee considers these deficiencies contributed to the adverse public perception of the way the National Parks and Wildlife (Aboriginal Ownership) Amendment Bill had been presented.

The New South Wales Aboriginal Land Council in its submission to the Legislation Committee objected to the fact that the Minister started the consultation process after introduction of the legislation.

"Negotiations in our opinion should have taken place in an opposite direction. It would have been more successful to have negotiated from the beginning and drafted a bill after close consultation and negotiation with the Aboriginal people (as in the cases of Uluru). Instead we see a bill already drafted and handed to us like an enterprise agreement to which we must respond."

Similar comments were made by Mr B Standen, President

Balranald Shire Council. During the course of the Committee's inquiry at Broken Hill he stated:

"I'm afraid this (proposal) appeared in the local Mildura paper. That is the press release released by Mr Moore and that was the first we heard of it. There was no consultation, no anything, of which we are disgusted with."

In future this situation may be corrected as a result of the terms of the Memorandum of Understanding dated 31 October 1991 between the Premier and the Independent Members. That Memorandum calls for statements on the financial, social or environmental impact of legislation and for the release, in an exposure draft, of landmark legislation for a minimum of 28 days for public comment.

Under that Memorandum it is also now Government policy to include review clauses in all legislation where this would be appropriate. The purpose of those clauses is to require the relevant Minister to review the operation of an Act after 5 years to determine whether the policy objectives for that legislation remain valid and secondly whether the form of the legislation remains appropriate for securing those objectives. The Minister is required to report to Parliament on the outcome of the review. The Legislation Committee supports the application of this policy in regard to the present legislation and recommends the inclusion of a suitable provision in the bill in regard to it.

LANDS OF SPECIAL CULTURAL SIGNIFICANCE TO ABORIGINAL PERSONS

Lands of "special" cultural significance

The legislation recognises the special cultural significance to Aboriginal persons of the following lands:

Mungo National Park
Mootwingee Historic Site, Mootwingee National Park and
Coturaundee Nature Reserve
Mount Grenfell Historic Site
Mount Yarrowyck Nature Reserve (Schedule 4)

The legislation enables these lands to be vested in one or more local Aboriginal land councils that have a close association with the lands or in the New South Wales Aboriginal Land Council.

Although new section 71C of the 1992 bill sets out the criteria that makes lands of cultural significance to Aboriginal persons, it does not say what makes such lands of "special" cultural significance. Consequently, future additions to Schedule 4 will depend on some further judgment of whether lands of cultural significance are special. It has been remarked that the discretionary nature of such a provision gives Aborigines little bargaining power.³ It can also be said that it provides insufficient information as to the basis on which the decision is to be made.

This issue has given rise to a detailed submission by the National Parks Association arguing that of the Schedule 4 areas only Mootwingee Historic Site and Mount Grenfell Historic Site should be transferred to Aboriginal ownership at this time.⁴

The Association summarised their appraisal of the Schedule 4 areas as follows:

"In relation to the specific areas under consideration, our view is that:

- a) *Mootwingee Historic Site was reserved primarily for the protection of caves and Aboriginal culture with nature conservation being a minor aspect;*
- b) *Mootwingee National Park was reserved for its landscape and nature conservation values;*

³ Article by Robert Lowe, October 1991 Aboriginal Law Bulletin.

⁴ Submission dated 30 March 1992 by National Parks Association of NSW.

- c) Grenfell Historic Site was reserved primarily for protection of Aboriginal culture;
- d) Coturaundee Nature Reserve was primarily dedicated to protect the Yellow-footed Rock Wallaby;
- e) Mungo National Park has a mixture of cultural and biological significance as well as outstanding landscape. The area warrants further deliberation prior to final determination as to its status. The area is part of the Willandra Lakes World Heritage listing and based on both archaeological and environmental significance; and
- f) Mount Yarrowyck Nature Reserve has been dedicated for nature conservation purposes although it is also important for cultural reasons."

The Association opposes the legislation proceeding in its current form. It argues that Mootwingee National Park, Coturaundee Nature Reserve, Mount Yarrowyck Nature Reserve and Mungo National Park should be retained in Crown ownership and managed by the National Parks and Wildlife Service in recognition of the broader nature conservation, landscape and scientific significance of those areas.

The views of the National Parks and Wildlife Service do not support the conclusions of the Association. Helen Clemens, Manager Cultural Heritage, National Parks and Wildlife Service, had this to say when questioned at the Inquiry.

MEMBER OF COMMITTEE: "Helen Clemens, it is quite obvious from the charter that the NPWS has, it has a commitment to Aboriginal culture and heritage within the National Parks of New South Wales. Within this bill that we are dealing with now there are four Schedule sites that we have identified. Do you believe that they are of significant Aboriginal cultural, spiritual and heritage listings?"

MS CLEMENS: "The three in the west undoubtedly. With Yarrowyck, from the little I know of it and the little that has ever been made known to the Service, would indicate it is certainly of cultural significance, but what the implications of that is I don't know. So I would not go further than that without talking to people."

MEMBER OF COMMITTEE: "You are saying three out of the four. The one you don't really know about is Yarrowyck, whether it fits the bill, so to speak."

MS CLEMENS: "It hasn't had anywhere near the level of community services in that short time."

However Ms Clemens went on to draw the Committee's attention to the difficulties of clearly establishing the cultural significance of particular areas to Aboriginal people.

MS CLEMENS: "It has been problematic in western New South Wales to arrive at neat statements of cultural and social significance since the history of the last hundred years means that people who have affiliation, for instance with Mt Grenfell, are spread all over western New South Wales and investigating that fairly would involve a fair amount of travel and consultation amongst these dispersed communities. For Yarrowyck the Service is not particularly aware of the significance to Aboriginal people of Yarrowyck. At the end of last week a meeting was held by the Lands Council, which includes recently elected members and again the Service would refer you to that Land Council to incorporate their views of the Aboriginal significance of that place."

Allan Fox & Associates, consultants in environmental management, education and information said this on the Aboriginal significance of Mootwingee:

"Many Aboriginal people living in the far west of N.S.W. regard Mutawintji as a special place. The area is seen as significant to the people of the Paakantji culture and other groups whose home is the country up to Tibooburra and further.

Descendants of Granny Hannah Quayle, Pop George Dutton and Pop Alf Barlow are some of the people who feel closest to Mutawintji. Their family origins can be traced to the country of Wilyali, Pantjikali, Wanyuparlku and Malyangapa. Other families from the Paakantji area and from Tibooburra and further joined them in the country between Wilcannia and Tibooburra. Many people were born and raised in this country, learning about it from the old people while working on stations, including all around Mutawintji.

The country gives life to Aboriginal people. It is a place to live, and a place for the spirits of the dead. It provides food, water, fire and shelter. The land ties people together. Aboriginal people feel a right and a duty to continue to live with the land. Special places are a strong source of identity between people and country.

At Mutawintji there are places for initiation and for rainmaking ceremonies. In the creation time Kulawirru came through, making water holes and other parts of the land. The carvings tell stories. Snake Cave is one very powerful place. Aboriginal men must control who goes there. The area around this site is very strong. Some Aboriginal people, especially some women from the families with close ties to Mutawintji, feel it is bad to go anywhere near this Site.

All the paintings and carvings at Mutawintji are felt to be a very important part of Aboriginal people's heritage.

*Mutawintji is a strong source of Aboriginal identity."*⁵

Ms Maureen O'Donnell, a traditional Aboriginal owner of Mootwingee lands, gave evidence on the cultural significance of that area.

MS O'DONNELL: *"Ownership of land at Mutawintji - and it's a very traditional place - it is important to us, to our elders, our children and our children to come. We have a culture that we'd like to re-ignite, get it growing again. Because we are one with the land, Mutawintji is a special place to us. We should have it as our traditional own. Like I said the other day, we accept the bill. A lot of those things we have got to discuss. Now, we're all here to listen and to talk with you, but you must remember that we have our elders to answer to yet. What we hear and say today we know what our people want, but for anything that we give you, it must go through our traditional people and our elders before we can give you the final draft on things, like William said. We're talking because we're the traditional owners on what we're feeling, but everything must go back to our meetings too. Don't forget that.*

Mutawintji is very special and it should be held by us. We want to look after it and that's why I think it should be back with us - the proper owners who can care for it as it should, in conjunction with National Parks. Because it is a spiritual ground as well.

You've seen the hand paintings and that the other day, but if you'd had any imagination at all you'd have looked out over the plains, and you would have seen Aboriginal people running free, old people, kids, getting their traditional food. No fences. Spiritual feelings. Every time we go out that spiritual feeling is always there. It's something we can't explain to a white man and we don't want to. But it is there, and if you'd have had any imagination at all you could have looked out and you could have seen us. That's something we'll always see. Whether you give us back Mutawintji or not, we'll still have it, because it's in here."

Mr Moore, in his speech to Parliament at the second reading stage of the Bill explained the reason for the inclusion of the Coturaundee Nature Reserve in Schedule 4.

"Following my discussions with the local Aboriginal groups I have recommended to my colleagues that it would be appropriate for the arrangements at Mutawintji to cover not only the historic site but the surrounding national park area. An area to the northeast of the Mootwingee Historic Site and Mootwingee National Park complex called the

⁵ Supplement to the Draft Plan of Management - Mootwingee National Park, Mootwingee Historic Site and Mootwingee Nature Reserve.

Coturaundee Nature Reserve is managed from the Mootwingee service complex. The nature reserve has some cultural significance for the local Aboriginal people although it is not as significant as the historic site and all or a large part of the national park site. The matter will be discussed with the local Aboriginal people to see whether it is desirable culturally and for land management purposes that the three should continue to be managed together. If so, all three would be under the purview of the local management board rather than one being split off and managed at a large distance from the management board."

No evidence was presented to the Committee either by the Aboriginal community or the NPWS in relation to any further discussions that might have taken place to clarify whether this reserve is of special cultural significance to Aboriginal persons. The Committee is therefore of the opinion that this matter will require further examination by the Minister in conjunction with the Aboriginal community to determine whether the Coturaundee Nature Reserve warrants retention in Schedule 4.

The Northern Tablelands Regional Aboriginal Land Council provided to the Committee a detailed submission supporting the special cultural significance to Aboriginal persons of Mt Yarrowyck Nature Reserve. The Council stated that Mt Yarrowyck is of enormous importance to the Gamilaroi, Gambangeree and Ainawaan Aboriginal people of what is now the New England Plateau. It said this site and the Serpentine were considered as Aboriginal cultural property. The Council supported its view with a resume of archaeological work and statements taken from Elders in the Aboriginal community. Although the archaeological evidence is supportive the Council indicates that the reports so far carried out are in the nature of preliminary work.

The strength of Aboriginal attachment to the Mt Yarrowyck Nature Reserve was evident to the Committee in its visit to that site and its special significance is clearly apparent in the statements of the Elders, some of which are set out below.

REUBEN KELLY (URALLA): *"This is our land, is our property - no alien people should have any right to push us off. We want justice, we want our important sites back. But the contempt we were treated with in the past is still shown to us today. My grandfather used to say that the Europeans had burst their boundaries ... but England has now been pushed back to her own doorstep ... and things must change here. The mountain is called Gooragumba - it belongs to the plains turkey people. It was an important site for ceremonies, it is very important for us today."*

BILL LOVELOCK (ARMIDALE) *"We take our children there all the time ... they go crazy up there, they love it. It gives them a strong feeling of the past ... it connects them with the way things used to be. It is a very important place to the local community - it is a place for teaching and when we own it we will manage it ourselves."*

JOHN NAYLOR (GYRA): *"It is ours. We own it and we should control it. It would be a good focus for the community in Armidale - we have got no land since land rights ... we've put claims in but nothing happens ... we've got nothing. Mount Yarrowyck and the Serpentine are our most sacred places around here and we should have them back. I hope I live to see something given back."*

BRUCE LOCKWOOD (ARMIDALE): *"That mountain was always a meeting place on the boundaries. They had big do's up there for thousands of years, of course it is important to us. That's why we should have it returned to us."*

THE LATE VICTOR SHEPHERD (ARMIDALE, DUNGHUTTI ELDER): *"The site is of a totemic character and is therefore the work of a Nguloongurra or clever man. In cases such as this the most prominent features were illustrated or portrayed only. Because only the feet are shown, it now indicates that the totem bird is a ground feeder. The toes are shown to be short and thickly set, unlike the feet of the emu which are more massive. The totem bird represented can be none other than the plains turkey. This bird rarely took to the wing unless startled by predators ... illustrating what were considered the most important physical features added an air of mystery to the work, a very important facet relating to Aboriginal law and custom."*

The site was also used by the persons during periods of darkness when the moon was waning, for sessions of meditation and for mental and spiritual intensification. This also increased his potential as a healer of spiritual ills and also ills of a physical nature. Only the Nguloongurra was allowed to draw figures and designs and children were strictly forbidden to make marks on wood or stone. There is a possibility that there may be other works in the area. There is no doubt that what has been discovered would reveal Mount Yarrowyck as a sacred mountain in the fullest sense, and worthy of all the protection that can be given."

MR BOB WRIGHT: *"If an Aboriginal has an identity crisis, they could come to this place, as only an Aboriginal can feel this vibration. As I was leaving Mt Yarrowyck a sense of feeling touched my heart. The heaven seems to cry in a passion for Aboriginal descendants and by the time I arrived back to Armidale I was proud to be a Koori."*

MRS BETTY WRIGHT: *"My feelings about the visit to the site is a feeling of close to the land and its natural beauty. I also feel that I am at peace and very close to my ancestors."*

Mungo National Park lies within the Willandra Lakes World Heritage Region, inscribed in 1981 because of the significant record of both Aboriginal heritage and past climate preserved in the landscape. The draft plan of management prepared by the National Parks and Wildlife Service for Mungo National Park

confirms in detail the special cultural significance of this park to Aboriginal persons. It states that the ancient sites of Aboriginal occupation within Mungo National Park are the most important features of the park.

An example of the type of significance this area has to Aboriginal people can be gauged from the evidence of Mrs Mary Pappin, a traditional owner of the Mutthi Mutthi Area:

MRS PAPPIN: *I'm from the Mutthi Mutthi tribal Aboriginal area. I'd just like to say that if in fact Mungo is handed back to the Aboriginal people, it should be handed back to the traditional owners - the people of the Lakes. No land council is necessary, but the people that can associate and identify with sites within the Mungo National Park. If they can associate and identify with a certain site in that area, then they can call themselves a traditional owner. The Mutthi Mutthi people only have a small area of Mungo National Park, but there are a lot of other traditional boundary tribes right around the lake and these are the people I would like to see come forward as traditional owners and to be represented on that committee that you're talking about - the management committee - along with the representative from the landowners and National Parks and whatever. But the traditional people with links to that area because you're going to be coming up against some pretty sacred sites in that area and they can only be looked at, in the eyes of Aboriginal people, as belonging those particular people associated with that site to have a say in it.*

MEMBER OF COMMITTEE: *I very much appreciate those comments and I must confess that I left out the National Parks too, who play a very important part. That's good. Where are the group of your Mutthi Mutthi people? Are they still identifiable within the Balranald-Wentworth area, or are they throughout the state?*

MRS PAPPIN: *Yes, there's still Mutthi Mutthi people living within the area at Balranald. Right down to Mildura you might as well say we've got links. But our main geographical area at Mungo of the Mutthi Mutthi people is from Lake Menindee to Carrathool right out to Mungo which is our boundary area, and within that area there are some sacred sites as you all know. The one site that put Mungo National Park on the map was the finding of the Mungo lady who is a descendant of the Mutthi Mutthi people. Because of that particular site she is very dear to us, and we belong to her. It is up to us as Mutthi Mutthi people to protect and look after her for the future generations of the Mutthi Mutthi people and all people in the future.*

Mount Grenfell Historic Site comprises an area of approximately 1357 hectares containing galleries of Aboriginal rock art. This site was reserved for the purpose of the protection of Aboriginal culture. The Minister in his Second reading speech said that this was an area of great cultural

significance to Aboriginal people. This view was supported by the NPWS. The evidence given on behalf of the New South Wales Aboriginal Land Council shows that Aborigines are endeavouring to preserve and enhance their connection with this site to overcome the cultural dislocation brought about by the placement of Aboriginal people on missions. The difficulty of preserving cultural links was clearly stated by Ms Delia Lowe, member of Jerrinya Nunda Community and Project Officer of the New South Wales Aboriginal Land Council.

"MS LOWE: Just recently when we were out at Murrin Bridge community and talking with the people there - their business was Mt Grenfell historic site - one of the local members mentioned the fact that it is difficult for them in some way to deal with the Mt Grenfell issue that's before this Committee and this Parliament, because they were alienated, isolated from their spirituality and cultural relationship with Mt Grenfell Historic Site through no fault of their own. The Government dispersed the people from up around that area, they put them on a mission that was created under the umbrella of the Aboriginal Protection Board but these are the historical legacies that the people have suffered out there now. One of the things that we suggested was that for those that have not kept that continuous association with that site, is that they go there and visit it and are able to develop back that spiritual relationship in connection with those sites."

The Committee considers that the New South Wales Aboriginal Land Council should have a formal role that will authorise it to place recommendations before the Minister in respect of lands of special cultural significance to Aboriginal persons that should be included in Schedule 4. This would be consistent with the statutory functions it now has under section 23 of the Aboriginal Land Rights Act 1983. These include advising the Minister on matters relating to Aboriginal land rights and exercising such other functions as are conferred or imposed on it by the Act or other legislation.

The Committee recommends that section 23 of the Aboriginal Land Rights Act be amended to provide that a function of the New South Wales Aboriginal Land Council shall be to recommend to the Minister lands within any national park, historic site or nature reserve that it considers should be included in Schedule 4 as lands of special cultural significance to Aboriginal persons. The Committee considers this amendment will remove a large amount of uncertainty that surrounds the rights of the Aboriginal community to bring to the Government's attention areas of special cultural significance to it.

In its submission the National Parks Association questioned the absence of any reference to Aboriginal areas and Aboriginal places in relation to Schedule 4. The Minister, in correspondence with the Committee, indicated that Aboriginal places were excluded from the bill because they do not form part of the National Parks and Wildlife Service estate. He said that the former Minister, Mr Moore, presumably excluded Aboriginal

areas because Parliament was not involved in their reservation. However Aboriginal areas are declared under section 84 of the National Parks and Wildlife Act and are, therefore, within the scope of Schedule 4 (see section 71C of the 1992 Bill).

A further matter argued by the National Parks Association was that areas principally reserved or dedicated for Aboriginal cultural purposes should not be administered by the National Parks and Wildlife Service but should be transferred to Aboriginal ownership under the terms provided by the Ministerial Task Force. A main reason for this suggested division of responsibility was that a board of management might not be able to adequately protect the conservation interests in those Schedule 4 areas that the Association argued had been reserved or dedicated primarily for nature conservation purposes. This was clear from the evidence given at the Committee's inquiry by Mr G Douglas, President of the Association.

CHAIRMAN: *"From what you have said it is obvious that the Association objects to the ownership of some schedule 4 areas, mainly on the basis that conservation interests may not be adequately protected by a board of management. Is that your Association's position?"*

MR DOUGLAS: *"In essence, yes....."*

The Legislation Committee does not support the approach taken by the Association in this matter. The division of responsibility recommended by the Association is based on the presumed inability of a board of management comprising a majority of Aboriginal persons, to effectively meet its responsibilities for the care, control and management of the Schedule 4 areas. The Committee considers that relevant experience in regard to the successful management of the Uluru (Ayers Rock- Mt Olga) National Park and the Kakadu National Park proves this is unfounded. Further, each board of management in New South Wales will be working in a close co-operative arrangement with the National Parks and Wildlife Service who will be carrying out, subject to the board's directions, the day to day management of the Schedule 4 areas.

Negotiation by Minister with Aboriginal land councils

The 1992 bill authorises the Minister to enter into negotiations with either local Aboriginal land councils (whose members have a close association with the Schedule 4 lands) or with the New South Wales Aboriginal Land Council either on its own behalf or on behalf of a local Aboriginal land council or a group of Aboriginal persons having a close association with the land. The purpose of those negotiations is to determine if those councils or bodies would like the lands vested in them in return for a lease back to the Crown. The legislation does not cover the situation where a local Aboriginal land council and the New South Wales Aboriginal Land Council each seek to have the lands vested in them. The legislation should be amended to include a provision to cover this eventuality. In the course of its inquiry the Committee heard detailed views from representatives

of the Aboriginal community, land owners and shire councillors favouring involvement of a local Aboriginal land council as against the New South Wales Aboriginal Land Council in regard to this issue.⁶ The pertinent remarks of Mr Ward, President of the Shires Association of NSW, typify this attitude.

MR WARD: " You get animosity or unhappiness in any decision-making process when it is removed from the area or the people closest to it. If a centralised land council, possibly in Canberra or in Sydney, were the controlling body it would have the potential to be less effective and less harmonious than it would if it were a regional or local land council."

The Committee supports this approach as it considers that a local Aboriginal land council has closer links with the traditional owners on whose behalf the land is to be held. The Committee therefore recommends that where both a local Aboriginal land council and the New South Wales Aboriginal Land Council seek a vesting of Schedule 4 lands that preference be given by the Minister to the local Aboriginal land council. This recommendation is consistent with one of the major principles supported by the Ministerial Task Force Report:⁷

"The local Aboriginal community is ultimately the most appropriate level for decision making concerning heritage and culture. It is within local communities where ties to heritage and culture are strongest, where these ties have been maintained and where the most detailed knowledge resides. It is recognised throughout the State that, despite the disruptions of the past 200 years, and despite the existence of a general, living Aboriginal culture, communities have their own heritage and culture."

⁶ See generally the evidence at the Inquiry, Broken Hill, 12 July 1992.

⁷ Ministerial Task Force Report p. 26.

CHAPTER 4

ABORIGINAL OWNERSHIP OF SCHEDULE 4 AREAS

Racial Discrimination Act (C'th)

During the course of the Committee's inquiry, various persons argued that the proposed legislation was discriminatory on the basis that it gave benefits to Aborigines that were not available to non-Aborigines. This argument was made in the context that the various Schedule 4 areas should be owned by all Australians.

The Committee sought the legal advice of the Crown Solicitor on whether the bill was inconsistent with the Racial Discrimination Act 1975 (C'th). Under that Act, legislation which makes a distinction on the basis of race can be valid only if it is a special measure under section 8.

On 28 August 1992 the Crown Solicitor provided detailed advice to the Committee. He considered there was no inconsistency with that Act. He said:

"I do not consider that there is any inconsistency in the relevant sense. It would seem to me, the provisions of the bill come within the special measures referred to in paragraph 4 of Article 1 of the Convention and so, pursuant to s. 8 of the RD Act are excepted from the provisions of Part II of that Act. The bill is clear in stating, pursuant to proposed s. 71B, that the purpose of the relevant provisions is "to provide for the recognition of the special cultural significance to Aboriginal persons of certain lands". It is further provided, in proposed s.71E(2)(j), that the lands, which are to be vested in the Aboriginal land council or councils, are to be held "on behalf of the traditional Aboriginal owners of the land". A board of management, a majority of which are to be nominated by the relevant Aboriginal land council, is to have the care control and management of each of the lands. Both in intent and in effect the bill may accordingly be considered, in my view, a special measure for the purpose of securing adequate advancement of the traditional Aboriginal owners."

Ownership as against management

A number of the persons who argued for retention of Crown ownership of the Schedule 4 areas did so on the basis that Aboriginal interests in their heritage would be sufficiently met through majority membership on each board of management. These submissions argued that Aborigines, as members of the public, already have the same rights over National Park areas as every other member of the community and the Government was not justified in taking the matter any further. The Committee considers this approach ignores the wider objectives of the New South Wales Government, the Commonwealth Government and the

Governments of all the other States in regard to the process of reconciliation between the Aboriginal and non-Aboriginal communities. Those Government objectives recognise that the land needs of Aboriginal people are an important element in effecting a change in race relations in Australia.

The Minister, in his evidence to the Committee on 18 August 1992 discussed this point of view and re-affirmed the Government's strong commitment on the matter.

MEMBER OF COMMITTEE: *"In the speeches made by the previous Minister, Mr Moore, on this legislation he stressed that the Government believes the Schedule 4 areas should be returned to Aboriginal ownership and not just Aboriginal management. Would you like to give us your views on this subject, as some of the submissions that we have received from various groups, particularly adjoining landowners, have argued that it is sufficient for Aboriginals to just simply have control of these National Parks through boards of management rather than actual ownership. These submissions have argued that the lands should remain in the ownership of all Australians. Can you give us your views on that?"*

MR HARTCHER: *"I am aware of that view and it has been put to me by the National Parks and Wildlife Foundation in respect of particular sites listed in Schedule 4. My position and the Government's position is that ownership is intrinsic to the whole thrust of the bill and also to the thrust of the reconciliation process between the Aboriginal and European communities. Management is not sufficient. Ownership has a legal, cultural and in some cases religious importance and management would not satisfy that real need. That's why the ownership thrust of the bill is insisted upon by the Government. That's the Government's submission to this Committee that it retain very strongly the concept of ownership."*

The Committee supports the approach taken by the Minister.

Register of Traditional Owners

During the course of the Committee's inquiry several objections were made by members of local Aboriginal land councils opposed to the identification in the lease of the traditional Aboriginal owners and to the subsequent tabling of that information before Parliament. The opinion was expressed by these persons that the names of the traditional owners should be recorded by the local Aboriginal land council in a register kept for that purpose at the office of the council. The Minister was asked his opinion of this proposal during the Inquiry.

MEMBER OF COMMITTEE: *"The legislation requires the names of traditional owners of Schedule 4 lands to be listed in the lease document which is then tabled in Parliament. Representatives from local Aboriginal land councils have put the view to the Committee quite strongly that those*

names should be kept in a register by the local Aboriginal land council rather than in an official public document. Do you have any objection to the list of owners being maintained in a register? That is also apparently the situation in the Northern Territory."

MR HARTCHER: *"We have established the principle of freedom of information rights that people have in this State, and I don't think the Government would be interested in somehow exempting this from the freedom of information process, if that could be tied into freedom of information, and obviously if the Director had access because he needs to know with whom he is dealing, then we would be quite happy to take your views as a Committee on that part of the legislation. I do find that both those points would have to be considered by you."*

In New South Wales, the Freedom of Information Act 1989 gives a person the legal right to obtain access to information held as records by State Government agencies, Government Ministers, local government and other public bodies. Local Aboriginal land councils have been prescribed under the regulations as public bodies for the purposes of that Act. The public therefore already has access to information held by those local councils.

In his evidence the Minister said this information would be needed by the Director of the National Parks and Wildlife Service so that he knew with whom he was dealing. However under the legislation the Director has no occasion to know the names of the traditional owners. The Director deals with the Board of Management and is subject to its direction and control. There would seem to the Committee to be a stronger case for such a register to be open to all Aboriginal persons rather than to the public at large.

The Committee supports the view of local Aboriginal land councils on this matter and recommends that the names of the traditional owners be kept in a register maintained by the Aboriginal land council rather than identified in the lease document.

Rights of Appeal

Under the provisions of the Aboriginal Land Rights (Northern Territory) Act 1976 a land council is required to compile and maintain a register of traditional Aboriginal owners. This requirement was examined by Mr Justice Toohey in the review he conducted into the operation of the Act in 1983. In his Report⁸ he stated that the duty of compiling the register introduced a subjective element because it was based on the opinion of the land council. He found it to be an onerous obligation. He said

⁸ Seven Years On - Report by Mr Justice Toohey to the Minister for Aboriginal Affairs on the Aboriginal Land Rights (Northern Territory) Act 1976 and Related Matters, Dec. 1983

that, inevitably, there will be disputes as to who are in truth the traditional owners. He expressed his concern that anyone not on the register may be excluded from asserting traditional ownership and that the register may become some sort of elitist list, with important legal rights and benefits for those who appear and with significantly fewer rights and serious detriment to those who do not. He said that this situation was more likely to occur if the register is seen as something comparable to a certificate of title under the Torrens system so that although Aboriginal land vests in Land Trusts, those on the register will be seen as occupying a position comparable to the registered proprietors of Torrens system land. His concluding remarks on these difficulties were as follows:

"At first glance it may seem most appropriate that an all Aboriginal body such as a Land Council be given the sole responsibility for deciding who qualifies for inclusion in a register. However, it should not be assumed that an Aboriginal who is not from the area in question is any better qualified to identify traditional owners than is a European, with relevant qualifications and experience. It must also be recognised that a Land Council, like any other organisation, has members with vested interests and political ambitions as well as those with ideals. Some right of appeal is desirable, to protect the interests of individuals where those interests may be damaged by political or other manipulation or by a genuine dispute."

Mr Justice Toohey went on to recommend that any person claiming to have been wrongly placed on or omitted from the register should have a right of appeal to the Supreme Court of the Northern Territory which should be empowered to give the necessary directions to the Land Council for rectification of the register. This situation has strong parallels to the arrangements under the New South Wales proposals. The 1992 bill makes provision for the Aboriginal land council to hold the lands on behalf of the traditional Aboriginal owners. These are defined as those Aboriginal persons named or otherwise identified in the lease from that council to the Minister. The practical task of identifying the traditional Aboriginal owners is left by the legislation for resolution between the Minister and the Aboriginal land council.

The submission by the New South Wales Aboriginal Land Council confirms that there will be difficulties in identifying traditional owners:

"The identification of these traditional owners will be difficult to determine and will be the source of some conflict. It must be remembered that any conflict in the communities over this issue is a direct result of colonisation and the forced movements of tribes from their homelands into foreign territory, the deliberate separation of children from their parents resulting in the destruction of family life, and religious indoctrination by Christians over the last 200 years."

Reconstructing the past, and the identification of traditional owners, is a big issue confronting Aboriginal communities, organisations and land councils. Almost every issue regarding heritage and culture reaches a crisis of legitimacy at the grass roots level - who are the right people? What we are undertaking in the south east (of Australia), is cultural reconstruction. It is a common experience around the Third World, during de-colonisation. How to re-establish traditional/contemporary authority after the traditional authority has disintegrated or become clouded.

In NSW there are some traditionally initiated Elders - though they are few they are extremely important people in their communities. There are also many old people in every community who are regarded as Elders in a contemporary, rather than in a traditional sense. These Elders are a strong force - they are people of an age, with the respect of their relations and their community, people who retain some traditional knowledge.

With the forced break up of Aboriginal families and the forced arrest, movement and virtual detention of Aboriginal people by government authorities over the last 100 years it is no wonder people are in conflict over where they come from.

The fact that one of the lease provisions allows traditional owners to be named on title deeds for the parks will raise problems of identification and some conflict. However, we believe that this is still an important and necessary provision in the bill."

The legislation does not contain any method to resolve a dispute as to the identification of traditional owners. The arbitration provisions only operate after the lease is granted. In any event the parties to such arbitration do not include persons outside the Director, the Minister and the Aboriginal land council. From the submissions received by the Committee a dispute has apparently already arisen in relation to this provision. The Balranald Shire Council⁹ states that various Aboriginal groups at Balranald, Dareton and Robinvale each believe they should be listed as the registered owner of Mungo National Park.

It seems to the Committee therefore, that a comparable appeal mechanism to that recommended by Mr Justice Toohey should be included in this legislation so that an appeal can be made to the Land and Environment Court. Section 7(3)(d) of the Aboriginal Land Rights Act 1983 already makes provision for an appeal in relation to disputes as to local Aboriginal land council rolls.

⁹ Submission dated 24 March 1992 by the Balranald Shire Council

THE LEASE-BACK ARRANGEMENT

The legislation authorises a park, site or reserve listed in Schedule 4 to be vested in an Aboriginal land council for an estate of freehold in possession, in return for a lease of the lands by that council to the Minister. Under new section 71E that lease must be for a term of 30 years with unlimited options to renew it exercisable by the Minister for further periods of 30 years. The lease is to be for a nominal rental of \$1 a year, if demanded, and it must contain various provisions acknowledging public rights of access and certain other rights and controls arising under other provisions of the bill. The lease cannot be terminated except by Act of Parliament.

This arrangement was the subject of criticism in a number of the submissions. In one submission it was said that the lease-back arrangement produced a "Clayton's ownership" of purely symbolic owners who had no real options available to them.¹⁰ The New South Wales Aboriginal Land Council in its submission said there was a complete rejection of the mandatory lease back to the National Parks and Wildlife Service in perpetuity. "Many of our people believe that this legislation is not offering real title or 'Aboriginal Ownership' at all - that it represents merely a token gesture as long as the hand-back means a perpetual lease back to the NPWS. At meetings held by this organisation most Aboriginal people said they will not accept any bill which gives the land back to Aboriginal people with these lease-back conditions attached."

In another submission dated 31 March 1992 the President of the New South Wales Bar Association, Mr J Coombs QC, made the following specific criticisms:

- "1. Clause 71H(4) provides for the land to vest in an Aboriginal land council 'for an estate of freehold in possession'. The only estates of freehold known to the law are fee simple, fee tail and life estate. One supposes that what is meant is an estate in fee simple.

In any event what is intended by the bill is not an estate 'in possession', however it might otherwise be described.

This should be clarified. It is submitted that any interest less than an estate in fee simple would be unacceptable. The word 'vest' is rubbery in this context - cf. comments below on the 'vesting' of care, control and management.

¹⁰ Letter dated 20 August 1992 jointly from the Australian Conservation Foundation, the Total Environment Centre, the Nature Conservation Council of NSW and the Wilderness Society.

2. *The bill gives with one hand and takes back with the other. It is necessary to look then at the terms on which the lease, the taking back, is effected.*

The changes between the 1991 and 1992 drafts reflect earlier concern for the length and terms of the lease.

As to the former, it is submitted that the bill gives to the Minister power to renew the 30 year leases in perpetuity, regardless of the wishes of the owners (except as to the consensual negotiation of particular terms). This is re-appropriation under a different guise, except for clause 71U(4) which provides for termination but only by an Act of Parliament."

On 7 May 1992 the Legislation Committee sought the views of the Crown Solicitor on the issues raised by the Bar Association. That advice was furnished on 9 June 1992 and the text of it is set out in Appendix 4 of this Report.

The Crown Solicitor reached the conclusion that the use of the term "an estate of freehold in possession" in clause 71H(4) was not a misdescription. However this conclusion was qualified by his statement that if his view was incorrect all that follows is that Parliament, in its sovereignty, had created a novel interest. In his advice the Crown Solicitor indicated he had taken the liberty of discussing the matter with the Parliamentary Counsel who had indicated a willingness, if so instructed, to substitute "fee simple" for "freehold" in the proposed section 71H(4).

The Committee recommends that this drafting alteration be made so as to put Parliament's intention beyond doubt.

As to the second criticism the Crown Solicitor agreed with the Bar Association that the combined effect of the lease-back arrangement was to provide for a lease to the Minister which can be effectively renewed by the Minister in perpetuity. That lease would not expire by effluxion of time and cannot be forfeited, terminated or extinguished except by Act of Parliament.

He said that although at law the Minister will obtain only a leasehold estate in the land, that in practice he would enjoy rights far greater than those ordinarily accorded by lease. He commented:

"I do not think it is an exaggeration for the Bar Association to state in the submission summary that 'the Aboriginal land councils are to receive a bare title with immediate loss of virtually all the attendant rights to land by compulsory lease in perpetuity (barring the passage of an Act of Parliament)'."

The Crown Solicitor concluded as follows:

"I agree with the Bar Association that the proposed Part 4A gives to the Aboriginal land councils little more than a

bare title to the land to be vested in them, the Minister by special lease obtaining virtually all the rights attendant to land 'ownership'."

The Committee notes that most of the mandatory terms of the lease are simply acknowledgments by the parties of the statutory provisions that are to be found elsewhere in the bill. This duplication extends to restating in the lease the functions of the board of management, the powers of the Director and his staff; the hunting and gathering rights of Aborigines in the vested lands; the obligation on the Aboriginal land council and its employees to comply with the Act, the regulations and plans of management; the existing interests to which the lease remains subject; the rights of access by the public and the prohibition on the sale or disposal of the lands.

The various acknowledgments given by the parties to the lease on these existing rights and restrictions do not make them any more enforceable. As most of the rights and obligations of the Aboriginal land council and of the public governing use and enjoyment of the vested lands are or will be comprehensively regulated under the Act, the regulations and plans of management the lease, in its present form, would not appear to serve any practical purpose other than reserving a form of perpetual title to the Crown over the lands. In a sense the lease has been made a 'price' for the fee simple. The Committee does not, however, object to the lease-back arrangement provided it is based in the long term on a consensus between the parties.

In its examination of comparable legislation governing Uluru, Kakadu and Nitmiluk (Katherine Gorge) National Parks the Committee found the government had no guaranteed option of renewal of the lease. In the case of the Cobourg Peninsula Sanctuary no lease back at all was required. The legislation for that Sanctuary vests the lands in the trust and at the same time declares the lands as a national park in perpetuity.

It is the opinion of the Committee that the provisions relating to the lease-back arrangement should be amended so as to make the renewal of any lease between the lessor and the Minister subject to the consent of both parties. That amendment would place the Aboriginal land council in whom the land is vested, in the same position as the ordinary owner of a fee simple whose land has been leased, while at the same time giving true substance to the intention of the Government to return the ownership of the Schedule 4 lands to the Aboriginal people. This recommendation is subject to the qualification that if the lease is not renewed the legislation shall preserve the status of the land as a national park, historic site or nature reserve under the National Parks and Wildlife Act 1974.

In that event the Aboriginal land council would retain title to the Schedule 4 lands which in turn would retain their status as a park, site or reserve although no longer subject to lease. The existing working arrangement with the NPWS would continue and rights of public access and enjoyment would remain. This arrangement is compatible with the submission of the New South

Wales Aboriginal Land Council in regard to the benefits of a national park classification.

"This organisation can state clearly that the overall consensus in the Aboriginal community is strongly in favour of having traditional Aboriginal land remaining as national park classification. That is, once the land is handed back to Aboriginal ownership, they are happy to have it remain and run as a National Park and to benefit from the legal protection this classification provides."

The Committee also considers that the lease between the Minister and the Aboriginal land council could be made a far more equitable and useful instrument if it included provision for a realistic rental and for enforceable programmes covering the training and employment of Aboriginal staff in the National Parks and Wildlife Service.

The Committee feels that these recommended changes, apart from meeting the Government's objectives, will give both parties to the lease a sufficient period to evaluate the costs and benefits of the lease-back arrangement and to decide whether they wish to renew it. That settling in period will also permit any changes flowing from the Report of the Ministerial Task Force on Aboriginal Heritage and Culture to be in place and for future discussions on the lease-back arrangement to be made in that context.

HUNTING AND GATHERING RIGHTS OF ABORIGINAL PERSONS

A purpose of the 1992 bill is to permit the traditional Aboriginal owners of Schedule 4 lands to use those lands for hunting and fishing and the gathering of foods for domestic, ceremonial and religious purposes.

Those activities are currently prohibited in a national park or nature reserve by sections 45, 56 and 57 of the National Parks and Wildlife Act and by regulations under that Act.

The amendments made to these sections are limited to rights for traditional Aboriginal owners whereas the mandatory lease condition in section 71E(7)(1) also acknowledges the exercise of these rights by "other Aboriginal persons". This matter was raised during the inquiry but it was not fully clarified. It seems to the Committee that the intention is that traditional owners should exercise these rights and that other Aboriginal persons may also do so but subject to the consent of the Aboriginal land council. The Parliamentary Counsel should clarify this in the amendments he makes to sections 45, 56 and 57 of the National Parks and Wildlife Act.

Several of the submissions received by the Committee contained an objection to the inclusion in the bill of these rights based on the view that to permit traditional hunting and gathering in national parks or nature reserves was contrary to the objectives of conservation:

On this issue the Committee adopts the view of the Law Reform Commission that the recognition of customary hunting and gathering rights accords with the principle that Aboriginal people should have the right to retain and develop their traditional lifestyle and identity, subject to the overriding priority to be accorded to conservation principles. The Commission found conservation principles represented a legitimate restriction on traditional Aboriginal hunting and gathering rights. It viewed conservation as a matter for ultimate determination by Government.¹¹ The Committee also notes that the Report of the New South Wales Ministerial Task Force on Aboriginal Heritage and Culture recommends, in relating to the exercise of such rights, that no rare or endangered species should be taken.¹² In its submission to the Committee, the Australian Conservation Foundation set out its policy on this subject as follows:

"ACF supports the continued right of the Aboriginal and

¹¹ Report No. 31 of the Law Reform Commission 1986

¹² Report of New South Wales Ministerial Task Force on Aboriginal Heritage and Culture 1989 at page 36.

Torres Strait Islander peoples to hunt, fish and gather food for subsistence or cultural purposes, and that where these activities take place in national parks or other areas designated for conservation purposes these be in accordance with appropriate management strategies. ACF does not support the traditional uses of endangered species in the exceptional circumstances where it is proven that such use is contributing to the decline of those species."

The Committee considers the structure of the present bill will implement the type of approach supported by these bodies provided that adequate studies are made, in advance, of the threat to endangered species of animals and plants posed by the exercise of traditional hunting and gathering rights. The Committee additionally recommends regular monitoring and reassessment of the affects of the exercise of those rights. These are matters appropriate to be dealt with by the inclusion of protective restrictions in the plan of management for the particular area. This approach is consistent with the view expressed by the Regional Manager, Western Division, National Parks and Wildlife Service who supported, in principle, the exercise of these rights provided they were properly regulated.¹³

Under the present terms of the 1992 bill the exercise of hunting and gathering rights by a traditional Aboriginal owner is subject to the approval of the Minister. During the Committee's inquiry this provision was criticised as being unnecessary on the basis that these rights were governed by the terms of the plan of management over which the Minister had control and which could be amended by him from time to time in accordance with new section 72(1G) - (1J).¹⁴ The Committee agrees with this argument and believes that the matter can be satisfactorily regulated through the plan of management without the additional obligation of requiring an Aboriginal person to obtain formal Ministerial approval. The Committee accordingly recommends this requirement be omitted from the legislation.

¹³ Evidence given by C Eden during Inquiry at Broken Hill 12 July 1992.

¹⁴ Evidence given by P Thompson during Inquiry at Broken Hill 12 July 1992.

**PARLIAMENT'S ROLE IN THE LEGISLATIVE SCHEME AND
FORMAL REQUIREMENTS RELATING TO VESTING OF THE LANDS**

Revocation, vesting etc if the proposal is not disallowed

Either House of Parliament can disallow the vesting proposal within 15 sitting days. If the proposal is not disallowed it can be carried into effect by the Minister publishing the Notification in the Gazette within 28 days of the last date for disallowance.

The purpose of the provision is to ensure the Minister acts expeditiously to gazette the notification. It would be well, however, to safeguard the validity of any gazettal which through oversight or otherwise took place outside the specified time. A safeguard would be suitable similar to that contained in section 40(4) of the Interpretation Act 1989 in relation to regulations tabled outside the required 15 sitting days.

Consequences of revocation, vesting etc on existing interests

The affect of the notification on existing interests is dealt with inconsistently in various provisions.

New section 71F(4)(b) requires a notification to be laid before each House vesting lands in the Aboriginal Lands Council which is to lease those lands to the Minister subject to any interest in the lands that has been granted under Part 12.

However, section 71I(f) appears to protect interests arising from other parts and sections of the National Parks and Wildlife Act. This section states that on publication of the notification 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 12 that affects the lands and is current at the date of notification continues to have effect. These two provisions seem in conflict. Further confusion arises from clause 71E(1)(O) which makes the lease subject to the extension of existing titles and the grant of new ones of a similar kind.

This complexity is increased by the fact that sections 71M and 71N also deal with the operation of existing interests under section 39 and 41 of the National Parks and Wildlife Act.

The ambit of the intended protection of existing interests requires clarification by the Parliamentary Counsel. He should in this connection be furnished with advice by the Minister on the actual leases, licences etc currently in force in the Schedule 4 areas to determine whether a continuation of each of these interests is compatible with the special cultural

significance of the areas. Information supplied to the Committee by the National Parks and Wildlife Service indicates that the existing interests include the following:

MUNGO NATIONAL PARK

- Travelling stock reserves affect the park.
- Agreement in writing for access to a water tank/windmill within the park.
- A power line affects or will affect the park.

MOOTWINGEE NATIONAL PARK

- A proposed power line will affect the park.
- Telephone lines exist within the park.

MOOTWINGEE HISTORIC SITE

- A telephone line exists or is proposed within the historic site.

COTURAUNDEE NATURE RESERVE

- There is a fence on the south-east boundary which has been erected under a give and take arrangement with the adjoining landowner to enable him to have access to water.

YARROWYCK NATURE RESERVE

- No evidence of any existing interests.

Name of park, site or reserve

The legislation requires the notification to assign a name to the national park, historic site or nature reserve. This must be preceded by consultation with the Aboriginal land council. The name assigned can be different from that listed in Schedule 4. The Governor can subsequently alter the name by Proclamation after consultation with the Aboriginal land council or councils. The name to be given to these lands is of great significance to Aboriginal people. A more attractive option for Aboriginal people and one recommended by the Committee, is a provision that fixes the name on the recommendation of the Aboriginal land council rather than after consultation with the council. There would be no certainty that consultation would lead to the adoption of the name favoured by the Aboriginal land council.

Consistent with this recommendation the Committee considers that an amendment should be made to the Bill to exclude the operation of section 112 of the Geographical Names Act 1966. That provision requires the approval of the Geographical Names Board prior to the naming by the Governor of any place. That provision is inapplicable in the present circumstances, particularly as no members on that Board are to be drawn specifically from the Aboriginal community. In its submission the Board indicates that future amendments to the Act may correct this situation, especially as a function of that Board is to compile and maintain a vocabulary of Aboriginal words suitable

for use in geographical names.

Custody of title documents

After publication of the notification the lease and all title documents held by the Director, are lodged at the Land Titles Office. The Registrar-General then enters in the register particulars of the vesting of the lands in the Aboriginal land council and of the lease of those land to the Minister. The Registrar-General is then required to return the title documents to the Director who keeps them in safe custody on behalf of the Aboriginal land council and the Minister.

There would seem to be a strong argument for modification of this provision to give the Aboriginal land council custody of its own title documents. After all, the Aboriginal land council has an estate in fee simple whereas the Minister has only a lease and the Director no estate at all. The Director's custody of documents should be limited to the lease granted to the Minister. This revised arrangement would more properly reflect the purpose of the legislation and the aspect of Aboriginal "empowerment" mentioned by the Minister in his second reading speech on 1 May 1991.

ABORIGINAL COMMUNITY DEVELOPMENT IN SCHEDULE AREAS

The 1992 bill does not specifically address Aboriginal needs for community development in the Schedule 4 areas.

Mr Peter Thompson, a person with research and field experience in Aboriginal studies, in his evidence made these comments on the community development needs of Aboriginal people in Schedule 4 areas:

MR THOMPSON: "I am familiar with the priorities at Mutawintji and to some extent Mungo and Mt Grenfell. The priorities of Mutawintji that Aboriginal people are talking about is to set aside an area, at least one area and possibly two or three, for them to permanently set up facilities for their use when they are visiting the park. Initially these will be camping facilities, but they desire the option to develop those into residence facilities. That is the first priority in terms of what we might call a development.

The first priority, in general, is to care for the country and make sure it is being managed properly. Lower down in the priorities are things to do with tourism, although they are being talked about and thought about. Community development, of course, includes matters such as employment and cultural advancement and cultural development. The extent to which those things in general are allowed will be one of the ways that Aboriginal people undoubtedly will judge the success of this bill in a generation's time, or similar arrangements to what is proposed in the bill.

If the bill enables and empowers Aboriginal people to develop communities in a way that allows culture to survive and flourish, then it will be looked back upon in a generation's time as a great thing. I guess they are the criteria with which we are trying to judge it now. So, this is a major weakness of the bill, that it does not enable that."

The Committee found that comparable legislation covering the Uluru, Kakadu and Nitmiluk (Katherine Gorge) National parks specifically addressed these needs. At Uluru traditional owners have certain residence rights and the most recent plan of management for the park discusses in detail a proposal for a cultural centre. This proposal arose from the recognition that the interpretive information previously provided to visitors was deficient in respect of Anagu culture and from frustration at the lack of Anagu control over the distribution and accuracy of such cultural information.

Anagu have frequently expressed a strong desire to present

their own story through active participation on their own terms. From the idea of presenting appropriate cultural information, the proposal has slowly expanded to recognise the varied roles which could be performed by a cultural centre in the park. The proposal has reached the stage where a feasibility study has been carried out and a contract let for the design of the centre.

Under the Nitmiluk (Katherine Gorge) National Park Act 1989 Aboriginal traditional owners have the right at all times, subject to the plan of management, to use and occupy the park. That Act also makes it possible for an area within the park to be developed as a cultural centre.

The New South Wales bill only touches on this subject indirectly. Under amendments that are to be made to the National Parks and Wildlife Act a plan of management can permit the use of a Schedule 4 area, with the approval of the Minister, "as a temporary camping area for such educational activities as the Minister considers necessary to promote appreciation of the cultural significance of the park, site or reserve." This qualified right is already available under the camping and residing provisions of clause 9 of the National Parks and Wildlife (Land Management) Regulation 1987. That regulation prohibits any person from camping or residing in a park unless authorised by the Director.

In its submission the New South Wales Aboriginal Land Council stated it was currently undertaking research on the type of community development projects suitable for Schedule 4 areas with a view to the council assisting with the funding of these developments. It said Aboriginal communities were strongly in favour of developing some kind of permanent buildings either in the park itself for the accommodation of the general public or for Aboriginal people when they visit.

"These lodges would range in size and structure dependent on the communities. Conference centres and cultural education centres have also been mentioned. According to most people consulted the main factor in any of these semi-commercial proposals is that any such developments would not spoil the natural environment in any way, or interfere with the habitats of animals and plants.

Most communities associated with the parks believe that the parks will be used regularly for culture camps and other cultural events. Culture camps for a broad range of Aboriginal people including school aged, tertiary students, young offenders and elderly.

The lodges and conference centres would definitely be used for the various educational ventures including language seminars and conferences on Aboriginal issues. With the expansion of Aboriginal Studies as a subject for the H.S.C., there will be an increasing demand for culture camps and study tours and the use of such facilities.

Aboriginal tourist bureaus which encourage appropriate

tourism have also been proposed. Some of these proposals have already come to NSWALC from interested Aboriginal business people and organisations wishing to act as a bureau or agency for an international clientele of academics, students and environmentalists who are genuinely interested in Aboriginal culture and who wish to come with the blessing of the communities and guided by Aboriginal tour leaders.

The growth in this market is unknown at the present time. NSWALC has had inquiries from overseas looking for this type of study/holiday in Australia. We believe, if encouraged, it would be a growth industry appropriate to Aboriginal owned parks.

Most people see some form of residential rights within the park as a definite form of community development. What kind of housing and what limits would be set has yet to be fully explored, however a provision for residential rights must be put into the lease."

The Committee is of the view that the bill should be amended to make it possible for a Board of Management to implement community development programmes in a Schedule 4 area. These programmes would need to be preceded, as at Uluru, by appropriate feasibility studies to ensure, among other things, that they were compatible with the objectives of the plan of management. The Committee recommends that the bill be amended to authorise a plan of management to provide for the use of a park, site or reserve for any community development purpose prescribed by the regulations.

BOARDS OF MANAGEMENT AND THEIR FUNCTIONS

Composition

Evidence taken during the Committee's inquiry disclosed a large degree of controversy on the issue of the interests that should properly be represented on the board of management.

The 1991 bill had an advisory management committee the majority of whose members were to be the members or nominees of the Aboriginal land council in whom the lands were vested. In the 1992 bill this Committee was changed to a board of management with different functions and composition.

The structure of the proposed board now reflects the Government decision, outlined by the Minister in his speech to Parliament on 14 November 1991, to provide for a management rather than an advisory body.

New section 71J now states that there is to be a board of management for each national park, historic site and nature reserve that is reserved or dedicated under Part 4A. The Board is to consist of at least 9 but not more than 13 members of whom:

- (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) *at least 2 are to be persons appointed by the Minister to represent owners, lessees or occupiers of land in the vicinity of the park, site or reserve; and*
- (c) *one is to be an officer of the Service for the time being appointed by the Director for the purposes of this section; and*
- (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.*

At the hearings in Sydney, Mr R Ward, President of the Shires Association of New South Wales, supported the view that specific shires should be represented on the management board on the basis of the services they contributed and their expertise in the provision of tourist infrastructure.

The Legislation Committee agrees with this view and is of the opinion that representation by a local shire council on the Board of Management is justified because of the wide community interests represented by those councils. The statutory

responsibilities of shire councils take in control and improvement of public roads in the shire; control over the erection of buildings in various parts of the shire; certain public health obligations; and the power to lend money or lease or acquire property to develop and stimulate the tourist industry. These are all matters relevant to the management of National Parks and to the areas adjoining them.

Landowners in the vicinity of the Mootwingee National Park also affirmed their need to be represented on the Board of Management. The Minister at the second reading of the bill guaranteed landholders a right of representation on the board so that their concerns about feral animals, bushfires, weeds and matters of that nature would be addressed. This commitment by the government reflected the strong interest and concern landholders had expressed to the Minister and subsequently to the Committee, in relation to future management practices that might be adopted in Schedule 4 areas. The Committee is satisfied that landholders in the vicinity of Schedule 4 areas have a legitimate case to be represented by a person on the board of management so as to participate in the regulation of those areas.

Their case for representation has additional merit in those areas affected by World Heritage listing. Landholders expressed repeated concern to the Committee on the implications that listing had for Commonwealth intervention in the conservation management of the Mungo National Park and in their adjoining holdings. The overriding nature of these Commonwealth powers was detailed by Ms V Ingram, Principal Legal Officer of the National Parks and Wildlife Service, in her evidence to the Committee. This appears, in the Committee's view, to represent a clear situation where a landholder should be represented on the board so as to participate in the development of management practices and strategies for that park and the adjoining properties.

In other respects the Committee supports the constitution of the Board as set out in the 1992 bill. It accordingly recommends that a board of management should consist of at least 9 but not more than 13 members of whom:

- the majority should be persons nominated by the lessor or lessors of the lands comprised within the park, site or reserve; and
- one should be a person appointed by the Minister on the nomination of owners, lessees or occupiers of land adjoining or in the vicinity of the park, site or reserve to represent those owners, lessees or occupiers; and
- one should be an officer of the National Parks and Wildlife Service for the time being appointed by the Director for this purpose; and
- one should 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

- one should be a person appointed by the Minister, to represent the shire council or councils for the area comprising or adjoining the park, site or reserve.

Under new section 71I of the bill the procedure to be followed at meetings of a board of management will be governed by the regulations. The Committee recommends this be qualified by the requirement that, at any meeting, a quorum shall not be constituted unless a majority of the members present at that meeting are persons who were appointed on the nomination of the lessor. This is consistent with the statutory provisions governing Uluru, Kakadu and Nitmiluk National Parks. Their aim is to ensure an Aboriginal majority at each board meeting.

Functions

The functions of a board of management are set out in proposed section 71K. These are:

- (a) the preparation of plans of management for the park, site or reserve; and
- (b) the care, control and management of the park, site or reserve.

This represents a significant change from the terms of the legislation as first introduced. In the 1991 bill preparation of plans of management and the care, control and management of the area remained with the Director of the National Parks and Wildlife Service. The change was based on a Government decision mentioned by the Minister in his speech on 14 November 1991.

However the Government's decision is not reflected in the consequential amendments to section 72 of the National Parks and Wildlife Act which is contained in Schedule 2 of the legislation. New section 72(1B) reads:

"(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 Director in consultation with and acting on the advice of the board of management for the park, site or reserve concerned."

Under the subsequent provisions of this section the Director submits the draft plan of management to the Minister "together with any comments or suggestions of the board of management." The Minister is required to consider these comments or suggestions before adopting the plan.

It will be seen that the new section 72(1B) in fact requires the Director to prepare the plan of management and that the board of management's role becomes that of providing "comments or suggestions" on the plan which are apparently not incorporated in it but merely brought to the Minister's attention. A similar

situation arises when a plan of management expires after 10 years. Under new section 79A the Board is to instruct the Director to prepare a new plan of management.

These provisions seriously downgrade the intended function of the Board which was to actually prepare the plan of management, not just comment upon it. The provisions may reflect some lack of confidence by the Administration in the ability or experience of a board of management to prepare an adequate plan.

The Committee does not see why that should be the case having regard to the required composition of the Board. The board can also properly seek assistance in drawing up the plan from the Director and other Government bodies or external agencies. The Committee recommends that the legislation should provide for a board of management to have the function of preparing plans of management in consultation with the Director of the National Parks and Wildlife Service. The Committee is therefore of the opinion that the amendments made to section 72 of the National Parks and Wildlife Act should be referred back to the Parliamentary Counsel for revision.

Review of existing plans of management

Under new section 72(1C) a plan of management is not required if an existing plan is in force when the park, site or reserve is dedicated under Part 4A.

There is only one plan of management currently in force in respect of the Schedule 4 areas. In his Second Reading speech to Parliament on 1 May 1991 the Minister made the following comments on that plan:

"Even the most recent up-to-date plan of management for what we call in Eurocentric fashion Mootwingee National Park, Mootwingee Historic Site and the Coturaundee Nature Reserve, was written from a European perspective. Those lands are of significance not only to European Australians but also to the Aboriginal citizens of the State, particularly to the local Aboriginal communities."

Under the new legislation this plan of management, notwithstanding its apparent limitations, will remain in force until such time as it is reviewed by the Director in accordance with section 72(1C). It is not clear from the legislation what powers, if any, the board of management might have to compel an expeditious review of that plan. It could well be that the review might take a longer period to finalise than a new plan of management for an area not previously covered by one. In the latter case the legislation requires it to be finalised within 2 years. Some indication that this could be the case is apparent from the fact that a draft plan of management for the Mungo National Park has been awaiting adoption by the Minister for 3 or 4 years. This leads the Committee to recommend that the legislation should compel the review of existing plans of management within 2 years of the commencement of the Act.

Public representations in connection with plans of management

At present where a new plan of management has been prepared the public has a statutory right, under the National Parks and Wildlife Act, to be notified of it and to make representations in connection with that plan. Under section 75 of that Act any person has one month or more to make their submission to the Director. The same rights of notification apply in respect of a plan of management for a nature reserve or state game reserve.

The 1992 bill amends section 75(1) and 76(1) of the National Parks and Wildlife Act to exclude the operation of these rights in respect of parks, sites or reserves vested in an Aboriginal land council under Part 4A of the bill. The reason for this provision was not explained by the Minister in his second reading speech and the Committee can find no support for it.

In the course of its Inquiry at Broken Hill the Committee asked Mr Eden, Regional Manager, National Parks and Wildlife Service, his views on the matter.

MEMBER OF COMMITTEE: *"Do you agree with the provisions in the bill.....that exclude the public from being invited to comment on the plans of management for Schedule 4 areas?"*

MR EDEN: *"No I don't. I would agree with Peter (Thompson) there that I think whilst the previous Minister did that with the best of intentions, it would be better to have plans of management operating in exactly the same way that they do at the present moment in other national parks, that is that the public should be able to comment."*

The Committee considers the board of management and the Director, in course of preparing the plan of management, can only benefit by inviting submissions from interested members of the public. That practice is followed in respect of plans of management for the Uluru National Park and it is a requirement under the Nitmiluk (Katherine Gorge) National Park Act.

The Committee recommends that draft plans of management for Schedule 4 areas be advertised and that interested members of the public be entitled to make submissions upon them.

Working arrangements between the board of management and the National Parks and Wildlife Service

The Committee considers this is a practical issue that will need to be addressed immediately in discussions between the board of management and the National Parks and Wildlife Service. In his evidence to the Committee Mr Eden spoke of the need to develop a working arrangement that was clear and unambiguous so as to avoid the possibility of friction arising between the board and the NPWS. The priorities and the working arrangement should be addressed through the plan of management and any associated guidelines. These should leave day to day practical management of Schedule 4 areas to the NPWS while preserving to the board overriding responsibility for policy, direction and development.

Power of Minister to direct board of management

Under new section 71K of the bill a board of management, in the exercise of its functions, is subject to the direction and control of the Minister. This provision was the subject of strong opposition by local Aboriginal land councils and particularly by the New South Wales Aboriginal Land Council. The Minister, in his explanation of the legislation, did not set out the reason for this unqualified power to direct the board in regard to all its statutory functions.

The Committee found that in comparable Australian legislation the power was generally restricted. The provisions of the National Parks and Wildlife Conservation Act 1975 (C'th) governing the Uluru National Park are an example.

Under section 14D the functions of the board established for that park are -

- (a) to prepare, in conjunction with the Director, plans of management in respect of that park or reserve;
- (b) to make decisions, being decisions that are consistent with the plan of management in respect of that park or reserve, in relation to the management of that park or reserve;
- (c) to monitor, in conjunction with the director, the management of that park or reserve; and
- (d) to give advice, in conjunction with the director, to the Minister on all aspects of the future development of that park or reserve.

Section 14D(2) of that Act states that a board shall, in performing those functions, comply with any directions given by the Minister to the Board under sections 11, 13 or 14A.

Sections 11 and 13 deal with directions issued by the Minister arising out of an arbitrator's report into a dispute between the Director and the Board regarding the preparation of a plan of management. Section 14A deals with directions arising out of similar disputes concerning the implementation of a plan of management. Apart from these matters the Uluru Board is not subject to Ministerial control.

One of the principal Government objectives of the New South Wales bill is to give Aborigines a co-operative management role in respect of the national park areas vested in them. In their submission the New South Wales Aboriginal Land Council stressed the need for Aborigines to be treated as equal partners. This will be fundamental to the success of the joint enterprise. This cannot be achieved by making their management role subject in all respects to the direction and control of the Minister. Although overriding responsibility for conservation management of national park areas must remain a responsibility of government, the Committee considers the Minister's power of direction and control

should be qualified as follows. It should not extend to directions relating to the contents of any report, advice, information or recommendation that may be made or given by the board or to any decisions as to the care, control or management of Aboriginal heritage and culture. This approach was followed in the legislative provisions governing Nitmiluk (Katherine Gorge) National Park.

FINANCE

The introduction into Parliament of this legislation was not accompanied by any assessment of its costs and benefits. No detailed information was offered to Parliament on the specific financial arrangements that would be necessary to ensure the success of the legislative scheme.

On 14 November 1991 the Minister made the following comments in Parliament in respect of the costs of maintenance and cultural conservation of areas reserved under Part 4A of the legislation:

"It is obvious that within the general budgetary constraints of the National Parks and Wildlife Service, there will always be a finite amount of money able to be directed to these matters. Their funding will be set within the budgetary priorities of the National Parks and Wildlife Service. However, it is the intention of the Government to have the moneys allocated to any of these areas the subject of such agreements dealt with through a special purposes account for that site so that such an account will be able to be administered by the local management board which, as I indicated earlier, will have an Aboriginal majority on it. At present only two of the four areas nominated in the schedule to the bill derive any revenue, but the amounts are comparatively insignificant compared to the real costs of maintenance and cultural conservation of the areas. Those two areas are Lake Mungo and Mutawindji. It is intended that the Act require that any revenue derived from those areas be paid into the special purposes account of the management board for that area and that management board account be topped up with money allocated to the National Parks and Wildlife Service."

This statement indicates that the various boards of management are unlikely to receive any appreciable funding from park revenues and that they will have to rely on amounts made available through the National Parks and Wildlife Service subject to the priorities of that Service.

This does not appear to the Committee to provide a reliable enough basis on which a board of management could operate effectively and independently. This is reinforced by the finding of the Public Accounts Committee that the greatest difficulty of the National Parks and Wildlife Service is its insufficiency of financial and human resources to carry out its own duties.¹⁵

During the Committee's public Inquiry at Broken Hill, this

¹⁵ Report on the National Parks and Wildlife Service: December 1991.

position was confirmed in evidence given by Mr C Eden, Regional Manager National Parks and Wildlife Service (Western Region).

MEMBER OF COMMITTEE: *"The Minister said a board of management will have to depend by and large on current funds from the National Parks and Wildlife Service and subject to the priorities of the Service. If the National Parks and Wildlife Service has inadequate funds, and I'm aware the New South Wales Public Accounts Committee has indicated that this is the situation for the Service, does this mean that the funding arrangements that are in the bill should be placed on a more formal basis as far as you're concerned?"*

MR EDEN: *"Yes definitely. In fact I meant to raise that in my initial address. The Service is in an extremely difficult position with funding, both with current and capital. It is likely that in this next year we will need to look at curtailing even more services and I'm not sure - allowing for the fact the smaller the unit is, the more it would effectively cost to operate - I'm not sure that we could seriously consider funding the board out of our existing resources."*

Under the new section 71K a principal function of a board of management is the care, control and management of the particular national park, historic site or nature reserve. It will also have the duty under section 81(6) of carrying out and giving effect to the plan of management. It will therefore have responsibility for the total operations carried out in the area. This means that a board of management now has the same responsibility for areas reserved under Part 4A that the Director of National Parks and Wildlife has in respect of other parks, sites or reserves. Each board must clearly have available to it adequate funds to meet these management responsibilities.

In response to a written request from the Committee the Minister, in a letter dated 13th August 1992 supplied the following details concerning current expenditure on Schedule 4 lands:

*"Mr. Paul Zammit MP, Chairperson
National Parks and Wildlife (Aboriginal Ownership)
Amendment Bill 1992
Parliament House, Macquarie Street
SYDNEY NSW 2000*

Dear Mr Zammit

Further to the letter of 3 June 1992 from Mr Moore, I now provide the following information, obtained from the National Parks and Wildlife Service, concerning expenditure on Schedule 4 lands.

	1990/91	1991/92
Mungo National Park	\$ 68 295	\$57 500
Mootwingee National Park	}	
Mootwingee Historic Site	}	
and Coturaundee Nature Reserve	} \$236 797	\$178 050
Mount Grenfell Historic Site	\$ 2 350	\$ 1 030
Mount Yarrowyck Nature Reserve	\$ 5 902	\$ 6 355

The above areas, with the exception of Mount Yarrowyck Nature Reserve, are located within the Service's Western Region. The Director of the Service has advised that capital expenditure on any particular area fluctuates from year to year, depending on the project. Thus the figures indicated do not suggest any sort of average for these areas. It is likely that in 1992/93, capital works funds may be more directed to urgent issues in other parks in the Region.

These national Parks form an integral part of District operations and programmes that cross park boundaries. Therefore it is not possible to separate the costs of District-wide support services or programme costs. Even the directly attributed costs will have a District-wide component. For example, the staff of Mootwingee work on other programmes within the District, and operate their vehicles and equipment to other sites accordingly. In these situations, the costs will be listed against the operation of Mootwingee, even though there is a significant off-park management component.

I trust this information is of assistance to the Committee.

Yours faithfully
 CHRIS HARTCHER, MP
Minister for the Environment"

It is apparent from this letter that in the 1992/93 financial year, the capital works programmes of other areas administered by the National Parks and Wildlife Service, will be given priority over capital works programmes of Schedule 4 lands. This example demonstrates that, in the absence of separate funding, de facto management of Schedule 4 lands remains with the Director of the National Parks and Wildlife Service, regardless of the specific authority given to the board of management to control and manage these lands.

The Minister, Mr Hartcher, in evidence to the Committee, generally followed the approach taken by Mr Moore that funding of Schedule 4 areas would depend on the priorities of the NPWS though he conceded that supplementation would be necessary.

The Committee is of the opinion that a funding base must be provided in the legislation that is not dependent on allocations from the Director of the National Parks and Wildlife Service particularly as his legal priorities must be directed firstly to meeting his obligations in respect of the parks, sites and reserves under his direct control.

Part 10 of the National Parks and Wildlife Act 1974 establishes the National Parks and Wildlife Fund which is kept at the Treasury in the Special Deposits Account. Section 138 of that Act requires payment into that Fund of all money provided by Parliament for the purposes of the Act. This section will be amended by the 1992 bill to require any money paid in respect of a Schedule 4 area to be carried into a separate account in that Fund for the particular area. The amendments proposed by the bill have expenditure safeguards. These require such moneys to be applied in connection with the particular park, site or reserve and in accordance with the relevant plan of management.

The proposed legislation therefore contemplates separate funding arrangements for each Schedule 4 area. What it does not do, however, is to deal with the regular provision of funds for each separate account. It is from these separate accounts that the expenses of the Board and the National Parks and Wildlife Service acting in co-operation with it, will need to be met.

The Committee considers that there are 2 sources from which specific and regular sums can be paid into the National Parks and Wildlife Fund for the use of a board of management.

The first source of funding should be the provision of specific and annual sums from the Consolidated Fund into the account set up under Part 10 of the National Parks and Wildlife Act. This should be an amount sufficient to meet the estimated expenses to be incurred by each board of management in connection with the preparation of plans of management and in the care, control and management of a national park, historic site or nature reserve.

The second funding source should be the payment of an annual rental in return for the grant of the lease by the Aboriginal land council in respect of the area under its control. The Committee sought the views of the Valuer General on the relevant ingredients or criteria that should be used for the calculation of rent for the Schedule 4 areas.

On 31st July 1992, the Valuer General furnished advice on this matter, a copy of which is set out in Appendix 5 of this Report. He advised as follows:

"In my opinion the issues that need to be considered in arriving at a basis of rental for these properties include:-

- * *initially, the nature of the particular property that is vested in the Aboriginal owners, its areas, location, infrastructure and improvements (if any).*

This should be a simple matter of identification based on existing records.

- * *the extent to which ownership rights are vested in the terms of the Act.*

This is to establish what are the rights of the owners to use and enjoyment of the land, and of development, transfer of interest or sale.

- * *the extent to which the vested ownership rights are to be changed by the provisions and implementation of a lease under the Act.*

This is to establish what are the restrictions on the ownership rights that flow from the lease.

- * *the extent to which the special cultural significance of the property to the owners restricts the use of the land for the purposes of the lease.*
- * *the arrangements, if any, for joint management and control of the property by the vested owners and the NPWS, particularly in respect of control of future development.*
- * *the specific terms and conditions contained in any lease, particularly the basis for setting any rental in the event of renewal of lease."*

At its hearing on 17th August 1992 the Committee asked the Valuer General various questions arising out of this advice.

In that evidence the Valuer General took the view that as a matter of rental valuation the perpetual nature of the lease back arrangement from the Aboriginal land council to the Minister was as good as giving away ownership of the property.

MEMBER OF COMMITTEE: *"Do I understand you correctly? Are you saying such a lease-back arrangement in perpetuity would need to have regard to the overall total value of the asset as if it was to be alienated, is that what you are saying, and sold off?"*

MR CUNNINGHAM: *"Yes."*

In view of the evidence of the Valuer General there is a strong argument, based on principles applying to the general community, that the rental should be set at a figure at least calculated to compensate the Aboriginal land council for the loss of the full use and enjoyment of its land rather than at the nominal rental of one dollar. The evidence from the Aboriginal land councils has continuously stressed this point, that if the land has been returned to them they should be treated on the same footing as the rest of the community in terms of the calculation of rent and not just as symbolic owners. The provisions governing the payment of that rent should require the rental moneys to be paid into the account set up under Part 10 of the National Parks and Wildlife Act for use in connection with the care, control and management of the park, site or reserve in respect of which it has been paid.

In conjunction with these recommended changes the Committee

proposes that each board of management be made subject to standard provisions for the auditing of their accounts.

MISCELLANEOUS MATTERS

Regulations

Under the scheme of the legislation the Minister is required to consult with the Aboriginal land council in whom the lands are vested before making, amending or repealing any regulation. The legislation at the same time continues in force any existing regulations. The principal regulations in this case are the National Parks and Wildlife (Land Management) Regulation 1987. This regulation will come up for full scale review in 1995 and at five yearly intervals after that as a result of the sunset provisions of section 10 of the Subordinate Legislation Act 1989. This means that Aboriginal land councils will have an opportunity to participate in that review.

Arbitration

The legislation in its original form required the inclusion in the lease of a term under which the Minister would arbitrate on any dispute occurring between the Director and the Aboriginal land council concerning the operation of the lease.

In his speech to Parliament on 14 November 1991 the Minister said this provision would be altered because there might be disputes from time to time between the Management Board and the Minister or between the Board and the Director. He therefore proposed the establishment of an independent arbitration system to enable those disputes to be dealt with rather than the Minister being the sole determinant of the issues. This redrafted provision now appears as Clause 71E(2)(c). This clause makes provision for such disputes to be arbitrated by a panel of 3 arbitrators.

The Committee supports this provision on the basis of its procedural fairness. However arbitration should not extend to those matters over which either of the parties are intended to have overriding jurisdiction. For example it would defeat the purposes of the Act if this provision operated to permit the Director to resort to arbitration over a dispute concerning the appropriateness of any direction issued or oversight sought to be exercised by the board of management. The Committee recommends the arbitration provisions be reviewed by the Parliamentary Counsel to exclude their operation in such cases. In some respects it would seem anomalous to give the Director the right to resort to Arbitration in a dispute with the Board when the Director or his delegate would be a member of that Board and a party to its decisions. The Parliamentary Counsel should also examine the merit of making the arbitration provisions a separate clause of the bill rather than as a term of the lease

as neither the Director, nor the Board are parties to the lease. A further reason for a separate arbitration provision is that there is no provision in the 1992 draft to resolve a dispute concerning lease terms, that is, during the stage when the lease is being negotiated, but not yet in existence.

Aboriginal employment and training

Clause 71E (3) states that the lease may make provision for such other matters as the Minister and the Aboriginal Land Council consider appropriate. In his speech to Parliament on 1 May 1991 the Minister stated that the Government, through the National Parks and Wildlife Service, is committed to provide, in an affirmative action program, employment for Aborigines in that Service. The Minister re-iterated this sentiment in a further speech on 14 November 1991 saying that a formal Aboriginal employment strategy was a complementary and essential component of the process of recognising the importance of Aboriginal culture in New South Wales.

The Committee considers that this matter should be dealt with in the conditions of the lease. It notes that provision in that regard is made in Clause 7 of the lease governing Uluru National Park. The Committee recommends that, as a condition of the lease with the Aboriginal Land Council, the Minister undertake to use his best endeavours to implement the Aboriginal Employment and Training Plan 1991-1996 published by the National Parks and Wildlife Service and in particular the timetable for the implementation of that Plan. Further, that he report to Parliament from time to time in regard to the progress achieved in implementing that Plan.

Dissolution of local Aboriginal Land Councils

Under new section 71W of the 1992 bill if Schedule 4 lands are vested in a local Aboriginal Land Council and that Council is dissolved the lands automatically revert to the Crown. The Minister may then enter into negotiations with the New South Wales Aboriginal Land Council for a fresh vesting and lease back of the lands.

This provision was generally opposed by all local Aboriginal Land Councils who addressed it on the grounds, firstly, that they did not wish to see the lands revert to the ownership of the Crown particularly as there was no certainty they would be returned to Aboriginal ownership. That would depend on the exercise of the Minister's discretion. The second reason was that local Aboriginal Land Councils did not want ownership to pass to the New South Wales Aboriginal Land Council because they considered ownership and decision making in regard to Schedule 4 areas was more properly a local matter.

The New South Wales Aboriginal Land Council also said the provision was unacceptable.

"Clause 71W is unacceptable. There is absolutely no reason for the land to return to the Crown if the local land

council that owns the land dissolves. There are three options to resolve this:

- * The title is transferred directly to the traditional owners under a corporate body or trust.
- * Title is transferred to another land council, as the area of the defunct land council is amalgamated into the boundaries of another, who then hold the land in trust for the traditional owners.
- * The title is transferred to the NSWALC who hold the land in trust for the traditional owners."

It is apparent to the Committee that this provision was not discussed with the Aboriginal community before its inclusion in the bill. The reversion of the lands to the Crown, on dissolution of the council, undermines the security of the title. Although the provision was intended as a bridging mechanism the Minister is nevertheless not obliged by the legislation to transfer that land to the New South Wales Aboriginal Land Council. He may or may not enter negotiations with it for that purpose.

The further objection is that the scheme does not include the option of transfer of ownership and control to a local Aboriginal land council.

The Committee in its approach to this issue adopts the view contained in the New South Wales Ministerial Task Force on Aboriginal Heritage and Culture that the local Aboriginal community is ultimately the most appropriate level for decision making concerning heritage and culture. The Committee therefore recommends that new section 71W be amended to provide, on the dissolution of a land council, for the Schedule 4 lands held by it to be transferred to the local Aboriginal land council or councils who subsequently incorporate the area of the dissolved council and that pending that incorporation, title to the Schedule 4 lands stand in the name of the traditional owners.

Restriction on rights of public access to sacred sites

Under the legislation the public have a right of access to the Schedule 4 areas subject to the terms of the plan of management. The Committee heard different views on the degree to which the plan of management could properly be used to restrict full public access to sacred Aboriginal sites within Schedule 4 areas. The Committee was asked to express its views on this issue.

Discussions on this matter principally concerned access to Snake Cave in the Mootwingee National Park. The evidence of Mr William Bates, Chairperson, Mootwingee Local Aboriginal Land Council, sets out his concern about this sacred site.

MEMBER OF COMMITTEE: "Just a final question, William. Snake Cave. It has been mentioned to this Committee on a

number of occasions, not only just today. The Mootwingee people and the tribal elders hold that in very high spiritual regard. It has been indicated to us on a number of occasions that that spirituality has only just become something known to Aboriginal people in this area in recent times. What's your comments on a statement like that."

MR BATES: "I'd like to make a comment. I don't know where they got their information from. Our people have been around for thousands of years. I've certainly known about Snake Cave ever since I was a little fella. I'm in my forties now. I've known about it all my life. I've known it to be a traditional sacred site to men. Aboriginal people throughout this country have sacred sites. The men have sacred sites where women can't go, and the women have sacred sites where men can't go. This place, I know for myself, it has been known to be one for years, and I'm sure that every Aboriginal person around this room knows the same thing, that it's a sacred site. It's only a very small area that we're talking about - probably twice the size of this room. It's a big country. Why should everybody want to go and have a look inside and stickybeak and say "Oh, what's in there?" I think we should have our right. It's been our right for thousands of years to have that place respected, it's for men only and we will - legislation or not - fight to see that the cave remains a sacred site. I respectfully ask that this be given serious consideration, Mr Chairman, in legislation that our spiritual belief in that place being a sacred site, not only now but that that place may not be opened through legislation."

Mr Bates also spoke of the need to protect Aboriginal heritage against vandalism.

MR BATES: "It was commented this morning about parks should be open to Australians - not just to one group. The parks as far as I know are open to all Australians, not just Australians but people from all over the world. It was commented this morning about Aboriginal people closing Mutawintji and we had no interest in that place and we run away from the place, and we only saw fit to go back to the place when something else was done. As far as I know Mutawintji wasn't even formerly open to the public.

I commented before that I said that the reason we blockaded the place in 1983 was because of some of the vandalism that was going on out at Mutawintji and the Historic Site itself. The robbing of engravings in slate form. Taking away thousands of years of Aboriginal people's history so that somebody could put it in their garden. I think that's appalling. We respect our people's traditions. We respect our rock engravings out there. We want to be given the chance to protect those engravings."

These extracts disclose legitimate reasons for the existence of a right to qualify public access to sacred sites in national

park areas.

The Committee found that legislation covering Uluru, Kakadu and Nitmiluk (Katherine Gorge) National Parks included powers to restrict access to sacred sites. The current plan of management for Uluru National Park shows that two sacred sites are restricted because they are the province only of men; another two are the restricted province of women. All are restricted because of their associations with non-public portions of ancestral tracks. At the national level the Aboriginal And Torres Strait Islander Heritage Protection Act 1984 (C'th) functions as a "safety net" in case State or Territory legislation gives inadequate protection.

The Royal Commission into Aboriginal Deaths in custody stated that the protection of their sacred sites is integral to the cultural survival of Aboriginal people. One of the recommendations of that Commission related to the reservation of areas of land within National Parks for use by Aborigines for ceremonial purposes. Mr Johnston, a consultant undertaking work in regard to the implementation of the report, had this to say in evidence:

MEMBER OF COMMITTEE: *"A Royal Commission recommendation that came out of the Millstream meeting relating to Western Australia was that certain areas within National Parks be reserved for ceremonial purposes for Aborigines. We have had it explained to us quite vividly by traditional owners from Mootwingee National Park where there is a very significant site called the "Snake Cave". The question I ask, coming out of the Royal Commission: Does that mean if a decision is made that that area is exclusive for Aboriginal people, that will bring about a situation where the general public will not have access to that area. Is that what that Royal Commission's decision was?"*

MR JOHNSTON: *"The Royal Commission's decision was that if it was an area of a sacred nature to Aboriginal people and sufficiently important to them in Aboriginal law terms that they should have a right of control over access to those areas. Now the principle in recommendation 315 that you are referring to applies to certain places as Uluru. For instance, where certain sacred sites are fenced off at the base of Ayers Rock, now that's a situation where in a very large National Park a couple of very small areas are fenced off and traditional owners continue to deny access to the public to those areas. Having lived there for three or four years I certainly have never seen a situation where the public have felt aggrieved by that arrangement. In the case of Mootwingee, you are referring to the "Snake Cave". If that's a similar situation to the fenced off areas at the rock, then I would say that the same principle should apply and certainly that is what the Royal Commission is saying. I don't know specifically what the feelings of the traditional owners are about the Snake Cave but their right to manage that area and control access as they see fit, or perhaps take people up there under guided*

supervision or something, should be their right."

The Committee supports the powers now in the bill that enable the public right of access to Schedule 4 areas to be properly regulated under restrictions in the plan of management.

Periodic review of conditions of lease

The Committee recommends that the lease between the Aboriginal land council and the Minister include a condition requiring the parties to meet at least once in every 5 years to discuss whether any of the conditions of that lease (other than a condition relating to the term of the lease) require variation. If the Lessor and Lessee fail to agree upon any variation of the lease proposed by either party the disagreement should be referred to arbitration in accordance with the provisions of the bill.

This recommendation is based on the Memorandum of Lease between the Uluru-Katatjuta Aboriginal Land Trust and the Director of National Parks and Wildlife Act. The Committee sees this as an equitable method of ensuring that the conditions of the lease remain relevant to present day circumstances. This course was supported in evidence presented to the Committee during its Inquiry.

**RELATIONSHIP OF THE LEGISLATIVE PROPOSALS TO THE
REPORT OF NEW SOUTH WALES MINISTERIAL TASK FORCE
ON ABORIGINAL HERITAGE AND CULTURE**

A number of the submissions made to the Committee were critical that the current legislative proposals had apparently been developed in isolation to the recommendations of the Ministerial Task Force. Those recommendations were as follows:

1. *That there be developed new legislation for the protection and management of Aboriginal heritage and culture in New South Wales;*
2. *This legislation be separate from existing legislation concerning protection and management of Aboriginal heritage and culture;*
3. *This legislation be based on the following principles:-*
 - (a) *acknowledgement of Aboriginal ownership of Aboriginal heritage and culture in N.S.W.;*
 - (b) *local Aboriginal involvement in protection and management of heritage and culture in N.S.W.;*
 - (c) *protection and management of all Aboriginal sites;*
 - (d) *protection and management of all Aboriginal heritage items;*
 - (e) *protection and reburial of Aboriginal skeletal remains;*
 - (f) *imposition of penalties for offences;*
 - (g) *requirement to report Aboriginal sites, heritage items and skeletal remains;*
 - (h) *access to Aboriginal sites by Aboriginal people;*
 - (i) *hunting, fishing and gathering rights.*
4. *Administration of this legislation be administered within the portfolio of the Minister responsible for Aboriginal affairs in N.S.W.;*
5. *There be an elected Aboriginal Heritage Commission to administer the legislation with adequate staff and other resources;*
6. *There be a phasing-in period of five years during which an elected Aboriginal Advisory Committee works in association with the N.S.W. National Parks and Wildlife Service to*

advise on matters relating to Aboriginal heritage and culture;

7. There be developed and implemented an education and public awareness programme to inform Aboriginal and other people of their rights and responsibilities under the new legislation.

Mr Moore, the former Minister, was asked by the Committee for his views on this issue and in a letter dated 3rd June 1992, he responded as follows:

"I recently commenced the process of dealing with issues relating to the report by changes, pursuant to statute law reform, to the National Parks and Wildlife Act. I attach a copy of those amendments for your information.

I recently met with representatives of the State Land Council to discuss with them dealing with issues arising from the report in a fashion which parallels the present legislative process. I do not regard the two issues as being linked."

Those amendments establish the Aboriginal Heritage and Culture Advisory (Interim) Committee with majority Aboriginal membership to provide Aboriginal involvement in the protection and management of Aboriginal heritage and culture. This interim committee was proposed by the Task Force Report as a 'phasing-in' strategy, leading up to the establishment of an Aboriginal Heritage and Culture Commission, independent of the National Parks and Wildlife Service and the Aboriginal land councils.

During the course of the Committee's inquiry, the Minister, Mr Hartcher was asked a series of questions centring on future implementation of the Task Force's recommendations:

MEMBER OF COMMITTEE: "A number of submissions made to the Committee seek clarification on the relationship between this legislation and the Report of the New South Wales Ministerial Task Force on Aboriginal Heritage and Culture. Since that Report was issued in 1989 there has been apparently no official Government comment upon its recommendations. Would you indicate to the Committee whether the Government intends to act on the recommendations of that Task Force?"

MR HARTCHER: "The Government has already moved to implement one of the recommendations which was the renaming of the Heritage sites and also is moving to establish the Aboriginal and Cultural Advisory Committee which is to be proclaimed soon. In fact, I had meetings with the Aboriginal land council about that issue and that is part of the response to the report. The rest of the report which is quite a comprehensive document is, in fact, under consideration by National Parks and Wildlife Service and they're to prepare a submission to me which I have not as yet received. It will then need my consideration but it is

wider than my portfolio. It will also need the consideration of other Ministers and of the Cabinet generally. This particular legislation is not seen as being in answer to that Task Force recommendation. It is seen as part of the overall process which started back in 1967 of reconciliation between the European community and the Aboriginal community. It is not seen as a response to the Task Force recommendation."

MEMBER OF COMMITTEE: "The submission made to the Committee by the National Parks Association argues that the present legislation will undermine implementation of the Task Force recommendations. What that submission appeared to be saying was that if you vest the ownership of the Schedule 4 lands in various local Aboriginal land councils it might be impracticable at a later stage to put those lands under the control and ownership of an Aboriginal Heritage Commission. The previous Minister in discussions with the Committee said that he saw that Commission as having a management role rather than an ownership role. However, if you look at that Report this may not be exactly the situation contemplated by the Task Force. For example, page 33 of the Task Force Report talks of the land being vested in the new authority. We would be grateful if you would give us your views on this matter."

MR HARTCHER: "Where we end up with after consideration of the Task Force Report and where we end up with overall relationships between the European and Aboriginal communities is going to be further down the track. It may well be that we do have the recommendation from the Task Force at some stage that there be an Aboriginal Heritage Commission to look after all these sites in which case we would simply have to have a mechanism, or by legislation introduce a mechanism, to transfer these sites to that Commission with the consent, if that course is adopted, of course, of the Aboriginal owners who would have to agree.

Once again that is essentially seen as separate. The purpose of this legislation is to ensure that the relevant Aboriginal communities own, not just manage, the sites that are of great significance to them. Now the broader picture may well emerge as far as Aboriginal Heritage goes but that really is not a Government policy at this time - that would need to be worked through."

MEMBER OF COMMITTEE: "So you really see the Task Force recommendations not usurping this legislation in any way? You see, if this legislation is passed it stands on its own and the Cultural and Heritage Commission which would be set up under the other legislation coming under this Report, would stand on its own?"

MR HARTCHER: "No, it may well be that this legislation would only end up being a temporary measure."

MEMBER OF COMMITTEE: "This legislation that we are

looking at now?"

MR HARTCHER: "Yes, it could be, if the Task Force is carried further and those recommendations are adopted what could well happen is that these particular sites that are listed in Schedule 4 and any others added may well end up being transferred over to an Aboriginal Heritage Commission."

MEMBER OF COMMITTEE: "With local management control?"

MR HARTCHER: "Continuing with local management control and with the consent of the local Aboriginal communities. We would not seek to be imposing by legislation a final solution to these matters on the Aboriginal communities. It would have to be one that fully involved them."

MEMBER OF COMMITTEE: "Would that allow for the future possibility then, perhaps, of the Aboriginal Heritage Council taking over the actual operational role of the National Parks and Wildlife Service in the areas where ownership is being handed back to Aboriginal communities?"

MR HARTCHER: "The actual management?"

MR YEADON: "Yes. There is a notion by the NSW Aboriginal Land Council that under the Heritage arrangement, that they would see themselves setting up a body for the actual day to day management and control of parks rather than just management?"

MR HARTCHER: "At this stage that wouldn't be supported. It would really need to be considered a great deal before any indication of support could be given towards that and the advice that I have is that that would not be regarded as a good idea."

The following points emerge from this evidence. The current legislation was not intended to address any of the recommendations of the Task Force Report which will be the subject of a submission from the National Parks and Wildlife Service to the Minister. Cabinet will at some future stage examine the Report.

If an Aboriginal Heritage Commission is subsequently set up then the particular Schedule 4 sites may be transferred over to that Commission but they would continue with local management control. The transfer would be subject to the consent of local Aboriginal communities.

The Minister, in his evidence, indicated these matters are not covered by Government policy at this time. A further matter in the Minister's evidence, dealt with the suggestion put forward in the submission by the New South Wales Aboriginal land council, that it hoped to see a general transfer during the period of the lease of the operational role of the NPWS in Schedule 4 areas to an Aboriginal model. The Minister said that proposal would need

further consideration but on the advice he had received it was not regarded as a good idea.

On the basis of these observations by the Minister the Committee does not consider the present legislation will impede or undermine implementation of the Task Force Report.

**NATIONAL PARKS AND WILDLIFE (ABORIGINAL OWNERSHIP)
AMENDMENT BILL 1992 INCORPORATING THE AMENDMENTS
PROPOSED BY THE COMMITTEE**

The Committee recommends that the legislation proceed in accordance with the National Parks and Wildlife (Aboriginal Ownership) Amendment Bill 1992 set out in Appendix 6. That bill was prepared by the Parliamentary Counsel on the instructions of the Committee. It is based on the legislation presented to Parliament but modified to incorporate the amendments recommended by the Committee. These are highlighted in the text of the bill so that Members of Parliament and the public can fully appreciate the changes proposed by the Committee. This course will also help address the complaint made by members of Local Aboriginal Land Councils that the proposals had not been made sufficiently clear to them.

Appendix 7 sets out separately, for the purposes of the Sessional Orders, the amendments which the Committee considers should be proposed to the Committee of the Whole to implement the recommendations.

The evidence presented to the Committee during the Inquiry canvassed two approaches to the legislation: the first, a general enabling bill in the form presented by the Minister which would allow further areas to be vested in Aboriginal land councils from time to time. The second, a case by case approach that would result in a separate Act of Parliament for each area.

Support for a case by case approach arose from the fact that some local Aboriginal land councils stated they did not have a clear picture of the proposed scheme or affect of the legislation. This is being addressed by further consultation and by on-going workshops of the New South Wales Aboriginal Land Council. The Council reports that at this stage workshops on the bill have been conducted with all the local Aboriginal land councils directly affected.

Several regional meetings were arranged by the NSWALC, at Mutawintji on 21 March, at Lake Mungo on 27 and 28 June and Murrin-Bridge on 15 August 1992. The Council said these meetings were well attended and served the purpose of gathering together as many traditional owners and community members as possible. NSWALC lawyers also attended. At these meetings workshops have been conducted on the bill, clause by clause, as well as discussion on other national parks such as Uluru and Kakadu.

Some further support for a case by case legislative approach was given by the National Parks and Wildlife Service officers who recognised the operational advantage this would have by way of being able to proceed gradually and build up experience for a successful co-operative partnership with each board. Present

funding limitations also suggested this as an easier path. The Minister, however, took a broader view when he was asked his opinion on the matter.

MR HARTCHER: *"I haven't turned my mind towards the idea of separate pieces of legislation for separate parks What does concern me though - and I take on board what Mr Markham has just said - is that it's taking an awful long time to get something that was promised to these people in April 1991 in place, and while it might satisfy Mootwingee it is going to, therefore, mean if we have separate items of legislation, we will be going through a very long process."*

The Committee does not support the approach of separate legislation for each area. The potentially large number of areas involved would make this approach unworkable. Mr Moore, in his second reading speech stated:

"I want to make it quite clear to my colleagues that this is simply the first stage of what I expect to be a very long process that will outlast any tenure that I have as Minister for Environment and, indeed, may well outlast the tenure of any member of this Chamber."

Some of these areas, like Mount Yarrowyck Nature Reserve, may only be a few hundred hectares. It would be incongruous to proceed by separate legislation in these cases and the length of time it would take would also disadvantage and dishearten the Aboriginal community.

The Committee accordingly supports the approach adopted by the Government of proceeding by way of a general enabling bill under which further areas of special cultural significance to Aboriginal persons can be identified and added to Schedule 4.

**NATIONAL PARKS AND WILDLIFE (ABORIGINAL OWNERSHIP)
AMENDMENT BILL 1992**

LIST OF SUBMISSIONS RECEIVED

- 1 Broken Hill Local Aboriginal Land Council
- 2 Mr Paul Adam, Associate Professor of Biological Science,
University of NSW
- 3 Council of the Shire of Wentworth
- 4 Aboriginal Catholic Ministry
- 5 Balranald Shire Council
- 6 Dr Tony D Auld, Research Scientist
- 7 Mr Norman A Lemon
- 8 Environmental Youth Alliance
- 9 Mr C Millman
- 10 Ms Jocelyn Davies of the Department of Geography and
Oceanography, University of NSW, Australian Defence Force
Academy
- 11 National Parks Association of New South Wales
- 12 Mrs Alice Kelly, Mutthi Mutthi Tribal Elder
- 13 Wiradjuri Regional Aboriginal Land Council
- 14 Rev. J F Boyall
- 15 Australian Conservation Foundation
- 16 Dr T De Lacy, Head, School of Environmental and
Information Services, Charles Sturt University
- 17 Mr A Powell, Director General, Department of Conservation
and Land Management
- 18 The New South Wales Bar Association
- 19 Wentworth Branch of NSW Farmers' Association
- 20 Mr G E Townsend
- 21 The Wilderness Society
- 22 Anglican Information Office
- 23 Mr Keith Chester
- 24 Shires Association of New South Wales
- 25 Ms Maxine Withers
- 26 Mr A Wridgeway
- 27 Geographical Names Board
- 28 National Parks and Wildlife Foundation
- 29 Board for Social Responsibility (Uniting Church in
Australia)

- 30 Forum for Thinkers
- 31 Newcastle Aboriginal Support Group
- 32 Mr Burnum Burnum
- 33 Merrimans Local Aboriginal Land Council
- 34 Mr Cliff Foley
- 35 Mr Peter Thompson
- 36 Cobar Local Aboriginal Land Council
- 37 Mr Brian Ablett
- 38 Broken Hill City Council
- 39 Mutawintji Local Aboriginal Land Council
- 40 Willandra Landholders Protection Group
- 41 Mr Peter Cunningham, Valuer General
- 42 The New South Wales Aboriginal Land Council
- 43 Mr Ross Johnston
- 44 The Pastoralists Association of West Darling
- 45 Balranald Local Aboriginal Land Council
- 46 The Hon. T Lewis
- 47 Northern Tablelands Regional Aboriginal Land Council

LIST OF WITNESSES AT COMMITTEE HEARINGS

Mr Brian Ablett, Willandra Landholders Protection Group
Mrs Helen Anderson
Mr Gavin Andrews, Head of Aboriginal Heritage Branch,
National Parks and Wildlife Service
Mr William Bates, Chairperson, Mutawintji Local Aboriginal
Land Council
Mr William "Badger" Bates, Regional Representative Mutawintji
Local Aboriginal Land Council
Ms Patricia Boyd, Solicitor, NSW Aboriginal Land Council
Mr Michael Bray, Vice President, National Parks and Wildlife
Foundation
Mr Andrew Chalk, Solicitor, NSW Aboriginal Land Council
Ms Helen Clemens, Manager - Cultural Heritage, NSW National
Parks and Wildlife Service
Mr Barrie Collison, Project Manager - OLMA Committee Broken
Hill City Council
Mr John Coombs, Q.C., President of the NSW Bar Association
Mr Nicholas Cowdrey, Q.C., Chairman of the Human Rights
Committee of the Bar Council
Mr Peter Cunningham, Valuer General
Ms Gertie Darrigo, Chairperson, Cobar Local Aboriginal Land
Council
Mr Terence De Lacey, Head, School of Environmental and
Information Sciences, Charles Sturt University - Albury
Mr Grahame Douglas, President NSW National Parks Association
Mr Christopher Eden, Regional Manager - Western Region
NSW National Parks and Wildlife Service
Mr John Gall
Mr Stephen Harding, Chief Executive Officer, Wentworth Shire
Council
The Hon. Christopher Hartcher, M.P., Minister for the
Environment
Mr Peter Henchman, Director, National Parks and Wildlife
Foundation
Mr Alistair Howard, Deputy Director - Field Management and
Conservation, NSW National Parks and Wildlife Service
Ms Vivian Ingram, Principal Legal Officer, National Parks and
Wildlife Service
Mr Ian Jackson
Ms Cindy Johnson, Research Officer, NSW Aboriginal Land
Council

Mr Ross Johnston, Consultant to the Australian Conservation Foundation

Mrs Alice Kelly, Elder, Muttie Muttie Tribe

Mr Phillip Kerwin, Provisional Member, Mutawintji Local Aboriginal Land Council

Mr William Lovelock, Elder, Armidale Local Aboriginal Land Council

Ms Delia Lowe, Project Officer, NSW Aboriginal Land Council

Reverend John McIntyre, Rector of St Saviour's Anglican Church, Redfern

Mr Donald McKinnon, President, Wentworth Shire Council

Ms Dulcie O'Donnell, Secretary, Mutawintji Local Aboriginal Land Council

Ms Maureen O'Donnell, Member, Mutawintji Local Aboriginal Land Council

Mrs Elaine Ohlsen, Member, Cobar Local Aboriginal Land Council

Dr Kingsley Palmer, Director, Australian Institute of Aboriginal and Torres Strait Islander Studies

Mrs Mary Pappin, Member, Muttie Muttie Tribe

Mr Mervyn Penrith, Officer, NSW Aboriginal Land Council

Ms Margaret Rodgers, Research Officer for the General Synod of the Anglican Church of Australia

Ms Sue Salmon, Australian Conservation Foundation

Mrs Gloria Shipp, Co-ordinator, Cobar Local Aboriginal Land Council

Mr Douglas Mc Sullea, Deputy Secretary of the Shires Association and Local Government Association

Mr Bernard Standen, President, Balranald Shire Council

Mr Peter Thompson

Mr Kenneth Turner

Mr Desmond Wakefield, Willandra Landholders Protection Group

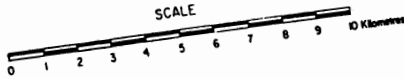
Ms Leanne Wallace, Manager - Corporate Services Division, NSW National Parks and Wildlife Service

Councillor Stephen Ward, President, Shires Association

Mr Stephen Webb, Research for the Social Issues Committee of the Anglican Diocese of Sydney

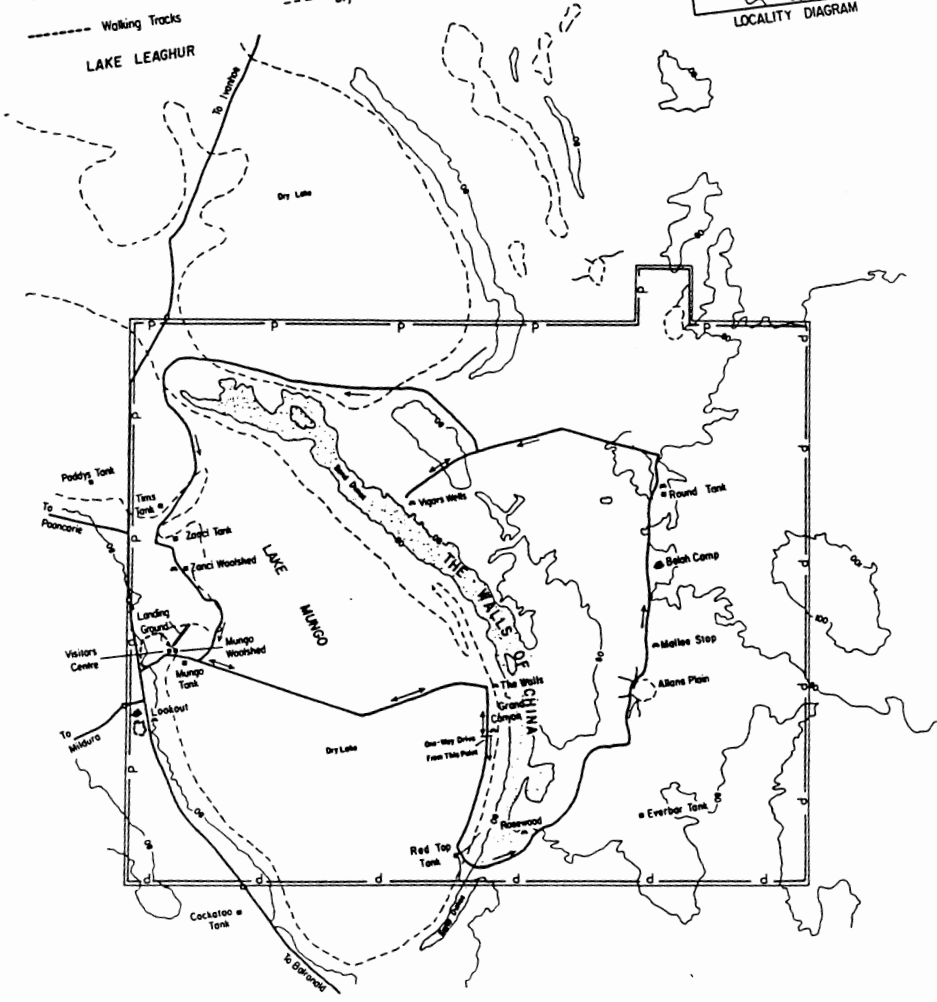
Mr Peter Withers, Chairman, Western Division Council of the NSW Farmers Association

MUNGO NATIONAL PARK

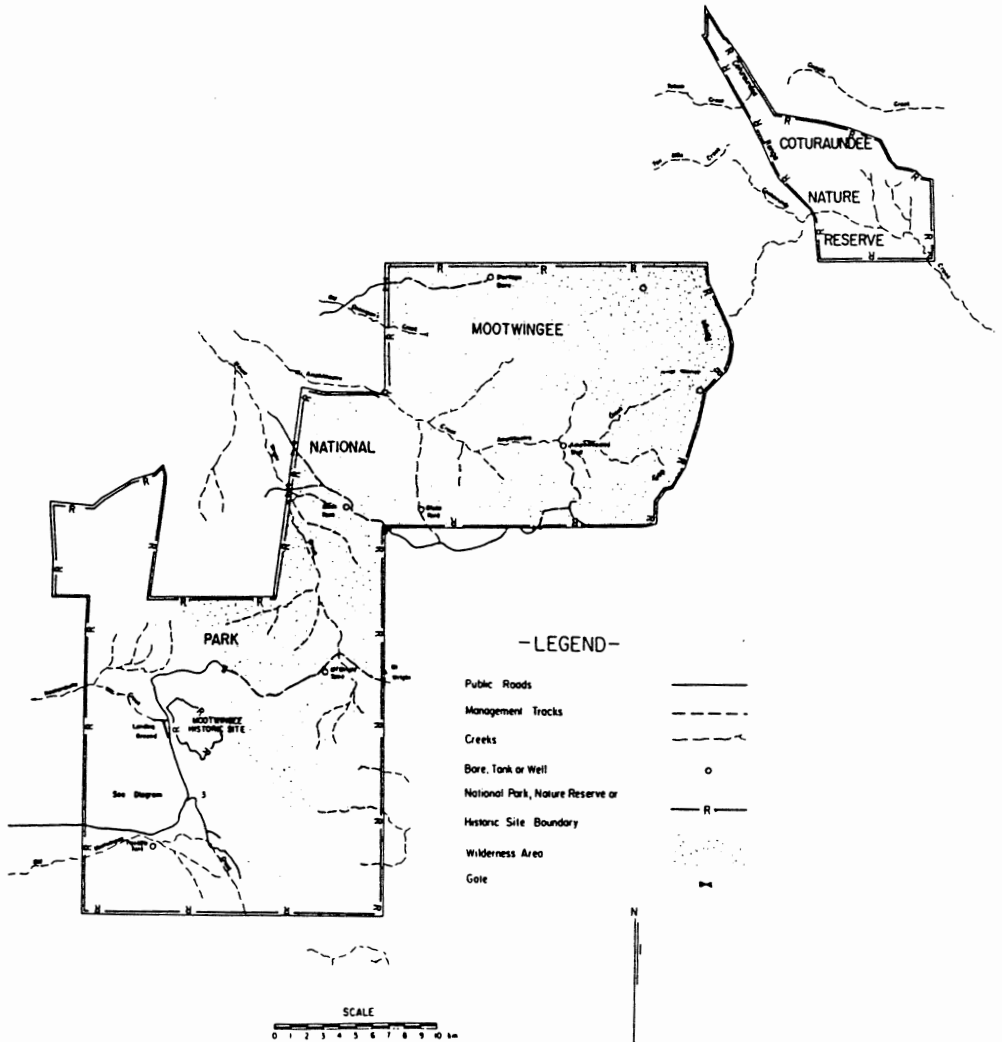
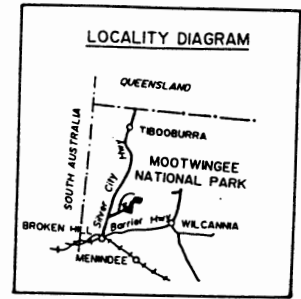


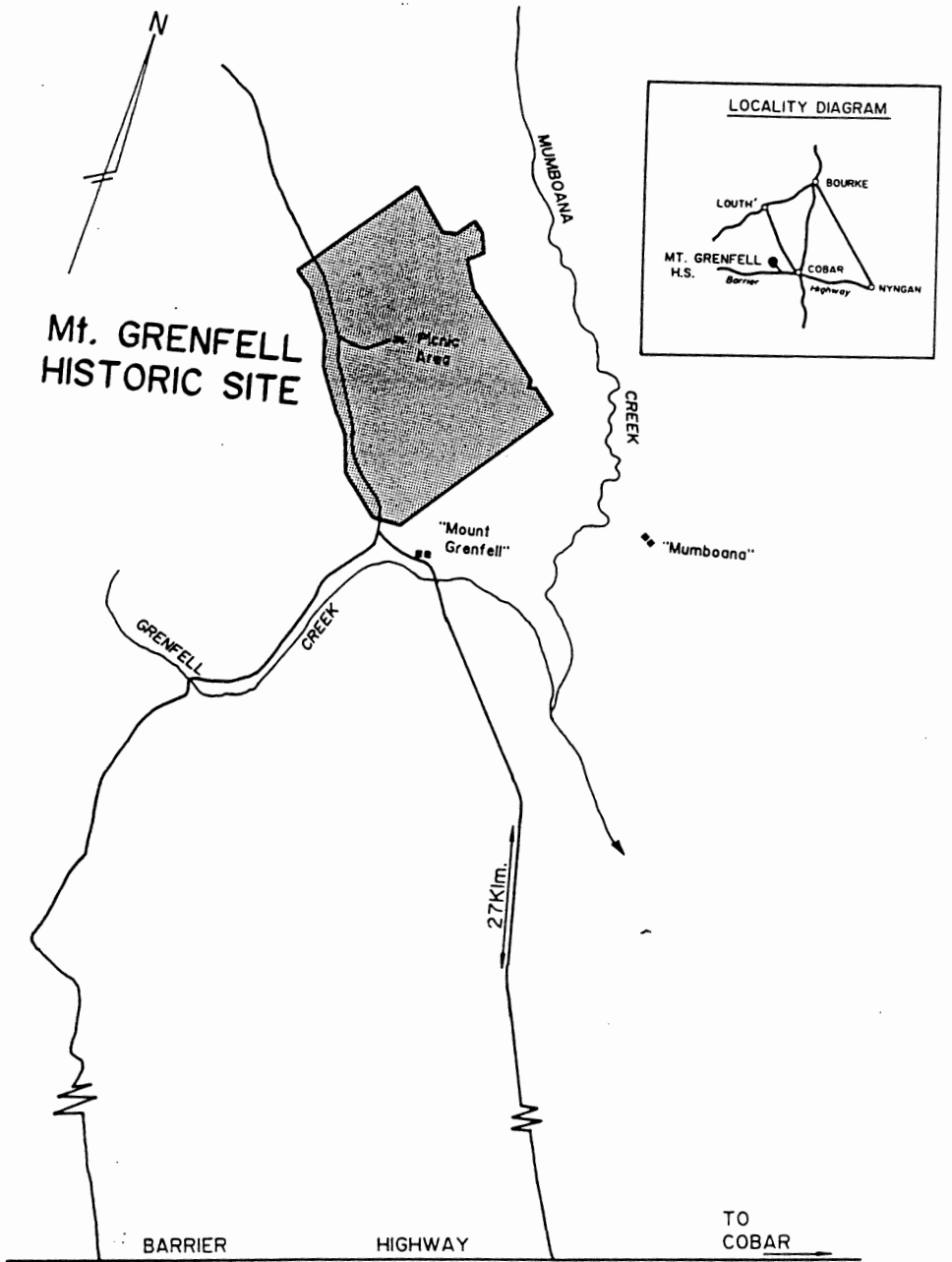
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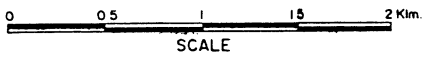
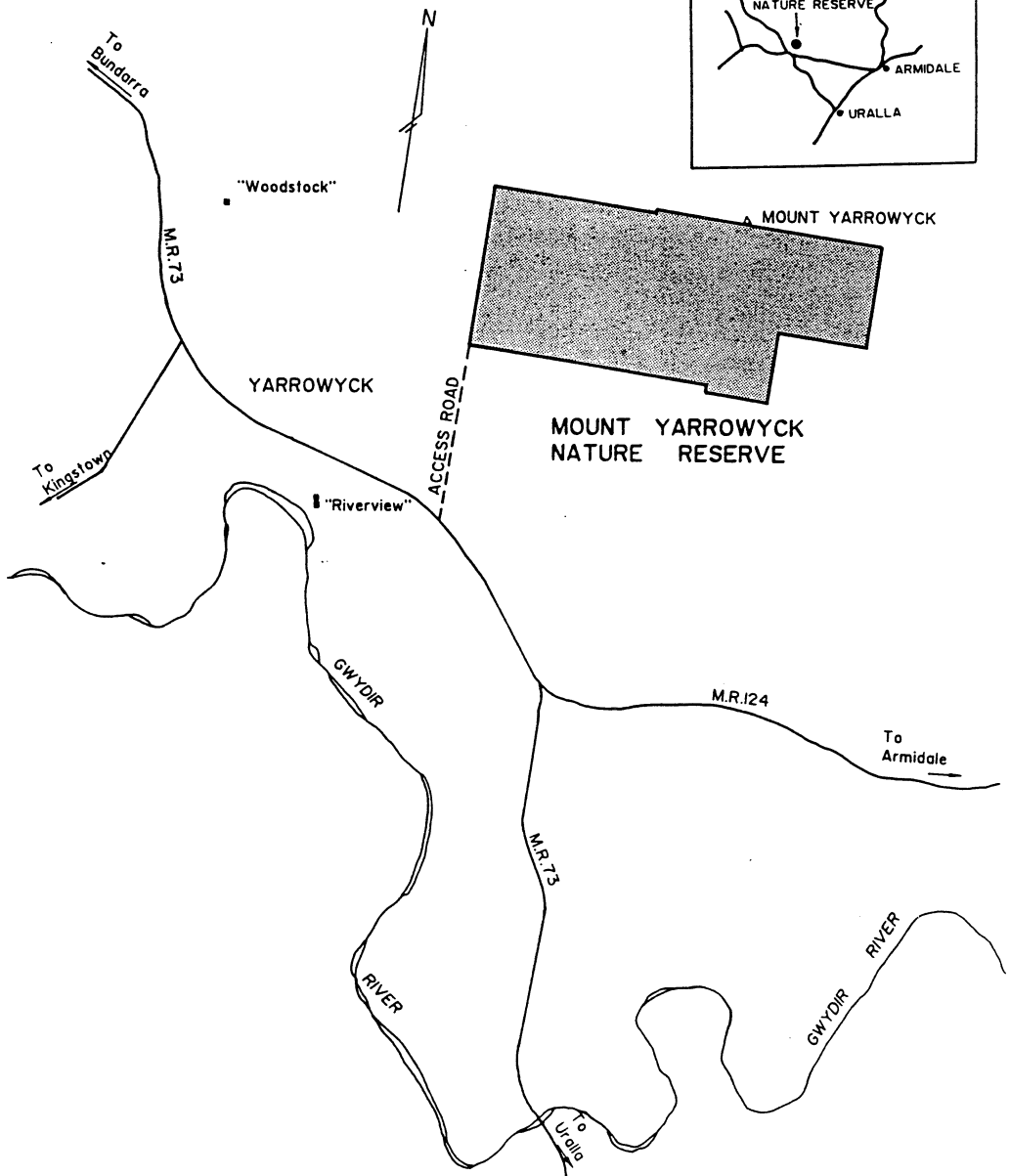
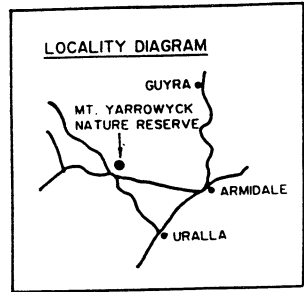
- P - Park Boundary
- Public Roads
- 80 - Contours
- - - - - Walking Tracks
- Picnic Area
- Camping Area
- Lunette
- - - - - Dry Lake



MOOTWINGEE NATIONAL PARK
 MOOTWINGEE HISTORIC SITE
 COTURAUNDEE NATURE RESERVE









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Mr P. Zammit, MP
Chairman of the Legislation Committee
Upon the National Parks and Wildlife
(Aboriginal Ownership) Amendment
Bill 1992, Level 2, Premier's Wing,
State Office Block, Macquarie Street,
SYDNEY NSW 2000

92/1387 A2:KGG
Our reference: Ken Gabb

Your reference:

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Facsimile No. ~~022287555~~
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9 June, 1992

Re: Criticism of the National Parks and Wildlife (Aboriginal
Ownership) Amendment Bill 1992 by The NSW Bar Association.

1. Background

1.1 By letter dated 31 March 1992 the President of the New South Wales Bar Association, Mr J. Coombs QC, wrote to you commenting on the National Parks and Wildlife (Aboriginal Ownership) Amendment Bill 1992 ("the Bill"). In addition to some general comments, Mr Coombs raised three specific criticisms of the Bill.

1.2 Those specific criticisms included the following:

- "1. Clause 71H(4) provides for the land to vest in an Aboriginal Land Council 'for an estate of freehold in possession'. This appears to be a misdescription. The only estates of freehold known to the law are fee simple, fee tail and life estate. One supposes that what is meant is an estate in fee simple.

In any event, what is intended by the Bill is not an estate 'in possession', however it might otherwise be described.

This should be clarified. It is submitted that any interest less than an estate in fee simple would be unacceptable. The word 'vest' is rubbery in this context - cf. comments below on the 'vesting' of care, control and management.

2. The Bill gives with one hand and takes back with

the other. It is necessary to look then at the terms on which the lease, the taking back, is effected.

The changes between the 1991 and 1992 drafts reflect earlier concern for the length and terms of the lease.

As to the former, it is submitted that the Bill gives to the Minister power to renew the 30 year leases in perpetuity, regardless of the wishes of the owners (except as to the consensual negotiation of particular terms). This is re-appropriation under a different guise, except for clause 71U(4) which provides for termination but only by an Act of Parliament".

2. Matter for Advice

I am asked to comment on the Bar Association criticism.

3. Advice

Criticism 1

3.1 The expression "freehold" originated in England in feudal times to designate those land tenures which were held by services considered worthy of a free man, such as military or knight's service. A further requirement of a freehold estate was that the time for which the tenant had the land was always of uncertain duration; it could not be limited to expire at a fixed and certain time (Woodman: The Law of Real Property in New South Wales, Volume 1, The Law Book Company 1980, p.65).

3.2 Originally there were three freehold estates:

- i. estates in fee simple;
- ii. estates in fee tail, or estates tail; and
- iii. life estates.

Although all three freehold estates still exist in England, in NSW the fee tail was abolished by ss.19 and 19A, Conveyancing Act 1919. The other two estates still exist. These days the term "freehold estate" is usually used in contradistinction to "leasehold estate".

3.3 Leaving aside questions of customary aboriginal title dealt with by the High Court in Mabo v. Queensland (unreported, decision handed down 3 June, 1992), the only absolute owner of land is the monarch, or "the State" as represented by the monarch but in the language of the layperson an estate in fee simple is the equivalent of "ownership" of the land. It is for

this reason, I think, the Bar Association has suggested that the term "estate of freehold in possession" should read instead estate in fee simple.

3.4 It seems to me that, although a fee simple is not usually subjected to such onerous leasing conditions as the one created (in the name of freehold) by the legislation, it is the nature of the lease and not of the estate from which it is carved that is unique. If I be wrong in that view, all that follows is that Parliament in its sovereignty, has created a novel interest. I have taken the liberty of discussing the matter briefly with the Parliamentary Counsel and he has authorised me to indicate a willingness, if so instructed, to substitute "fee simple" for "freehold" in the proposed s.71G(4).

3.5 I do not agree that it is inappropriate to use the words "in possession" when describing the estate which the Aboriginal Land Councils will hold. An estate in possession does not necessarily mean a right to physical possession. As Griffith CJ said in Glen v. Federal Commissioner of Land Tax (1915) 20 CLR 490 at 498: "The essential element of an 'estate in possession' is, in my opinion, that the owner of it has a present right of beneficial enjoyment, whether accompanied by physical possession of the land or not". Accordingly, where property is leased, the lessee is entitled to actual physical possession during the term of the lease, but the lessor has the right of beneficial enjoyment during that term, and has a present estate of freehold which is vested in possession (Woodman, supra, p.68). It is true that the nature of the lease contemplated in the Bill is very different from an ordinary lease and denies to the Aboriginal Land Councils virtually all beneficial enjoyment of the land. Nevertheless, I consider that upon obtaining the interest in land referred to in the proposed s.71H(4) the Aboriginal Land Councils will enter into possession in the relevant sense.

3.6 Whether or not "any interest less than an estate in fee simple would be unacceptable", as suggested by the Bar Association, is a matter for Parliament to determine.

Criticism 2

3.7 I agree with the Bar Association that the legal effect of the proposed ss.71E, 71U and 71V is to provide for a lease to the Minister which can effectively be renewed by the Minister in perpetuity (s.71E(c)). The lease does not expire by effluxion of time (s.71V(1)) and cannot be forfeited, terminated or extinguished by any means except by an Act of Parliament (s.71U(4)). Accordingly, although at law the Minister will obtain only a leasehold estate in the land, in practice he/she will enjoy rights for greater than those ordinarily accorded by lease.

3.8 I do not think it is an exaggeration for the Bar Association to state in the submission summary that "the Aboriginal Land Councils are to receive a bare title with immediate loss of virtually all the attendant rights to land by compulsory lease in perpetuity (barring the passage of an Act of Parliament)". Whether this should or should not be so is not a matter for me to comment upon.

4. Conclusions

4.1 Given what I perceive to be the intention of the Bill, I do not consider the use of the term "an estate of freehold in possession" to be a misdescription.

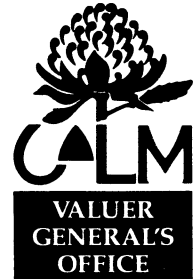
4.2 I agree with the Bar Association that the proposed Part 4A gives to the Aboriginal Land Councils little more than a bare title to the land to be vested in them, the Minister by special lease obtaining virtually all the rights attendant to land "ownership".

4.3 It is not appropriate for me to comment upon the merits of the Bill.



G W BOOTH
Acting Assistant Crown Solicitor
for Crown Solicitor

Mr P. Zammit, MP
 Chairman
 Legislation Committee on the
 National Parks and Wildlife
 (Aboriginal Amendment) Bill 1992
 Parliament House
 SYDNEY NSW 2000



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Dear Mr Zammit

31st July, 1992

**National Parks and Wildlife (Aboriginal
 Ownership) Amendment Bill 1992**

I refer to your recent request that I prepare advice for your Committee concerning the payment of rental for the lease of "Schedule 4" lands by the National Parks and Wildlife Service from traditional owners.

I am pleased to advise that the request coincided with my attendance at the Biennial Conference of Valuer-General's of Australia and New Zealand held in Darwin last week. I was able to canvass the experience in this area of other States and Territories, the Commonwealth and New Zealand. I have asked my colleagues to provide any information they hold about leases or other arrangements between traditional owners of similar lands and bodies such as the NPWS.

I was advised that a formal lease does exist between the Commonwealth and the traditional owners of the Yulara National Park in the Northern Territory where the Commonwealth pays an annual rental for the general park area but the owners have negotiated directly with commercial enterprises for leases such as the tourist facilities at Uluru. I hope to have details of these arrangements within a couple of weeks.

I understand that other Northern Territory Parks such as Kakadu and Katherine Gorge are vested in the traditional land owners who control and direct their management in conjunction with the Northern Territory Conservation Commission. Where commercial developments exist, such as Jabiru in Kakadu, formal arrangements have been negotiated directly between the owners and developers/operators. On Bathurst and Melville Island the owners, the Tiwi community, control activities including access, tourism and forestry developments through commercial ventures.

Discussion at our conference covered a number of issues concerning the valuation of the interests of Aboriginal or Maori owners in vested traditional lands.

A particular issue, common to New Zealand and Canada as well as Australia, is the determination of monetary value where traditional and cultural concepts prevented the consideration of transfer, by sale or lease, of land. Recent New Zealand experience shows that these problems are best resolved by valuers talking to the Maori owners to develop an understanding of the issues and the culture and gain the confidence of the owners in the valuation process. This applies equally to rating and to market valuations where the restrictions imposed by traditional law and culture need to be identified and assessed and brought to account in valuations.

Rental can be defined as payment for the granting of rights by the owner to the lessee for the use, occupation, development and management of property; in every case it has to take account of the particular rights and responsibilities that are transferred.

In my opinion the issues that need to be considered in arriving at a basis of rental for these properties include:-

- * initially, the nature of the particular property that is vested in the Aboriginal owners, its areas, location, infrastructure and improvements (if any).

This should be a simple matter of identification based on existing records.

- * the extent to which ownership rights are vested in the terms of the Act.

This is to establish what are the rights of the owners to use and enjoyment of the land, and of development, transfer of interest or sale.

- * the extent to which the vested ownership rights are to be changed by the provisions and implementation of a lease under the Act.

This is to establish what are the restrictions on the ownership rights that flow from the lease.

- * the extent to which the special cultural significance of the property to the owners restricts the use of the land for the purposes of the lease.

- * the arrangements, if any, for joint management and control of the property by the vested owners and the NPWS, particularly in respect of control of future development.

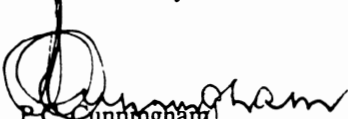
- * the specific terms and conditions contained in any lease, particularly the basis for setting any rental in the event of renewal of the lease.

To a large extent these issues are covered in the provisions of the Bill or can be resolved readily, e.g. identifying the nature of a particular property. I expect that work would be necessary to establish and come to an understanding of the limitations imposed by the owners in respect of their cultural concerns. This, however, is an important part of the process for gaining acceptance of the means of determining a monetary value (expressed as a rental) for this particular exercise.

In arriving at a value for this type of exercise the valuer would have to obtain all available market evidence for comparable properties. I expect there would be little directly comparable data, although I hope to obtain details of the Commonwealth/Yulara arrangements. This however, would be of limited use for small sites of high cultural significance. The next best information would be market evidence of transactions for unrestricted property with appropriate adjustments for the limitations imposed by the specific arrangements under the Act. This process is acceptable in the valuation of particular purpose lands or those with outstanding natural features where account can be taken of both the traditional concepts of highest and best use and the special characteristics of the property to be valued.

You asked if the Valuer-General's Office would be an appropriate body to determine rentals for the purpose of legislation. I am prepared to undertake this work; I believe it would be appropriate to do so given this Office's access to relevant information. I am also prepared to provide your Committee with further advice on the valuation and related issues of this proposal.

Yours sincerely


P. C. Cunningham
Valuer-General

Appendix 6

BILL SHOWING PROPOSED CHANGES

[The proposed changes to the Bill as introduced are shown in the text of this print. The matter to be omitted has been struck out and the matter to be inserted is in bold type in brackets.]

NATIONAL PARKS AND WILDLIFE (ABORIGINAL OWNERSHIP) AMENDMENT BILL 1992

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 1992

NEW SOUTH WALES



No. , 1992

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 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 1992***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 1992.

5 Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of National Parks and Wildlife Act 1974 No. 80

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

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.

15 SCHEDULE 1—PRINCIPAL AMENDMENTS

(Sec. 3)

(1) Part 4A:

After Part 4, insert:

PART 4A—ABORIGINAL LAND**20 Definitions**

71A. In this Part:

25 “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;

30 “traditional Aboriginal owners”, in relation to land, means those Aboriginal persons named or otherwise identified in a ~~lease of the land executed~~ [the register kept] in accordance with this Part as the traditional owners of the land.

National Parks and Wildlife (Aboriginal Ownership) Amendment 1992

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

Purpose of Part

71B. 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: 5

- (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 10
- (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. 15

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. 20

(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. 25

Negotiations by Minister with Aboriginal Land Councils

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

- (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 30
- (b) the New South Wales Aboriginal Land Council on behalf of one or more Local Aboriginal Land Councils referred to in paragraph (a); or 35
- (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

National Parks and Wildlife (Aboriginal Ownership) Amendment 1992

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

association with any of the lands comprising the national parks, historic sites and nature reserves listed in Schedule 4.

5 (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
10 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.

(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
15 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 in return for:

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

25 (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 Council on the basis set out in subsection (3) (a) and (b), the
30 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.

35 [(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.]

National Parks and Wildlife (Aboriginal Ownership) Amendment 1992SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued***Terms of lease between Aboriginal Land Council and Minister**

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

- | | | |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| | | 5 |
| (a) | the lease of the whole of the lands vested in the Aboriginal Land Council or Councils to the Minister; | |
| (b) | a term of 30 years; | |
| (c) | options to renew the lease for further terms of 30 years with no limitation on the number of such options that may be exercised by the Minister; | 10 |
| [(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; | 15 |
| (d) | the manner in which the lease is to be renewed;] | |
| (d) [(e)] | a term permitting the replacement of the lease, in accordance with this Part, with a new lease; | |
| (e) | the manner of exercising an option to renew the lease; | |
| (f) | a nominal rental of \$1 a year, if demanded; | 20 |
| (g) | the naming or other identification of the traditional owners of the land, being those Aboriginal persons having a close association with the land; | |
| (h) | a term providing for the omission or addition of the names of persons identified, by agreement between the Minister and the Aboriginal Land Council or Councils in which the lands are vested, as traditional Aboriginal owners of the land; | 25 |
| (i) [(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 |
| (j) [(g)] | a term acknowledging that the Aboriginal Land Council or Councils in which the lands are vested hold the land on behalf of the traditional Aboriginal owners of the land; | 35 |
| (k) [(h)] | a term acknowledging that the Service and the officers, employees and contractors of the Minister, the Director and the Service are (subject to any plan of management | |

*National Parks and Wildlife (Aboriginal Ownership) Amendment 1992*SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- 5 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) 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 land ~~and any other Aboriginal person is~~
[, 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
15 this Act and ~~any~~ [the] 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 for ceremonial and religious
purposes to the extent that entry or use is in accordance
with Aboriginal tradition governing the rights of those
20 persons with respect to the land;
- (⊕) [(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
25 plan of management in force with respect to the lands,
including provisions concerning the protection of
animals, trees, timber, plants, flowers and vegetation;
- (⊕) [(k)] a term acknowledging that the lease is subject to any
existing interest within the meaning of section 39 and
30 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
40 extinguishment, to any document under which the
interest, licence, lease, franchise or easement was
granted;

National Parks and Wildlife (Aboriginal Ownership) Amendment 1992

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (p) [(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
- (q) [(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 and the board of management for the lands; 20
- ~~(e) a term requiring that any dispute between the Director and the board of management or between the Minister or Director and the Aboriginal Land Council or Councils is to be arbitrated by a panel of 3 arbitrators (of whom one is to be appointed by the Director, one by the board of management for the lands and the third by agreement between the other 2 or, failing such agreement, by the Chief Judge of the Land and Environment Court) in accordance with procedures to be determined by the panel;~~ 25 30
- (d) [(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: 35
- (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 40

*National Parks and Wildlife (Aboriginal Ownership) Amendment 1992*SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

5 Nations Education, 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).

10 [(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 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.

15 (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 other, the disagreement is to be arbitrated in accordance with this Part.]

20 (3) [(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 consider appropriate.

25 [Rent payable under lease

30 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 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.

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

40 (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;

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- (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; 5
- (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; 10
- (f) the amount of rent payable under leases of lands adjoining or in the vicinity of the lands the subject of the lease; 15
- (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.
- (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. 20
- (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. 25
- Arbitration of disputes** 30
- 71G. (1) Any dispute between the Director and a board of management or between the Minister or Director 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 by a board of management in accordance with this Part) is to be arbitrated by a panel of 3 arbitrators. 35

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

5 (2) One of the 3 arbitrators is to be appointed by the Director, 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.

(3) The procedures to apply to an arbitration are to be determined by the panel of arbitrators.]

Tabling of notification and lease

10 74F. [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).

15 (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.

20 (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.

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

30 (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

35 (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 ~~interest in the lands that has been granted under Part 12~~ [existing interest within the meaning of section 39, any licence issued under Part 9 and any lease, licence, franchise or easement granted under Part 12 that is current and affects the lands, or any part of the lands]; and

40

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- (c) reserving or dedicating those lands as a national park, historic site or nature reserve, subject to any ~~interest~~ [existing interest, lease, licence, franchise or easement] referred to in paragraph (b). 5

Disallowance of proposal by Parliament

~~74G.~~ [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 ~~74F~~ [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. 10

(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. 15

Revocation, vesting etc. if proposal not disallowed

~~74H.~~ [71J.] (1) If no resolution of a kind referred to in section ~~74G~~ [71I] is or can be passed, it is lawful for the proposal embodied in the documents referred to in section ~~74F~~ [71H] (3) [and (4)] to be carried out in accordance with this section. 20

(2) The Minister must, within 28 days after the last date on which the notification referred to in section ~~74F~~ [71H] (4) might have been disallowed, cause the notification to be published in the Gazette. 25

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

~~(3)~~ [(4)] On publication of the notification:

(a) the existing reservation as a national park or historic site; or 30

(b) the existing dedication as a nature reserve,

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

(4) [(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 35

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

5 under section ~~71F~~ [71H] for an estate of ~~freehold in possession~~ [in fee simple] without the necessity for any further assurance, but subject to any ~~interest in the lands that has been granted under Part 12~~ [existing interest within the meaning of section 39, any licence issued under Part 9 and any lease, licence, franchise or easement granted under Part 12 that is current and affects the lands, or any part of the lands].

10 ~~(5)~~ [(6)] On publication of the notification, the lease laid before Parliament under section ~~71F~~ [71H] takes effect and the lease is taken to have been executed on, and its term commences to run from, the date of publication.

15 ~~(6)~~ [(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 ~~interest~~ [existing interest, lease, licence, franchise or easement] referred to in subsection ~~(4)~~ [(5)].

20 **Consequences of revocation, vesting etc.**

~~71H~~. [71K.] On publication under section ~~71H~~ [71J] of the notification referred to in section ~~71F~~ [71H] (4):

- 25 (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
- 30 (b) the Director, 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 him or her by this Act, the regulations or any other instrument under this Act; and
- 35 (c) the Service and the officers, employees and contractors of the Minister, the Director 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
- 40 respect to those lands any power, authority, duty or

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- function conferred or imposed on any of them by this Act, the regulations or any other instrument under this Act; and
- (d) any regulations that, immediately before that publication, applied to the lands continue to apply and may be amended and repealed accordingly; and 5
- (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 10
- (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 continues to have effect and may be terminated or otherwise dealt with in accordance with this Act or the document under which it was granted; and 15
- (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 20
- (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. 25
- [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. 30**
- (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. 35**

*National Parks and Wildlife (Aboriginal Ownership) Amendment 1992*SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- 5 (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:
- (a) order the Aboriginal Land Council or Councils to rectify the register; or
- (b) decline to order that the register be rectified; or
- 10 (c) make such other order as to the Court appears appropriate.
- (4) Such an appeal is to be made within the time and in the manner provided by the rules of the Court.
- 15 (5) In deciding such an appeal, the Court has the functions and discretions of an Aboriginal Land Council or Councils under this section.
- (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**
- 20 ~~71J.~~[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:
- 25 (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) ~~at least 2 are to be persons appointed by the Minister to represent owners, lessees or occupiers of land in the vicinity of the park, site or reserve; and~~
- 30 [(b) one is to be a person appointed by the Minister to represent the local council or local councils (if any) for the area comprising, or adjoining, the park, site or reserve; and]
- 35 (c) one is to be an officer of the Service for the time being appointed by the Director for the purposes of this section; and

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SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (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~~ **interests; and** 5
- [(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.] 10
- (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.
- [(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).]** 15
- ~~(4)~~ [(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. 20
- Functions of boards of management**
- ~~71K.~~ [71N.] (1) The board of management for a national park, historic site or nature reserve has the following functions:
- (a) the preparation of plans of management for the park, site or reserve; 25
- (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. 30
- (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.
- (3) In the exercise of its functions, a board of management is subject to the control and direction of the Minister. 35

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

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

- 5 (a) the contents of any report, advice, information or recommendation that is to be or may be made or given by the board; or
- 10 (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.]

15 ~~(4)~~ [(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.

[Board of management to keep accounts

20 710. (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.

25 (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.

30 (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.

35 (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.]

*National Parks and Wildlife (Aboriginal Ownership) Amendment 1992***SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*****Certain provisions not to apply to lands reserved or dedicated under this Part**

~~71L.~~ [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. 5

(2) Subsection (1) does not limit section ~~71H~~ [71K].

Application of certain provisions to lands reserved under this Part 10

~~71M.~~ [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 15

~~71N.~~ [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. 20

(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

~~71O.~~ [71S.] (1) The notification referred to in section ~~71F~~ [71H] (4) must assign a name to a national park, historic site or nature reserve reserved or dedicated under this Part. 25

(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. 30

(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: 35

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

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(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.

5 ~~(4) Before the notification referred to in subsection (1) or a proclamation under subsection (3) is published, the Minister must consult with the Aboriginal Land Council or Councils in which the lands are, or are proposed to be, vested concerning the selection of a name for the park, site or reserve.~~

10 [(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.]

15 (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.

20 **No consideration payable by Aboriginal Land Council on vesting of lands**

30 ~~71P~~ [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 ~~71H~~ [71J].

35 (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 etc. of lease

40 ~~71Q~~ [71U.] On publication of a notification under section ~~71H~~ [71J], the Minister must cause the date of publication of the notification to be inserted in the lease as:

*National Parks and Wildlife (Aboriginal Ownership) Amendment 1992***SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued***

- (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

5

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

- (a) all title documents held by the Director in relation to the lands referred to in the notification; and
- (b) the lease completed in accordance with section ~~71Q~~ [71U].

10

(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.

15

(3) Following registration of the particulars referred to in subsection (2), the Registrar-General must ~~return the title documents to the Director who must keep the title documents in safe custody on behalf of the Aboriginal Land Council or Councils and the Minister~~ [deliver the title documents to the Aboriginal Land Council or Councils].

20

Re-negotiation of certain lease terms at 30 year intervals

~~71S.~~ [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.

25

30

(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.

35

(3) Any amendments prepared in accordance with subsection (2) and agreed to by the Aboriginal Land Council

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

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.

5 (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.

10 (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.

15 (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.

20 (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 ~~71U~~ [71Y] but only to the extent provided for in that section.

Dating and registration of new lease

30 ~~71T~~ [71X.] (1) The Minister must cause the date on which a new lease takes effect under section ~~71S~~ [71W] (6) to be inserted in the new lease as:

- (a) the date of execution of the new lease; and
- (b) the date of the commencement of the term of the new lease.

35 (2) ~~The Minister must cause the new lease and all title documents held by the Director~~ [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

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

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 particulars of the new lease. 5

(3) Following registration of the particulars referred to in subsection (2), the Registrar-General must return the title documents to the ~~Director for safe custody in accordance with section 71R~~ [Aboriginal Land Council or Councils].
Variation or termination of lease 10

~~71U. [71Y.]~~ (1) 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.

~~(2) Despite subsection (1), the Minister must cause to be laid before each House of Parliament any proposed variation of a lease that relates to the omission from or addition to the lease of the names of persons identified, or to be identified, as traditional Aboriginal owners of the land within 14 sitting days of that House after the date on which the Minister certifies in writing that the Minister and the Aboriginal Land Council or Councils have agreed on the proposed variation.~~ 15 20

~~(3) A proposed variation referred to in subsection (2) may be disallowed in the same manner as a notification may be disallowed under section 71G.~~

~~(4) A lease under this Part cannot be forfeited, terminated or extinguished by any means by a party or by a court but may be brought to an end only by an Act of Parliament.~~ 25

Holding over under lease

~~71V. [71Z.]~~ (1) A lease under this Part does not expire by effluxion of time except as otherwise provided by this Part. 30

(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 ~~an Act of Parliament~~ [12 months' notice in writing to the Minister from the Aboriginal Land Council or Councils in which the lands the subject of the lease are vested]. 35

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(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.

5

Dissolution of Local Aboriginal Land Council

~~71W.~~ [71ZA.] (4) If lands are vested under this Part:

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

15

the lands are on and from the date of dissolution vested in the Crown and reserved as a national park or historic site or dedicated as a nature reserve, as the case requires, within the meaning and for the purposes of this Act [traditional owners of the lands recorded in the register kept in accordance with this Part until a new Aboriginal Land Council or Councils are constituted for the area or areas that constituted 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].

20

~~(2) If lands are vested in the Crown under this section:~~

25

~~(a) the Minister may enter into negotiations with the New South Wales Aboriginal Land Council for a fresh vesting and lease of the lands in accordance with this Part; or~~

30

~~(b) if the Minister and the New South Wales Aboriginal Land Council agree, and the proposal is not disallowed by either House of Parliament, the lands may be vested in the New South Wales Aboriginal Land Council and the previous lease of the lands may be taken to be in effect for the balance of the term of the lease, with the New South Wales Aboriginal Land Council being taken to be substituted as lessor for the dissolved Local Aboriginal Land Council or Councils.~~

35

~~(3) Sections 71F-71H apply to and in respect of an arrangement under subsection (2) (b) as if references in those sections:~~

*National Parks and Wildlife (Aboriginal Ownership) Amendment 1992*SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (a) ~~to the lease were references to the previous lease of the lands between the now dissolved Local Aboriginal Land Council or Councils and the Minister, and~~
- (b) ~~to certification and execution of the draft lease were references to a written certification by the Minister that the New South Wales Aboriginal Land Council is prepared to adopt the previous lease as lessor and to execution in escrow by the Council and the Minister of an endorsement on the previous lease by which the previous lease is adopted by those parties as lessor and lessee respectively for the balance of its term; and~~ 5 10
- (c) ~~to the notification were references to a notification revoking the reservation as a national park or historic site or the dedication as a nature reserve of the lands referred to in subsection (1), vesting those lands in the New South Wales Aboriginal Land Council, subject to any interest in the lands that has been granted under Part 12, and reserving or dedicating those lands as a national park, historic site or nature reserve, subject to any interest granted under Part 12.~~ 15 20

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

~~71X.~~ [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. 25

[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. 30

(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 1992. 35

(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.]

*National Parks and Wildlife (Aboriginal Ownership) Amendment 1992***SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued***

(2) Schedule 4:

After Schedule 3, insert:

**SCHEDULE 4—LANDS OF SPECIAL CULTURAL
SIGNIFICANCE TO ABORIGINAL PERSONS**(Secs. 71C (2), ~~71D~~ [71S] (3), ~~71Z~~ [71ZB])

Mungo National Park

Mootwingee Historic Site, Mootwingee National Park and
Coturaundee Nature Reserve

Mount Grenfell Historic Site

Mount Yarrowyck Nature Reserve

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

(Sec. 3)

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

(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".

20 (2) Section 31:

Omit the section, insert instead:

Care, control and management of parks and sites31. (1) The Director has the care, control and management
of all national parks and historic sites except as provided by
subsection (2).(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.

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

After section 45 (5), insert:

(6) This section does not prevent a traditional Aboriginal
owner on whose behalf the lands of a national park or

National Parks and Wildlife (Aboriginal Ownership) Amendment 1992

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

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 ~~with
the approval of the Minister.~~ 5
10

~~(7) The Minister is to consult the board of management for
the park or site before giving approval.~~

(4) Section 48:

Omit the section, insert instead:

Care, control and management of nature reserves 15

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

(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. 20

(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
~~with the approval of the Minister.~~ 25
30

~~(8) The Minister is to consult the board of management for
the reserve before giving approval.~~ 35

National Parks and Wildlife (Aboriginal Ownership) Amendment 1992

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

(6) Section 57 (Restrictions as to timber, vegetation, plants etc. in nature reserves):

5 After section 57 (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 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

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15 ~~with the approval of the Minister.~~

~~(8) The Minister is to consult the board of management for the reserve before giving approval.~~

(7) Section 72 (Plans of management):

20 (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 Director ~~in consultation with and acting on the advice of the board of management for the park, site or reserve concerned~~ [board of management for the park, site or reserve concerned in consultation with the Director].

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 (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. However, ~~the existing plan may be reviewed by the Director and~~ [any such existing plan must be reviewed by the board of management for the park, site or reserve concerned within 2 years of the commencement of Part 4A and may] be amended, altered or cancelled in accordance with this section.

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 (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

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

is reserved or dedicated under Part 4A, a plan of management is to be prepared by the Director [board of management for the park, site or reserve] within 2 years after that date. 5

~~(1E) The Director is to submit a draft plan of management to the board of management for the park, site or reserve concerned for its consideration and advice within 6 months after the park, site or reserve is reserved or dedicated under Part 4A.~~ 10

[(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:

(a) specify the address where copies of the plan of management may be inspected; and 15

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

(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.] 20

~~(1F) [(1G)] The Director is [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 comments or suggestions of the board of management [representations forwarded to it].~~ 25

~~(1G) [(1H)] The Minister is to consider any comments or suggestions of [representations forwarded to] the board of management before adopting the plan of management.~~ 30

~~(1H) [(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 Director and board of management for further consideration.~~ 35

~~(1I) If the plan of management is referred back to the Director and the board of management, the Director is to resubmit the plan to the Minister together with any further comments and suggestions of the board.~~

*National Parks and Wildlife (Aboriginal Ownership) Amendment 1992*SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
NATIONAL PARKS AND WILDLIFE ACT 1974—*continued*

- 5 (1J) The Minister may, on the recommendation of the board of management for a park, site or reserve reserved or dedicated under Part 4A:
- (a) amend or alter the plan of management for the park, site or reserve from time to time; or
 - (b) cancel the plan; or
 - (c) cancel the plan and substitute a new plan.
- 10 (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.
- 15 (b) Before section 72 (2A), 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 ~~(with the approval of the Minister given after consultation with the board of management for the park, site or reserve)~~ as a temporary camping area for such educational activities as the Minister ~~considers necessary to promote appreciation of the cultural significance of the park, site or reserve~~ [for any community development purpose prescribed by the regulations].
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- 25
- [(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.]
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- 35
- (e) [(d)] Omit “and” at the end of section 72 (4) (j1).

*National Parks and Wildlife (Aboriginal Ownership) Amendment 1992***SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
NATIONAL PARKS AND WILDLIFE ACT 1974—continued**

- (d) [(e)] At the end of section 72 (4), insert:
; and
- (1) 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.
- (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 park or site reserved under Part 4A)”.
- (9) **Section 76 (Adoption etc. of plan of management for nature reserve or state game reserve):**
After “reserve” where firstly occurring in section 76 (1), insert “(other than a reserve dedicated under Part 4A)”.
- (10) **Sections 79A and 79B:**
After section 79, insert:
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.
(2) Not less than 6 months before a plan of management expires, the board of management for the park, site or reserve concerned must require the Director to prepare a new plan of management to replace it.
(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
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.

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

- 5 (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.
- 10 (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.
- (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)”.
- 15 (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.
- 20 (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.
- 25 (13) **Section 117 (Restriction on picking or possession of native plant):**
After “refuge” in section 117 (2), insert “or in land reserved or dedicated under Part 4A by a traditional Aboriginal owner for purposes referred to in section 57 (7)”.
- 30 (14) **Section 138 (Payments into the Fund):**
- 35 [(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”.
- (b) After section 138 (1) (b) (xi), insert:
- (b1) rent paid by the Minister under section 71F;]

*National Parks and Wildlife (Aboriginal Ownership) Amendment 1992***SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF
NATIONAL PARKS AND WILDLIFE ACT 1974—continued**

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

(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. 5

(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. 10

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

After section 139 (4), insert:

(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: 15

(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 20

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

(16) Section 144B:

After section 144A, insert:

Annual reports 25

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. 30

(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 1992***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:

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PART 1—GENERAL**Regulations**

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

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National Parks and Wildlife (Aboriginal Ownership)
Amendment Act 1992

(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.

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(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:

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(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

25

(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.

PART 2—SPECIAL PROVISIONS

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

(c) After clause 22, insert:

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Termination of appointment of members of certain advisory committees

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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 71H ceases to hold office on the date on which a lease of those lands takes effect by the operation of that section.

National Parks and Wildlife (Aboriginal Ownership) Amendment 1992

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

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

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

(Sec. 4)

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

After section 12 (a), insert:

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(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

15

(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;

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[(c2) to recommend to the Minister administering Part 4A of the National Parks and Wildlife Act 1974 the insertion of reference in Schedule 4 to that Act of particular lands reserved or dedicated under that Act that are of special cultural significance to Aboriginal persons;]

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30

(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.

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

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

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

5 (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.

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

15 (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.

20 (6) Nothing in this Act prevents lands that are the subject
of a lease under 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.

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

25 After section 58A (3), insert:

30 (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.

C.028
Legis.Cmttee

LEGISLATIVE ASSEMBLY

**NATIONAL PARKS AND WILDLIFE (ABORIGINAL OWNERSHIP) AMENDMENT
BILL 1992**

First Print

Amendments to be moved in Committee

1. Page 2, Schedule 1 (1). From the definition of "traditional Aboriginal owners" in proposed section 71A, omit "a lease of the land executed", insert instead "the register kept".
2. Page 4, Schedule 1 (1). After proposed section 71D (4), insert:
 - (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.
3. Page 5, Schedule 1 (1). Omit proposed section 71E (1) (c), insert instead:
 - (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;
4. Page 5, Schedule 1 (1). Omit proposed section 71E (1) (e) as printed.
5. Page 5, Schedule 1 (1). Omit proposed section 71E (1) (f) as printed.
6. Page 5, Schedule 1 (1). Omit proposed section 71E (1) (g) as printed.

7. Page 5, Schedule 1 (1). Omit proposed section 71E (1) (h) as printed.
8. Page 5, Schedule 1 (1). From proposed section 71E (1) (1) as printed, omit "and any other Aboriginal person is", insert instead ", and any other Aboriginal persons who have the consent of the Aboriginal Land Council or Councils in which the lands are vested, are".
9. Page 5, Schedule 1 (1). From proposed section 71E (1) (1) as printed, omit "any" where secondly occurring, insert instead "the".
10. Page 7, Schedule 1 (1). Omit proposed section 71E (2) (c).
11. Page 7, Schedule 1 (1). After proposed section 71E (2), insert:

(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 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.
12. Page 7, Schedule 1 (1). Before proposed section 71E (3), insert:

(3) 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 other, the disagreement is to be arbitrated in accordance with this Part.
13. Page 7, Schedule 1 (1). After proposed section 71E, insert:

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 Local 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.

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

- (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;
- (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;
- (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.

(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.

(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.

14. Page 7, Schedule 1 (1). Before proposed section 71F as printed, insert:

Arbitration of disputes

71F. (1) Any dispute between the Director and a board of management or between the Minister or Director 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 by a board of management in accordance with this Part) is to be arbitrated by a panel of 3 arbitrators.

(2) One of the 3 arbitrators is to be appointed by the Director, 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.

(3) The procedures to apply to an arbitration are to be determined by the panel of arbitrators.

15. Page 8, Schedule 1 (1). From proposed section 71F (4) (b) as printed, omit "interest in the lands that has been granted under Part 12", insert instead "existing interest within the meaning of section 39, any licence issued under Part 9 and any lease, licence, franchise or easement granted under Part 12 that is current and affects the lands, or any part of the lands".
16. Page 8, Schedule 1 (1). From proposed section 71F (4) (c) as printed, omit "interest", insert instead "existing interest, lease, licence, franchise or easement".
17. Page 9, Schedule 1 (1). In proposed section 71H (1) as printed, after "(3)", insert "and (4)".
18. Page 9, Schedule 1 (1). After proposed section 71H (2) as printed, insert:

(3) Publication of the notification more than 28 days after the required date does not affect its validity.
19. Page 9, Schedule 1 (1). From proposed section 71H (4) as printed, omit "of freehold in possession", insert instead "in fee simple".
20. Page 9, Schedule 1 (1). From proposed section 71H (4) as printed, omit "interest in the lands that has been granted under Part 12", insert instead "existing interest within the meaning of section 39, any licence issued under Part 9 and any lease, licence, franchise or easement granted under Part 12 that is current and affects the lands, or any part of the lands".
21. Page 9, Schedule 1 (1). From proposed section 71H (6) as printed, omit "interest", insert instead "existing interest, lease, licence, franchise or easement".
22. Page 11, Schedule 1 (1). After section 71I as printed, insert:

Register of traditional Aboriginal owners

71J. (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.

(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.

(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:

- (a) order the Aboriginal Land Council or Councils to rectify the register; or
- (b) decline to order that the register be rectified; or
- (c) make such other order as to the Court appears appropriate.

(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.

(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.

23. Page 11, Schedule 1 (1). Omit proposed section 71J (2) (b) as printed, insert instead:
- (b) one is to be a person appointed by the Minister to represent the local council or local councils (if any) for the area comprising, or adjoining, the park, site or reserve; and
24. Page 11, Schedule 1 (1). From proposed section 71J (2) (d) as printed, omit "interests.", insert instead "interests; and".
25. Page 11, Schedule 1 (1). After proposed section 71J (2) (d) as printed, insert:
- (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.
26. Page 11, Schedule 1 (1). After proposed section 71J (3) as printed, insert:
- (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).

27. Page 12, Schedule 1 (1). After proposed section 71K (3) as printed, insert:

(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
- (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.

28. Page 12, Schedule 1 (1). After proposed section 71K as printed, insert:

Board of management to keep accounts

71L. (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.

(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.

(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.

29. Page 13, Schedule 1 (1). In proposed section 710 (2) as printed, after "subsection (1)", insert "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"

30. Page 13, Schedule 1 (1). In proposed section 710 (3) as printed, after "may," insert "on the recommendation of the Aboriginal Land Council or Councils in which the park, site or reserve is vested,".

31. Page 13, Schedule 1 (1). Omit proposed section 710 (4) as printed, insert instead:
- (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.
32. Page 14, Schedule 1 (1). From proposed section 71R (3) as printed, omit "return the title documents to the Director who must keep the title documents in safe custody on behalf of the Aboriginal Land Council or Councils and the Minister", insert instead "deliver the title documents to the Aboriginal Land Council or Councils".
33. Page 15, Schedule 1 (1). From proposed section 71T (2) as printed, omit "Minister must cause the new lease and all title documents held by the Director", insert instead "Aboriginal Land Council or Councils in which the lands are vested must cause all title documents held by the Aboriginal Land Council or Councils".
34. Page 15, Schedule 1 (1). In proposed section 71T (2) as printed, after "enable", insert "the new lease to be lodged for registration and".
35. Page 15, Schedule 1 (1). From proposed section 71T (3) as printed, omit "Director for safe custody in accordance with section 71R", insert instead "Aboriginal Land Council or Councils".
36. Page 16, Schedule 1 (1). Omit proposed section 71U (2)-(4) as printed.
37. Page 16, Schedule 1 (1). From proposed section 71V (2) as printed, omit "an Act of Parliament", insert instead "12 months' notice in writing to the Minister from the Aboriginal Land Council or Councils in which the lands the subject of the lease are vested".
38. Pages 16 and 17, Schedule 1 (1). From proposed section 71W (1) as printed, omit "Crown and reserved as a national park or historic site or dedicated as a nature reserve, as the case requires, within the meaning and

for the purposes of this Act", insert instead "traditional owners of the lands recorded in the register kept in accordance with this Part until a new Aboriginal Land Council or Councils are constituted for the area or areas that constituted 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".

39. Page 17, Schedule 1 (1). Omit proposed section 71W (2) and (3) as printed.

40. Page 18, Schedule 1 (1). After proposed section 71X as printed, insert:

Review of Part

71Y. (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.

(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 1992.

(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.

41. Page 19, Schedule 2 (3). In proposed section 45 (6), after "4A", insert "or any other Aboriginal person who has the consent of that Aboriginal Land Council or Councils".

42. Page 19, Schedule 2 (3). From proposed section 45 (6), omit "with the approval of the Minister".

43. Page 19, Schedule 2 (3). Omit proposed section 45 (7).

44. Page 19, Schedule 2 (5). In proposed section 56 (7), after "4A", insert "or any other Aboriginal person who has the consent of that Aboriginal Land Council or Councils".

45. Page 19, Schedule 2 (5). From proposed section 56 (7), omit "with the approval of the Minister".

46. Page 19, Schedule 2 (5). Omit proposed section 56 (8).

47. Page 20, Schedule 2 (6). In proposed section 57 (7), after "4A", insert "or any other Aboriginal person who has the consent of that Aboriginal Land Council or Councils".
48. Page 20, Schedule 2 (6). From proposed section 57 (7), omit "with the approval of the Minister".
49. Page 20, Schedule 2 (6). Omit proposed section 57 (8).
50. Page 20, Schedule 2 (7) (a). From proposed section 72 (1B), omit "Director in consultation with and acting on the advice of the board of management for the park, site or reserve concerned", insert instead "board of management for the park, site or reserve concerned in consultation with the Director".
51. Page 20, Schedule 2 (7) (a). From proposed section 72 (1C), omit "the existing plan may be reviewed by the Director and", insert instead "any such existing plan must be reviewed by the board of management for the park, site or reserve concerned within 2 years of the commencement of Part 4A and may".
52. Page 20, Schedule 2 (7) (a). From proposed section 72 (1D), omit "Director", insert instead "board of management for the park, site or reserve".
53. Page 20, Schedule 2 (7) (a). Omit proposed section 72 (1E), insert instead:
 - (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:
 - (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.
 - (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.
54. Page 21, Schedule 2 (7) (a). From proposed section 72 (1F) as printed, omit "Director is", insert instead "board of management is, on the expiration of the period

specified in the notice for making representations,".

55. Page 21, Schedule 2 (7) (a). From proposed section 72 (1F) as printed, omit "comments or suggestions of the board of management", insert instead "representations forwarded to it".
56. Page 21, Schedule 2 (7) (a). From proposed section 72 (1G) as printed, omit "comments or suggestions of", insert instead "representations forwarded to".
57. Page 21, Schedule 2 (7) (a). From proposed section 72 (1H) as printed, omit "Director and".
58. Page 21, Schedule 2 (7) (a). Omit proposed section 72 (1I) as printed.
59. Page 21, Schedule 2 (7) (b). From proposed section 72 (2AA), omit "(with the approval of the Minister given after consultation with the board of management for the park, site or reserve) as a temporary camping area for such educational activities as the Minister considers necessary to promote appreciation of the cultural significance of the park, site or reserve", insert instead "for any community development purpose prescribed by the regulations".
60. Page 21. After Schedule 2 (7) (b), insert:
 - (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.
61. Page 23, Schedule 2 (14). After "Fund):", insert:
 - (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".

62. Page 23, Schedule 2 (14). Before "After section", insert:
- (a) After section 138 (1) (b) (xi), insert:
 - (b1) rent paid by the Minister under section 71F;
63. Page 23, Schedule 2 (14). After "Fund" where firstly occurring in proposed section 138 (1A), insert ", including rent paid by the Minister under section 71F,".
64. Page 24, Schedule 2 (15). After "reserve" in proposed section 139 (5) (a), insert "(including in connection with the preparation of a plan of management for the park, site or reserve)".
65. Page 24, Schedule 2 (15). From proposed section 139 (5) (b), omit "the" where secondly occurring, insert instead "any".
66. Page 26, Schedule 3 (2). After proposed section 23 (c1), insert:
- (c2) to recommend to the Minister administering Part 4A of the National Parks and Wildlife Act 1974 the insertion of reference in Schedule 4 to that Act of particular lands reserved or dedicated under that Act that are of special cultural significance to Aboriginal persons;
-

Appendix 8

**SUMMARY OF ASPECTS OF ABORIGINAL INVOLVEMENT IN
OTHER NATIONAL PARKS AND PROTECTED AREAS**

STATE/TERRITORY	Northern Territory
NAME OF ACT	National Parks and Wildlife Conservation Act 1975 (Cth) Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)
NAME OF NATIONAL PARK ETC.	Uluru (Ayers Rock - Mt Olga) National Park
NATURE OF ABORIGINAL TITLE	Fee simple
LEASE-BACK ARRANGEMENT	Lease from Uluru-Kata Juta Land Trust to Director, National Parks and Wildlife Service. Term 99 years. Conditions of lease reviewed every 5 years. Government has no guaranteed option of renewal
RENT, ROYALTY, FEES	Annual rent of \$75,000 plus 20% of park revenues (currently under negotiation)
TRADITIONAL ABORIGINAL HUNTING AND FISHING RIGHTS	Aborigines have the right to use and occupy the land in accordance with Aboriginal tradition
COMPOSITION OF BOARD OF MANAGEMENT AND FUNCTIONS	The Board comprises 10 persons, being: <ul style="list-style-type: none"> . six members nominated by the traditional Aboriginal owners; . one member nominated by the Federal Minister responsible for the environment; . one scientist experienced in both arid land ecology and the management of such land; and . the Director of National Parks and Wildlife
FUNDING ARRANGEMENTS	Funding for management provided by Australian National Parks and Wildlife Service
BODY EXERCISING DAY TO DAY MANAGEMENT	Australian National Parks and Wildlife Service
COMMUNITY DEVELOPMENT	The 1991 Uluru Management Plan provides for a housing program and a cultural centre
EMPLOYMENT AND TRAINING	A commitment to promotion of employment and training of Aboriginals in administration, management, service and control of the park is included in the lease and the management plan
PUBLIC ACCESS TO SACRED SITES	The 1991 management plan acknowledges the need to restrict visitor access to sacred sites. Some areas in the park are fenced.

**SUMMARY OF ASPECTS OF ABORIGINAL INVOLVEMENT IN
OTHER NATIONAL PARKS AND PROTECTED AREAS**

STATE/TERRITORY	Northern Territory
NAME OF ACT	National Parks and Wildlife Conservation Act 1975 (Cth) Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)
NAME OF NATIONAL PARK ETC.	Kakadu National Park
NATURE OF ABORIGINAL TITLE	Fee simple.
LEASE-BACK ARRANGEMENT	Lease from Jabiluka Aboriginal Land Trust to Director of the Australian National Parks and Wildlife Service. Term 99 years. Conditions of lease reviewed every 5 years. Government has no guaranteed option of renewal of lease. Clause 12 allows termination of lease by lessor if any future government legislation or regulation is substantially detrimental to Aboriginal interests in the Park.
RENT, ROYALTY, FEES	Rent is \$150,000 plus 25% of Park revenues.
TRADITIONAL ABORIGINAL HUNTING AND FISHING RIGHTS	Aborigines have the right to use and occupy the land in accordance with Aboriginal tradition
COMPOSITION OF BOARD OF MANAGEMENT AND FUNCTIONS	The Board comprises 14 persons, being; <ul style="list-style-type: none"> . ten adult Aboriginal persons nominated by the traditional owners of the Park; . the Director and General Manager (Northern Operations), NPWS; . an employee of the Northern Territory Tourist Commission; and . a person prominent in nature conservation. The Board manages the Park in conjunction with the Director.
FUNDING ARRANGEMENTS	Funding provided by the Australian National Parks and Wildlife Service
BODY EXERCISING DAY TO DAY MANAGEMENT	Australian National Parks and Wildlife Service
COMMUNITY DEVELOPMENT	The 1991 Kakadu Management Plan provides for the involvement of Aboriginal owners in appropriate commercial activities, and for the establishment and protection of Aboriginal living areas within the Park.
EMPLOYMENT AND TRAINING	The Park participates in the ANPWS Aboriginal ranger training program. There is a commitment to employ graduates from these programs as well as traditional owners and Aboriginal Park residents wherever possible.
PUBLIC ACCESS TO SACRED SITES	Public access to a number of sacred sites is restricted under the National Parks and Wildlife Regulations.

**SUMMARY OF ASPECTS OF ABORIGINAL INVOLVEMENT IN
OTHER NATIONAL PARKS AND PROTECTED AREAS**

STATE/TERRITORY	Northern Territory
NAME OF ACT	Nitmiluk (Katherine Gorge) National Park Act 1989
NAME OF NATIONAL PARK ETC.	Nitmiluk (Katherine Gorge) National Park
NATURE OF ABORIGINAL TITLE	Fee simple
LEASE-BACK ARRANGEMENT	Lease from Jayoyn Aboriginal Land Trust to the N.T. Conservation Land Corporation. Term 99 years. Clause 9 allows termination of the lease by lessor if future government legislation or regulation is substantially detrimental to Aboriginal interests in the park. Government has no guaranteed option of renewal of lease.
RENT, ROYALTY, FEES	Rent is \$100,000 plus 50% of Park revenue. Rent is reviewed every 3 years.
TRADITIONAL ABORIGINAL HUNTING AND FISHING RIGHTS	Aboriginal traditional owners and Aborigines entitled by Aboriginal tradition have the right to use and occupy the park.
COMPOSITION OF BOARD OF MANAGEMENT AND FUNCTIONS	The Board comprises 13 persons being: <ul style="list-style-type: none"> . 8 traditional Aboriginal owners nominated by the Jayoyn Association. . 4 members nominated by the Director of the Conservation Commission. . 1 resident of the Katherine area nominated by the Mayor of the Municipality of Katherine
FUNDING ARRANGEMENTS	Funding for Board of Management provided by the Conservation Commission of the Northern Territory.
BODY EXERCISING DAY TO DAY MANAGEMENT	Conservation Commission of the Northern Territory under the direction of the Nitmiluk Board of Management.
COMMUNITY DEVELOPMENT	The lease provides a right for Aborigines to reside within the park. The Act provides for an area to be set aside as an Aboriginal cultural centre.
EMPLOYMENT AND TRAINING	The lease contains an agreement to maximise Aboriginal employment within the park with a goal of 25% Aboriginal employment in 5 years. Also an agreement to implement training programmes in skills relevant to administration, planning, management and control of the park and to employ Aborigines so trained. In 1989 an Aboriginal Ranger scheme was established.

**SUMMARY OF ASPECTS OF ABORIGINAL INVOLVEMENT IN
OTHER NATIONAL PARKS AND PROTECTED AREAS**

STATE/TERRITORY	South Australia
NAME OF ACT	Pitjantjatjara Land Rights Act, 1981
NATURE OF ABORIGINAL TITLE	Fee simple
LEASE-BACK ARRANGEMENT	No lease back arrangement
RENT, ROYALTY, FEES	Mining royalties received are distributed as follows: 1/3 Anagu Pitjantjatjara; 1/3 Minister of Aboriginal Affairs for advancement of the Aborigines of South Australia; 1/3 into general revenue of the State.
TRADITIONAL ABORIGINAL HUNTING AND FISHING RIGHTS	Hunting and gathering is allowed on the land subject to the regulations.
COMPOSITION OF BOARD OF MANAGEMENT AND FUNCTIONS	Executive Board of 10 elected members of Anagu Pitjantjatjara. The Board can only act with the consent of the members of the Anagu Pitjantjatjara.
FUNDING ARRANGEMENTS	Funding for the purposes of the Act is to be provided by Parliament.
BODY EXERCISING DAY TO DAY MANAGEMENT	Executive Board
PUBLIC ACCESS TO SACRED SITES	A Court may prohibit a person from entering certain areas if they have wilfully interfered with a sacred site.

**SUMMARY OF ASPECTS OF ABORIGINAL INVOLVEMENT IN
OTHER NATIONAL PARKS AND PROTECTED AREAS**

STATE/TERRITORY	Victoria
NAME OF ACT	Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987
NAME OF NATIONAL PARK ETC.	Lake Condah, Framlington Forest
NATURE OF ABORIGINAL TITLE	Fee simple. Land vested in Aboriginal Corporation.
LEASE-BACK ARRANGEMENT	No lease back arrangement
RENT, ROYALTY, FEES	
TRADITIONAL ABORIGINAL HUNTING AND FISHING RIGHTS	Hunting and gathering rights regulated by Committee of Elders.
COMPOSITION OF BOARD OF MANAGEMENT AND FUNCTIONS	A Committee of Elders is formed from the Elders Aboriginal Corporation, of those people considered by Aboriginal tradition and practice and recognised by the Community as elders.
FUNDING ARRANGEMENTS	Money is paid from the Consolidated Revenue Fund into the Condah Land Trust Fund and the Framlingham Forest Trust Fund.
BODY EXERCISING DAY TO DAY MANAGEMENT	The Elders Committee.

**SUMMARY OF ASPECTS OF ABORIGINAL INVOLVEMENT IN
OTHER NATIONAL PARKS AND PROTECTED AREAS**

STATE/TERRITORY	Queensland
NAME OF ACT	Aboriginal Land Act 1991
NAME OF NATIONAL PARK ETC.	Proposed Cape Melville National Park and Flinders Island National Park.
NATURE OF ABORIGINAL TITLE	The Act includes the power to grant both fee simple and lease title.
LEASE-BACK ARRANGEMENT	Mandatory provision for leaseback in perpetuity to the Crown of National Park areas.
RENT, ROYALTY, FEES	No rent provisions. Traditional Aboriginal owners are entitled to receive out of money appropriated by Parliament a percentage of mining royalties.
COMPOSITION OF BOARD OF MANAGEMENT AND FUNCTIONS	Aboriginal people particularly concerned with the National Park are to be represented on the Board. The function of the Board is to prepare and revise a management plan in co-operation with the Director of NPWS.
BODY EXERCISING DAY TO DAY MANAGEMENT	National Parks and Wildlife Service

Appendix 9

PROCEEDINGS OF THE LEGISLATION COMMITTEE UPON THE
NATIONAL PARKS AND WILDLIFE (ABORIGINAL OWNERSHIP)
AMENDMENT BILL AND COGNATE BILL

Monday, 9 December, 1991
At 5.30 p.m., Parliament House, Sydney

No. 1

MEMBERS PRESENT

Mr Markham
Mr Mills

Mr Photios
Mr Small

Mr Zammit

The Hon. T.J. Moore, M.P., Minister for the Environment, and 3 of his staff were also in attendance together with Mr David Blunt of the Committee on the Independent Commission Against Corruption.

An apology was received from Dr Metherell.

The Clerk to the Committee, in the absence of the Clerk of the Legislative Assembly, opened the meeting and read the following:

"Portion of entry number 19, Votes and Proceedings of the Legislative Assembly, 14 November 1991:

That—

- (1) The National Parks and Wildlife (Aboriginal Ownership) Amendment Bill (No. 2) and cognate Bill be referred to a Legislation Committee.
- (2) Such Committee consist of Mr Markham, Dr Metherell, Mr Mills, Mr Photios, Mr Small and Mr Zammit.
- (3) The Committee report by 31 March, 1992."

Election of a Chairman

Resolved, on motion of Mr Small, seconded by Mr Photios:

"That Mr Zammit be elected Chairman of the Committee"

And Mr Zammit having made his acknowledgements—

Background

Mr Moore briefed the Committee about the background to the legislation, the legislation Committee, the various technical assistance to be provided at various times and the availability of new draft bills in January, 1992.

The Committee deliberated.

The Committee deferred consideration of any further business until the new draft bills become available and consequentially canvassed the possibility of an extension of time for reporting.

The Committee adjourned at 6.03 p.m., sine die.

Wednesday, 26 February, 1992
At 1.00 p.m., Parliament House, Sydney

No. 2

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Markham

Dr Metherell

Mr Mills

Ms Catherine Watson of the Regulation Review Committee was also in attendance.

Apologies were received from Messrs Photios and Small.

The Clerk to the Committee read the following:

"Portion of entry number 15, Votes and Proceedings of the Legislative Assembly, 25 February 1992:

(2) Ordered, on motion of Mr Moore (by leave), that the National Parks and Wildlife (Aboriginal Ownership) Amendment Bill 1992 be referred to the Legislation Committee appointed to consider the National Parks and Wildlife (Aboriginal Ownership) Amendment Bill (No. 2) 1991 and Cognate Bill.

(3) Mr Moore moved (by leave), that the reporting time for the Legislation Committee on the National Parks and Wildlife (Aboriginal Ownership) Amendment Bill 1992 be extended to 30 April 1992.

Question put and passed."

Copies of the new Bill and Minister's second reading speech were distributed to Committee Members.

Committee Work Plan

The Chairman addressed the meeting concerning the Committee Work Plan and timetable.

The Committee deliberated.

Resolved, on motion of Mr Mills, seconded by Mr Markham:

"That the Chairman write to the Minister about the Committee work plan and timetable and advise of the difficulty in reporting by 30 April 1992."

Staffing

The Chairman and the Clerk to the Committee advised the Committee of new staffing arrangements.

Ministerial Task Force on Aboriginal Heritage and Culture

A copy of the Report of the NSW Ministerial Task Force on Aboriginal Heritage and Culture 1989 was distributed to Committee Members.

The Committee adjourned at 1.33 p.m., sine die.

Thursday, 19 March, 1992
At 12.00 noon, Parliament House, Sydney

No. 3

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Markham
Mr Mills

Dr Metherell
Mr Photios

Mr Small

Mr Jim Jefferis and Ms Catherine Watson of the Regulation Review Committee were also in attendance.

Advertisement

The Clerk reported that the Committee advertisement calling for submissions by 31 March 1992 was published in "The Sydney Morning Herald", "The Telegraph Mirror", "The Weekend Australian", "The Sun Herald" and "The Sunday Telegraph" on 7 and 8 March 1992 respectively.

Briefing on the Provisions of the Bill

Mr Jefferis briefed the Committee on the provisions of the Bill.

Committee proceedings suspended between 12:15 and 12:30 p.m. for a division.

Briefing continued.

Visit of Inspection

Resolved, on motion of Mr Markham, seconded by Mr Photios:

"That the Chairman and Clerk consult with the Speaker about the Committee making an appropriate visit of inspection".

Reporting Date

Resolved, on motion of Mr Mills, seconded by Mr Photios:

"That the Chairman write to the Minister following up the issue of an extended reporting date for the Committee".

Further Advertisement

Resolved, on motion of Mr Small, seconded by Mr Mills:

"That a further advertisement calling for submissions by 10 April 1992 be published in the 'Sunraysia Daily'".

Minutes

The minutes of the meeting held on 26 February 1992, as circulated, were confirmed.

The Committee adjourned at 1.36 p.m., sine die.

Thursday, 9 April, 1992
At 12.00 noon, Parliament House, Sydney

No. 4

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Markham
Mr Photios

Mr Mills
Mr Small

Mr Jim Jefferis and Ms Catherine Watson of the Regulation Review Committee were also in attendance.

An apology was received from Dr Metherell.

Minutes

The minutes of the meeting held on 19 March 1992, as circulated, were confirmed.

Briefing on Submissions

Mr Jefferis briefed the Committee on submissions nos 1 to 5.

Visit of Inspection

The Chairman reported that he had written to the Speaker seeking approval for the funding of a visit of inspection to Broken Hill, Mootwingee National Park and Uluru National Park.

The Clerk reported the Speaker's qualified approval.

The Committee deliberated.

The Committee adjourned at 1.02 p.m., sine die.

Tuesday, 5 May, 1992
At 1.00 p.m., Parliament House, Sydney

No. 5

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Markham

Mr Mills

Mr Photios

Mr Jim Jefferis and Ms Catherine Watson of the Regulation Review Committee were also in attendance.

An apology was received from Mr Small.

Minutes

The minutes of the meeting held on 9 April 1992, as circulated, were confirmed.

Vacancy on the Committee

The Clerk reported that, on 10 April 1992, Dr Metherell had resigned as a Member of the Legislative Assembly and that consequently a vacancy had arisen on the Committee.

Reporting Date

The Clerk read a portion of entry No. 13, Votes and Proceedings of the Legislative Assembly, 9 April 1992, viz:

"That so much of the Standing and Sessional Orders be suspended as would preclude the reporting time for the Legislation Committee on the National Parks and Wildlife (Aboriginal Ownership) Amendment Bill being extended to 25 September 1992".

Visit of Inspection

The Clerk read a portion of entry No. 7, Votes and Proceedings of the Legislative Assembly, 29 April 1992, viz:

"That the Legislation Committee upon the National Parks and Wildlife (Aboriginal Ownership) Amendment Bill have leave to make a visit of inspection to Broken Hill, Mootwingee Historic Site and National Park and Uluru - Kata Tjuta National Park".

The Committee noted the Minister's comments in the House when speaking to the motion about a visit of inspection to Kakadu National Park and meeting with the Gagadju Association.

The Committee deliberated.

Resolved, on motion of Mr Photios, seconded by Mr Markham:

"That the Chairman write to the Speaker about extending the Committee visit of inspection to include Kakadu National Park".

Correspondence

Resolved, on motion of Mr Mills, seconded by Mr Photios:

"That the Chairman write to:

- The National Parks Association seeking an expansion of their submission; and
- The Crown Solicitor seeking advice as to the question of "estate in possession" and "re-appropriation by way of compulsory leasing in perpetuity".

The Committee adjourned at 1.50 p.m., sine die.

Thursday, 7 May, 1992
At 7.00 p.m., Parliament House, Sydney

No. 6

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Mills

Mr Photios

Mr Small

Apologies were received from Messrs Markham and Yeadon.

New Member

The Clerk reported that this day Mr Yeadon had been appointed to the Committee in place of Dr Metherell, resigned.

Visit of Inspection

The Chairman reported that the Speaker had approved the proposal to extend the visit of inspection.

The Clerk then reported that this day the Legislative Assembly had agreed to the following motion:

"That the Legislation Committee upon the National Parks and Wildlife (Aboriginal Ownership) Amendment Bill have leave to make a visit of inspection to Kakadu National Park".

The Committee deliberated.

The Committee adjourned at 7.15 p.m., sine die.

Friday 29 May, 1992
At 10.00 a.m. Parliament House, Sydney

No. 7

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Markham
Mr Photios

Mr Mills
Mr Small

Mr Yeadon

Mr Jim Jefferis of the Regulation Review Committee was also in attendance.

Minutes

The minutes of the meetings held on 5 and 7 May 1992, as circulated, were confirmed.

Submissions

Resolved, on motion of Mr Markham, seconded by Mr Mills:

"That those submissions forwarded directly to Members be accepted as submissions to the Committee".

Briefing on Submissions

The Committee resumed consideration of the submissions—

Mr Jefferis briefed the Committee on submission No. 6.

The Committee deliberated.

Resolved, on motion of Mr Photios, seconded by Mr Markham:

"That the Committee:

- write to the Minister for the Environment advising of the issues of concern to the Committee and seek his response;
- invite the Minister for the Environment to brief the Committee on those issues of concern;
- invite the Minister for the Environment to give evidence to the Committee at an appropriate time".

Hearings

The Committee deliberated over hearing dates and possible witnesses.

Visit of Inspection

The Clerk read a portion of entry No. 48, Votes and Proceedings of the Legislative Assembly, 7 May 1992, viz:

"That the Legislation Committee upon the National Parks and Wildlife (Aboriginal Ownership) Amendment Bill have leave to make a visit of inspection to Nitmiluk National Park".

The Committee deliberated over the various arrangements concerning the visit of inspection.

The Committee adjourned at 12.05 p.m., until Thursday 4 June 1992 at 2.30 p.m.

Thursday, 4 June 1992
At 2.30 p.m. Parliament House, Sydney

No. 8

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Markham
Mr Photios

Mr Mills
Mr Yeadon

Mr Jim Jefferis and Mr Jim Donohoe of the Regulation Review Committee were also in attendance.

The Hon T.J. Moore, M.P., Minister for the Environment accompanied by Ms Sally King (Policy Adviser to the Minister), Ms Vivienne Ingram (Principal Legal Officer - NPWS), Ms Helen Clemens (Manager, Cultural Heritage - NPWS) and Helene Culig (Liaison Officer - NPWS) were also in attendance.

An apology was received from Mr Small.

Briefing

Mr Moore briefed the Committee upon various matters concerning the bill.

Briefing concluded.

Mr Moore and his staff withdrew.

The Committee deliberated.

The Committee adjourned at 4.05 p.m. until Thursday, 11 June, 1992, at 10.00 a.m.

Thursday, 11 June 1992
At 10.00 a.m. Parliament House, Sydney

No. 9

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Markham
Mr Photios

Mr Mills
Mr Small

Mr Yeadon

Mr Jim Jefferis and Mr Jim Donohoe of the Regulation Review Committee were also in attendance.

Hearings

The press and public were admitted.

By direction of the Chairman, the Clerk read the Committee terms of reference and Legislative Assembly Standing Order No. 362 relating to the examination of witnesses.

Mr Grahame Bruce Douglas, President of the New South Wales National Parks Association, sworn and examined.

Evidence concluded the witness withdrew.

Ms Margaret Amelia Rodgers, Research Officer for the General Synod of the Anglican Church of Australia, Reverend John Charles McIntyre, Rector of St Saviour's Anglican Church, Redfern and Mr Stephen Francis Webb, Researcher for the Social Issues Committee of the Anglican Diocese of Sydney, sworn and examined.

Evidence concluded the witnesses withdrew.

Mr John Sebastian Coombs, Q.C., Barrister at Law and President of the New South Wales Bar Association and Mr Nicholas Richard Cowdery, Q.C., Barrister at Law and Chairman of the Human Rights Committee of the Bar Council, sworn and examined.

Evidence concluded the witnesses withdrew.

Ms Sue Francis Salmon, New South Wales Campaign Co-ordinator, Australian Conservation Foundation, affirmed and examined.

Evidence concluded the witness withdrew.

The press and the public withdrew.

New South Wales Aboriginal Land Council

The Committee deliberated.

Resolved, on motion of Mr Markham, seconded by Mr Yeadon:

"That the Chairman write to the New South Wales Aboriginal Land Council inviting the Council to make a written submission and be called to give evidence before the Committee".

Press Release

The Chairman suggested that Committee Members may issue a press release for their respective electorate newspapers.

Hearings

The press and the public were admitted.

Councillor Stephen Robert Ward, President of the Shires Association and Mr Douglas John McSullea, Deputy Secretary of the Shires Association and Local Government Association, sworn and examined.

Evidence concluded the witnesses withdrew.

Mr Michael Keith Fosbery Bray, Vice President, and Mr Peter Humphrey Henschman, Director, of the National Parks and Wildlife Foundation, sworn and examined.

Evidence concluded the witnesses withdrew.

The Committee adjourned at 4.35 p.m. sine die.

Tuesday 30 June, 1992
At 4.00 p.m. Parliament House, Sydney

No. 10

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Markham
Mr Small

Mr Mills
Mr Yeadon

Mr Jim Jefferis and Mr Jim Donohoe of the Regulation Review Committee were also in attendance.

An apology was received from Mr Photios.

Minutes

The minutes of the meetings held on 29 May, 4 and 11 June 1992, as circulated, were confirmed.

Visit of Inspection

The Clerk reported upon the arrangements for the itinerary of the visit of inspection.

The Committee deliberated and finalised the arrangements for the visit of inspection.

The Committee adjourned at 4.50 p.m., until Friday 10 July 1992 at 3.30 p.m.

Friday 10 July 1992

At 3.00 p.m. (CST)

Western Region Office of the NSW
National Parks and Wildlife Service, Broken Hill.

No.11

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Markham
Mr Mills

Mr Small
Mr Yeadon

Also in attendance Mr Jim Jefferis (Project Officer).

An apology was received from Mr Photios.

Briefing and Discussions - National Parks and Wildlife Service

The Committee, was briefed by and, held discussions with Mr Chris Eden (Regional Manager - Western Region), Mr Geoff Parsons (Manager - Broken Hill Office), Mr "Badger" Bates (Aboriginal Sites Officer) and Mr Karl Williams (Ranger) of the NSW National Parks and Wildlife Service.

Briefing and discussions concluded.

Inspection - Broken Hill Local Aboriginal Land Council

The Committee proceeded to the premises of the Broken Hill Local Aboriginal Land Council.

The Committee inspected the premises with Mr William Smith (Office Manager - Broken Hill L.A.L.C.).

Inspection concluded.

The Committee adjourned at 5.45 p.m. until Saturday 11 July 1992 at 10.30 a.m. (EST).

Saturday 11 July 1992

At 10.30 a.m. (EST)
Staff Quarters, Mootwingee National Park

No.12

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Markham
Mr Mills

Mr Small
Mr Yeadon

Also in attendance Mr Jim Jefferis (Project Officer) and Messrs Eden and Parsons (NSW National Parks and Wildlife Service).

An apology was received from Mr Photios.

Briefing and Discussions - West Darling Pastoralists

The Committee then held discussions with Mr John Gall (Senior Vice-President - West Darling Pastoralist Association), Mrs Helen Anderson, Mr Ian Jackson, Mr Ken Turner and other pastoralists neighbouring Mootwingee National Park.

Discussions concluded.

Inspection - Homestead Gorge

The Committee proceeded to Homestead Gorge.

The Committee inspected Homestead Gorge under the guidance of Messrs Eden and Parsons.

Inspection concluded.

Briefing and Discussions - Mutawintji and Cobar Local Aboriginal Land Councils and Inspection - Mootwingee Historic Site

The Committee proceeded to Mootwingee Historic Site.

The Committee then held discussions with Mr William Bates (Chairperson), Mr "Badger" Bates (Regional Representative), Mr Harold Brown (Member), Mr Phillip Kerwin (Provisional Member), Maureen O'Donnell (Member) and Ms Norma Walford (Member) of Mutawintji Local Aboriginal Land Council and Ms Gertie Darrigo (Chairperson), Mrs Gloria Shipp (Co-ordinator) and Mrs Elaine Ohlsen (Member) of the Cobar Local Aboriginal Land Council.

Discussions concluded the Committee inspected Mootwingee Historic Site under the guidance of Mr "Badger" Bates.

Inspection concluded.

The Committee adjourned at 4.30 p.m. until Sunday 12 July 1992 at 10.30 a.m. (CST).

Sunday 12 July 1992

At 10.30 a.m. (CST)
City Council Chamber, Broken Hill.

No.13

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Markham
Mr Mills

Mr Small
Mr Yeadon

Also in attendance Mr Jim Jefferis (Project Officer).

An apology was received from Mr Photios.

Hearings

The press and public were admitted.

By direction of the Chairman, the Clerk read the Committee terms of reference and Legislative Assembly Standing Order 362 relating to the examination of witnesses.

Mrs Helen Patricia Anderson, Mr John Gall, Mr Ian Scott Jackson and Mr Kenneth John Turner, Pastoralists of West Darling; Mr Peter Malcolm Withers, Chairman, Western Division Council of the NSW Farmers Association; Mr Brian Clifford Ablett and Mr Desmond Thomas Wakefield, members of the Willandra Landholders Protection Group; Mr Bernard Standen, President of Balranald Shire Council; Mr Donald Allan McKinnon, President, and Mr Stephen John Harding, Chief Executive Officer, Wentworth Shire Council; all sworn and examined.

Evidence concluded the witnesses withdrew.

Mr Anthony Christopher Eden (Regional Manager - Western Region, NSW National Parks and Wildlife Service), sworn; Mr Barrie Vincent Collison (Project Manager - OLMA Committee, Broken Hill City Council), sworn; Mr Peter Weston Thompson, affirmed; all examined.

Evidence concluded the witnesses withdrew.

Mr William Charles Bates (Chairperson), Ms Dulcie Dawn O'Donnell (Secretary), Mr William "Badger" Brian Bates (Regional Representative), Mr Phillip John Kerwin (Provisional Member) and Ms Maureen Mary O'Donnell (Member) of Mutawintji Local Aboriginal Land Council; Mrs Alice Kelly (Tribal Elder) and Mrs Mary June Pappin (Member) of Muttie Muttie Tribe; Ms Gertie Darrigo (Chairperson), Mrs Gloria Jean Shipp (Coordinator) and Mrs Elaine Joyce Ohlsen (Member) of Cobar Local Aboriginal Land Council; all affirmed and examined.

By direction of the Chairman the Clerk read a letter received from the Balranald Local Aboriginal Land Council.

Evidence concluded the witnesses withdrew.

The Committee adjourned at 4.55 p.m. until Monday 13 July 1992 at 2.30 p.m.

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Monday 13 July 1992

At 2.30 p.m. (CST)
Ranger Station, Uluru National Park

No.14

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Markham
Mr Mills

Mr Photios
Mr Small

Mr Yeadon

Inspection - Uluru

Mr David Carter (Acting Park Manager - Uluru National Park) being absent on sick leave the Committee proceeded to inspect Uluru and surrounds.

Inspection concluded.

The Committee adjourned at 5.05 p.m. until Tuesday 14 July 1992 at 9.15 a.m. (CST).

Tuesday 14 July 1992

At 9.15 a.m. (CST)
Ranger Station, Uluru National Park.

No.15

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Markham
Mr Mills

Mr Photios
Mr Small

Mr Yeadon

Briefing and Discussions - Acting Park Manager Uluru

The Committee was briefed by, and held discussions with, Mr David Carter (Acting Park Manager - Uluru National Park).

Briefing and discussions concluded.

Discussions - Mutitjulu Community Centre

The Committee proceeded to Mutitjulu Community Centre.

The Committee then held discussions with Mr Yami Lester and Mr Tony Tjamiwa (Traditional Owners, Uluru National Park Board of Management); Mr Brad Nesbit (Acting Community Liaison Officer); Mr Graeme Lightbody (Central Land Council). Also in attendance Mr David Carter and Mr John Willis (Community Liaison Officer).

Discussions concluded.

Inspection - Kata Tjuta

The Committee proceeded to the Kata Tjuta area of Uluru National Park (the Olgas) and met with Mr Peter Pappin (Ranger - Uluru National Park) and inspected the Kata Tjuta and surrounds.

Inspection concluded.

The Committee adjourned at 5.15 p.m. until Thursday 16 July 1992 at 9.30 a.m. (CST).

Thursday 16 July 1992

At 9.30 a.m. (CST)

Ranger Uranium Mines Pty Ltd Offices,
Jabiru, Kakadu National Park

No.16

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Markham
Mr Mills

Mr Photios
Mr Small

Mr Yeadon

Briefing, Discussions and Inspection - Ranger Uranium Mines
Pty Ltd

The Committee was briefed by and held discussions with Mr Mike Hoey (Acting Manager), Mr Rob Auty (Safety, Health and Radiation Protection Superintendent) and Mr John Bywater (Environment Superintendent) of Ranger Uranium Mines Pty Ltd.

Briefing and discussions concluded the Committee proceeded to inspect the open cut mine and the research laboratory.

Inspection concluded.

Discussions - Jabiru Town Centre

The Committee proceeded to Jabiru Town Council Centre and held discussions with Mr Mike McHugh (Chairperson) and Mr Phil Pinyon (Town Clerk) of Jabiru Town Council and Mr Terry McCarthy, (Member for Goyder - Northern Territory, Legislative Assembly).

Discussions concluded.

Inspection - Nourlangie Rock

The Committee then met with Mr Roque Lee (Ranger - Kakadu National Park) and proceeded to the Nourlangie Rock area of Kakadu National Park.

The Committee then inspected the Nourlangie Rock area.

Inspection concluded.

The Committee adjourned at 6.00 p.m. until Friday 17 July 1992 at 9.00 a.m. (CST).

Friday 17 July 1992

At 9.00 a.m. (CST)

Visitors Centre, Kakadu National Park.

No.17

MEMBERS PRESENT

Mr Markham
Mr Mills

Mr Small
Mr Yeadon

Apologies were received from Messrs Photios and Zammit on account of illness.

Acting Chairman

Resolved, on motion of Mr Yeadon, seconded by Mr Mills:

"That Mr Markham do take the Chair as Acting Chairman of the Committee."

Briefing and Discussions - Park Manager Kakadu

The Committee was briefed by, and held discussions with, Mr Peter Wellings (Park Manager - Kakadu National Park).

Briefings and discussions concluded.

Discussions - Kakadu Board of Management

The Committee proceeded to Coinda.

The Committee then held discussions with Mr Mick Alderson, Mr David Canari, Ms Mary Blyth and Ms Nellie Bayne (Traditional Owners - Kakadu Board of Management). Also in attendance Mr Peter Wellings.

Discussions concluded.

Inspection - Yellow Waters

The Committee proceeded to Yellow Waters together with Mr Peter Wellings and Mr Mick Alderson.

The Committee inspected the Yellow Waters area of Kakadu National Park.

Inspection concluded.

Inspection - East Alligator River and Ubirr Rock

The Committee met with Mr Greg Miles (Ranger - Kakadu National Park) and proceeded to the East Alligator River and Ubirr Rock areas of Kakadu National Park.

The Committee inspected the East Alligator River and Ubirr Rock areas of Kakadu National Park.

Inspection concluded.

The Committee adjourned at 6.20 p.m., sine die.

Monday 17 August 1992

At 9.30 a.m.
Parliament House, Sydney.

No.18

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Markham
Mr Mills

Mr Small
Mr Yeadon

Also in attendance Mr Jim Jefferis (Project Officer).

An apology was received from Mr Photios.

Discussions

The Committee met and held discussions with the Hon Helen Sham-Ho, M.L.C., in her capacity as the Ethnic Communities representative on the National Council for Aboriginal Reconciliation.

Discussions concluded.

Hearings

The press and public were admitted.

By direction of the Chairman, the Clerk read the Committee terms of reference and Legislative Assembly Standing Order 362 relating to the examination of witnesses.

Mr Peter Charles Cunningham, Valuer General, sworn and examined.

Evidence concluded, the witness withdrew.

Mr Ross Andrew Johnston, Consultant for the Australian Conservation Foundation, affirmed and examined.

Evidence concluded, the witness withdrew.

Mr Brian Clifford Ablett and Mr Desmond Thomas Wakefield, members of the Willandra Landholders' Protection Group, previously sworn and both examined.

Evidence concluded, the witnesses withdrew.

Dr Kingsley Palmer, Director of Research at the Australian Institute of Aboriginal and Torres Strait Islander Studies, affirmed and examined.

Evidence concluded, the witness withdrew.

Mr Alistair Hamilton Willis Howard (Deputy Director - Field Management and Conservation) sworn, Mr Anthony Christopher

Eden (Regional Manager - Western Region) previously sworn, Ms Leanne Wallace (Manager - Corporate Services Division) sworn, Ms Helen Scott Clemens (Manager - Cultural Heritage) affirmed and Mr Gavin Douglas Andrews (Head of Aboriginal Heritage Branch) affirmed, all of the National Parks and Wildlife Service and all examined.

Evidence concluded, the witnesses withdrew.

Dr Terence Peter De Lacey, Head of School of Environmental and Information Sciences, Charles Sturt University (Murray), sworn and examined.

Evidence concluded, the witness withdrew.

The Committee adjourned at 5:23 p.m. until Tuesday, 18 August 1992 at 8:00 a.m.

Tuesday 18 August 1992

At 8.00 a.m.
Parliament House, Sydney.

No.19

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Markham
Mr Mills

Mr Small
Mr Yeadon

Also in attendance Mr Jim Jefferis (Project Officer).

An apology was received from Mr Photios.

Hearings

The press and public were admitted.

By direction of the Chairman, the Clerk read the Committee terms of reference and Legislative Assembly Standing Order 362 relating to the examination of witnesses.

The Hon. Christopher Peter Hartcher, M.P., Minister for the Environment, sworn and examined.

Evidence concluded the witness withdrew.

Ms Patricia Boyd (Solicitor) sworn, Mr Andrew John Chalk (Solicitor) sworn, Ms Delia May Lowe (Project Officer) affirmed and Mr Mervyn Charles Penrith (Officer) affirmed, all delegated representatives of the NSW Aboriginal Land Council and all examined.

Mr William Charles Bates (Chairperson - Mutawintji Local Aboriginal Land Council) previously affirmed, Mrs Elaine Joyce Ohlsen (Cobar Local Aboriginal Land Council) previously affirmed, Ms Cindy Marie Johnson (Research Officer - NSW Aboriginal Land Council) affirmed and Mr Ernest William Lovelock (Elder - Armidale Local Aboriginal Land Council) sworn and all examined.

Evidence concluded the witnesses withdrew.

Mr Peter Weston Thompson previously affirmed and examined.

Evidence concluded the witness withdrew.

The press and public withdrew.

Minutes

The minutes of the meetings held on 20 June, and 10, 11, 12, 13, 14, 16 and 17 July 1992, as circulated, were confirmed.

Deliberations

The Committee deliberated.

Resolved, on motion of Mr Small, seconded by Mr Markham:

"That the Committee seek leave to make visits of inspection to Mungo National Park, Mt Grenfell Historic Site and Mt Yarrowyck Nature Reserve to meet with the respective Local Aboriginal Land Councils".

The Committee deliberated.

Resolved, on motion of Mr Small, seconded by Mr Yeadon:

"That the Chairman write to the Leader of the House to seek an extension on reporting time to enable fuller consultation on the bill with the respective Aborigine groups".

The Committee adjourned at 3:50 p.m. until Tuesday, 15 September 1992 at 3:00 p.m.

Thursday 17 September 1992

At 11.00 a.m.

Parliament House, Sydney.

No.20

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Markham
Mr Mills

Mr Schultz
Mr Small

Mr Yeadon

Also in attendance Mr Jim Jefferis (Project Officer).

New Member and Reporting Date

The Clerk reported and read entry No. 31, Votes and Proceedings of the Legislative Assembly, 1 September 1992, viz:

"(1) That Michael Stephen Photios be discharged from attendance upon the Legislation Committee upon the National Parks and Wildlife (Aboriginal Ownership) Amendment Bill and that Albert John Schultz be appointed to serve on such Committee.

(2) That so much of the Standing and Sessional Orders be suspended as would preclude the reporting time for the Legislation Committee upon the National Parks and Wildlife (Aboriginal Ownership) Amendment Bill being extended to 25 November 1992."

Field Trips

The Committee deliberated.

Resolved, on motion of Mr Markham, seconded by Mr Yeadon:

"That the Committee seek the leave of the House to make short field trips to Mount Grenfell Historic Site, Mount Yarrowyck Nature Reserve and Mungo National Park for the purposes of meeting with representatives of the respective Local Aboriginal Land Councils and other interested persons".

The Committee deliberated.

Resolved, on motion of Mr Schultz, seconded by Mr Mills:

"That, subject to approval, representatives of the State Aboriginal Land Council be invited to accompany the Committee on the field trips".

Working Paper

The Committee proceeded to consider the Working Paper previously circulated.

The Committee deliberated.

The Committee adjourned at 12.35 p.m. until Tuesday, 22 September 1992 at 1.00 p.m.

Tuesday 22 September 1992

At 1.00 p.m.

Parliament House, Sydney.

No.21

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Markham
Mr Mills

Mr Schultz
Mr Small

Mr Yeadon

Also in attendance Mr Jim Jefferis (Project Officer).

Minutes

The minutes of the meetings held on 17 and 18 August and 17 September 1992, as circulated, were confirmed.

Payment to Certain Witnesses

Resolved, on motion of Mr Small, seconded by Mr Markham:

"That pursuant to Standing Order 374, the following payments be made to, or reimbursements for, certain witnesses—

Mr Brian Clifford Ablett for air and taxi fares	\$798.85
Mr William Charles Bates for travelling and vehicle allowances	\$1,565.50
Dr Terence Peter De Lacey for air and taxi fare	\$218.00
Mr Anthony Christopher Eden for air fare	\$684.00
Mr Ross Andrew Johnston for air and taxi fares	\$566.30
Mr Ernest William Lovelock for airfare	\$342.00
Mrs Elaine Joyce Ohlsen for fares and accommodation	\$522.10
Dr Kingsley Palmer for air and taxi fares and parking fee	\$305.00
Mr Peter Weston Thompson for accommodation	\$80.00
Mr Desmond Thomas Wakefield for air and taxi fares	\$782.00

Working Paper

The Committee resumed consideration of the Working Paper.

Mr Markham moved, seconded by Mr Mills:

"That this Committee agrees in principle with the proposed vesting of certain lands in an Aboriginal Land Council or Councils under the provisions of the National Parks and Wildlife (Aboriginal Ownership) Amendment Bill 1992".

Upon which Mr Small moved the following amendment:

"That the motion be amended by omitting the word 'ownership' with a view to inserting the word

'management' instead thereof".

Mr Yeadon then foreshadowed an amendment to add words to the original motion, viz: but desires to examine the cultural significance of those certain lands.

Deliberations adjourned.

The Committee adjourned at 2.05 p.m. until Thursday, 24 September 1992 at 5.00 p.m.

Thursday 24 September 1992

At 5.00 p.m.

Parliament House, Sydney.

No.22

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Markham
Mr Mills

Mr Schultz
Mr Small

Mr Yeadon

Also in attendance Mr Jim Jefferis (Project Officer).

Working Paper

The Committee resumed the adjourned deliberations of Tuesday 22 September 1992-

With the leave of the Committee Mr Yeadon moved his foreshadowed amendment:

"That the original motion of Mr Markham be amended by adding the words 'but desires to examine the cultural significance of those certain lands'."

Amendment put and passed.

The original question, as amended, was:

"That this Committee agrees in principle with the proposed vesting of certain lands in an Aboriginal Land Council or Councils under the provisions of the National Parks and Wildlife (Aboriginal Ownership) Amendment Bill 1992 but desires to examine the cultural significance of those certain lands".

Upon which Mr Small had moved the following amendment:

"That the motion be amended by omitting the word 'ownership' with a view to inserting the word 'management' instead thereof".

Question proposed:

"That Mr Small's amendment be agreed to".

The deliberations continued.

Mr Zammit then made the following statement:

ABORIGINAL OWNERSHIP OF PROPOSED SCHEDULE 4 LANDS

The Committee has now received in evidence all arguments for and against the principle of Aboriginal ownership of National Park lands listed in Schedule 4.

I believe the Committee should now clarify its attitude to this central proposal of the legislation as a continuing failure to do so is affecting the Committee's ability to conclude its examination of the legislation.

The following is my appraisal of the issues.

Arguments against Transfer of Ownership

Various persons have argued the legislation is discriminatory as it gives benefits to Aborigines that are not available to non-Aborigines. These persons argue that Schedule 4 areas should be owned by all Australians.

A further argument against the transfer of ownership is that Aboriginal interests in their heritage will be satisfied by giving them overall control of the management of the areas.

Others argue however, that a board of management having a majority of Aborigines will not have the expertise to both protect the cultural heritage and manage the environmental needs of the national park areas. On this basis it is said the lands should stay with the NPWS.

A final objection would appear to be that some members of the public just do not want the lands to be returned to the Aborigines.

Arguments in favour of Aboriginal Ownership

It can be argued that those persons opposing the transfer of ownership have not taken into account the wider objectives of justice and race harmony being promoted by the Governments of the Commonwealth and Australian States through the Council for Aboriginal Reconciliation.

The Minister in his evidence has strongly re-affirmed the New South Wales Government view that ownership is intrinsic to the Bill because of its legal, cultural and religious importance to Aboriginal people. Management alone, he has said, does not satisfy those needs.

It can also be argued that those persons opposing the transfer of ownership have not demonstrated to the Committee any specific disadvantage that would be suffered by the public. The claim that the New South Wales public will be disadvantaged is perhaps disproven by the legislation itself. It specifically protects public rights of access and enjoyment of National Parks regardless of whether they are under Aboriginal ownership or not.

The claim that an Aboriginal board of management will not be able to effectively regulate both conservation and cultural heritage is disproven by the cases of Kakadu and Uluru National Parks.

The claim by some individuals in evidence to the Committee that a transfer of land to Aboriginal ownership discriminates against other Australians was fully examined by the Crown Solicitor. His advising to our Committee conclusively shows the proposed legislation is not discriminatory because it represents a special measure for the purpose of securing adequate advancement of the traditional Aboriginal owners.

At the Committee's last meeting on 15 September 1992 I told members that I had a concern with the point raised by Mr Small that the legislation could serve as a catalyst for an indefinite number of claims over other National Park areas.

I have in the interim examined the Minister's second reading speech and I concede that it has always been the Government's intention to add further areas of special cultural significance to that schedule. Under the terms of the legislation this will always be a matter for final examination and decision by Parliament. I do not think the Committee's support of the current legislative proposals will lead to an un-checked flow of additions to Schedule 4. I think this will realistically be balanced by Parliament's attitude to prevailing public opinion.

At the last meeting I also mentioned the Mabo case. I have now written to the Office of Aboriginal Affairs to obtain a copy of the Crown Solicitor's examination of that decision which informally I have read. I understand that basically that advice is that claims could only be made in respect of Crown land that has not been leased and which is held under a use consistent with native title. National Parks apparently are in this category. However a claim can only be made by an indigenous group with a continuous connection with the land and which has followed continuous observance of traditional laws and customs.

I am now satisfied, subject to official receipt of a copy of the Crown's advice, that this case does not conflict with the current proposals the Committee is considering but rather runs parallel to them. The case represents another channel or means by which the Aboriginal community can acquire rights to land apart from specific legislative action.

It is my view after weighing up these matters that the overall public interest would be best served by this Committee supporting the transfer to the Aboriginal community of those areas currently listed in Schedule 4 which can be demonstrated to have the necessary special cultural significance to Aboriginal persons. I mention that the Committee has sought further advice on that question from the New South Wales Aboriginal Land Council and intends to make any necessary further visits of inspection with the approval of Parliament for that purpose.

Question put.

The Committee divided.

Ayes 2

Mr Schultz Mr Small

Noes 4

Mr Markham Mr Yeadon
Mr Mills Mr Zammit

Amendment negatived.

Question - That the original motion of Mr Markham, as amended by Mr Yeadon, be agreed to - put.

The Committee divided.

Ayes 4

Mr Markham Mr Yeadon
Mr Mills Mr Zammit

Noes 2

Mr Schultz Mr Small

Resolved in the affirmative.

Consideration of the Working Paper - proposals:

Proposal 1	proposed and agreed to.
Proposal 2	proposed and amended.
Proposal	as amended, agreed to.
Proposal 3	proposed and agreed to.
Proposal 4	proposed and deferred.
Proposals 5 to 12	proposed and agreed to.
Proposals 13 & 14	proposed and deferred.
Proposal 15	proposed and agreed to.
Proposals 16 & 17	proposed and deferred.
Proposals 18 to 21	proposed and agreed to.
Proposals 22 to 26	proposed and deferred.
Proposals 27	proposed and agreed to.
Proposal 28	proposed and omitted.
Proposal 29	proposed and agreed to.
Proposal 30	proposed and deferred.
Proposal 31	proposed and agreed to.

The Committee adjourned at 6.57 p.m. sine die

Wednesday 14 October 1992

At 4.20 p.m.

Parliament House, Sydney.

No.23

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Markham
Mr Mills

Mr Schultz
Mr Small

Mr Yeadon

Also in attendance Mr Jim Jefferis (Project Officer).

Working Paper

The Committee resumed consideration of the Working Paper - proposals:

Proposal 4	again proposed and again deferred.
Proposal 13 & 14	again proposed and agreed to.

The Committee adjourned at 6.00 p.m. until Thursday 15 October 1992 at 4.00 p.m.

Thursday 15 October 1992

At 4.00 p.m.

Parliament House, Sydney.

No.24

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Markham
Mr Mills

Mr Schultz
Mr Small

Mr Yeadon

Also in attendance Mr Jim Jefferis (Project Officer).

Working Paper

The Committee resumed consideration of the Working Paper - proposals:

Proposal 4	again proposed and amended.
Proposal	as amended, agreed to.
Proposals 16 & 17	again proposed and again deferred.
Proposals 22 & 23	again proposed and again deferred.
Proposal 24	again proposed and omitted.
Proposal 25	again proposed and agreed to.
Proposal 26	again proposed and omitted.
Proposal 30	again proposed and agreed to.

The Committee adjourned at 6.35 p.m., sine die.

Wednesday 28 October 1992

At 5.00 p.m.

Parliament House, Sydney.

No.25

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Markham
Mr Mills

Mr Schultz
Mr Small

Mr Yeadon

Visit of Inspection

The Committee deliberated upon arrangements for the visit of inspection to Mount Grenfell Historic Site and Mount Yarrowyck Nature Reserve on 5 and 6 November 1992.

Resolved, on motion of Mr Markham, seconded by Mr Mills:

"That the Chairman of the NSW Aboriginal Land Council or his representatives be invited to accompany the Committee on the visit of inspection.

Working Paper

The Committee resumed consideration of the Working Paper - proposals:

Proposals 16 & 17 again proposed and amended.
Proposals as amended, agreed to.

The Committee adjourned at 5.35 p.m., until Thursday 5 November 1992.

Thursday 5 November 1992

At 12.30 p.m.

Mount Grenfell Historic Site

No.26

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Markham
Mr Mills

Mr Schultz
Mr Small

Mr Yeadon

Discussions - Cobar Local Aboriginal Land Council

The Committee held discussions with Mrs Elaine Ohlsen, Mr Chris Cohen, Mrs Dawn Griffiths, Miss Carol Griffiths, Mr Norman Ohlsen and Mr Rick Ohlsen of the Cobar Local Aboriginal Land Council.

Discussions concluded.

Inspection - Mount Grenfell Historic Site

The Committee inspected Mount Grenfell Historic Site.

Inspection concluded the Committee then proceeded to Cobar Shire Council Chamber.

Discussions - Cobar Shire Council

The Committee held discussions with Mr Peter Yench (Shire President) and Mr Don Ramsland (Shire Clerk) of Cobar Shire Council.

Also in attendance were Mr B.H. Beckroge, M.P. and Mrs Elaine Ohlsen.

Discussions concluded.

The Committee adjourned at 5.28 p.m., until Friday 6 November 1992.

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Friday 6 November 1992

At 11.30 a.m.

Mount Yarrowyck Nature Reserve

No.27

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Markham
Mr Mills

Mr Schultz
Mr Small

Mr Yeadon

Inspection - Mount Yarrowyck Nature Reserve

The Committee inspected Mount Yarrowyck Nature Reserve.

Inspection concluded.

Discussions - Armidale Local Aboriginal Land Council

The Committee held discussions with Mr Rueben Kelly, Mr Bill Lovelock, Mr Michael Kim and various other members of the Armidale Local Aboriginal Land Council.

Discussions concluded.

The Committee adjourned at 1.33 p.m., sine die.

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Friday 13 November 1992

At 10.30 a.m.

Parliament House, Sydney

No.28

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Markham

Mr Mills

Mr Yeadon

Apologies were received from Messrs Schultz and Small.

Draft Report

The draft report having previously been circulated.

The Committee deliberated about the draft report.

The Committee adjourned at 11.03 a.m., until Thursday 19 November 1992 at 12 noon.

Thursday 19 November 1992

At 12.00 noon

Parliament House, Sydney

No.29

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Markham
Mr Mills

Mr Schultz
Mr Small

Mr Yeadon

Minutes

The minutes of the meetings held on 22 and 24 September, 14, 15 and 28 October and 5, 6 and 13 November 1992, as circulated, were confirmed.

Draft Report and Recommendations

The Committee deliberated.

12.25 p.m. proceedings interrupted for a division in the House.

12.40 p.m. proceedings resumed.

Resolved, on motion of Mr Markham, seconded by Mr Mills:

"That the draft report and recommendations be adopted as the final report and recommendations of the Committee".

The Committee adjourned at 12.57 p.m., sine die.

Tuesday 24 November 1992

At 1.00 noon

Parliament House, Sydney

No. 30

MEMBERS PRESENT

Mr Zammit (Chairman)

Mr Markham
Mr Mills

Mr Schultz
Mr Small

Mr Yeadon

Minutes

The minutes of the meeting held on Thursday 19 November 1992, as circulated, were confirmed.

Draft Report and Recommendations

The Final Report and Recommendations of the Committee as agreed to at the previous meeting, having been recommitted -

The Committee deliberated.

Resolved, on the motion of Mr Mills, seconded by Mr Schultz:

"That the report be amended at page 11 by the insertion of the words 'in relation to Mount Yarrowyck Nature Reserve'".

The Committee deliberated.

Resolved, on the motion of Mr Mills, seconded by Mr Schultz:

"That the report and recommendations, as amended, be adopted as the final report and recommendations of the Committee."

The Chairman closed the meeting at 1.55pm.