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Aborigines, Land and National Parks in New South Wales

by

Stewart Smith

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EXECUTIVE SUMMARY

An era of reconciliation between indigenous and modern Australians has led to a variety of processes whereby Aboriginal people can claim land. As a result, Commonwealth national park lands have been returned to traditional owners on condition of lease back to the government as a national park, and in New South Wales vacant Crown land has been claimable by Aboriginal people. In New South Wales, the process of Aboriginal reconciliation gained a firm footing with the passing of the *Aboriginal Land Rights Act 1983*.

The *Aboriginal Land Rights Act 1983* aims to assist Aboriginal self determination by improving financial independence and increasing access to land (page 3). The Act established Aboriginal Land Councils to make claims on Crown land. Criteria for claimable land included available Crown land that was not needed for residential development or an essential public purpose. From commencement of the Act to the end of the 1995-96 financial year, 5 863 claims for Crown land have been lodged. 4,542 of these claims have been finalised, with 1 132 claims granted covering an area of 55 463 hectares of land valued at $184 million. At 30 June 1996, 1544 claims remained under investigation by the Department of Land and Water Conservation (page 5).

Section 28 of the *Aboriginal Land Rights Act* provides for the payment of 7.5 percent of land tax from 1984 to 1998 into the NSW Aboriginal Land Council account. The Act requires fifty percent of this money to be invested, and the interest from this to be reinvested, and the balance is used to meet expenditure for the operations of all the Land Councils. From 1999, the NSW Aboriginal Land Council is expected to be financially independent. It is estimated that there will be $530 million in the investment fund by October 1998 (page 5).

Currently, the National Parks and Wildlife Service is responsible for caring and managing Aboriginal heritage in the State, and several national parks are on land which is of cultural significance to Aboriginals. The process of reconciliation over the last 20 years has led to a rethink of the traditional approach (page 5). On a Commonwealth level, this has resulted in two major national parks (Uluru and Kakadu) being handed back to the traditional owners on condition of lease back to the government as a national park (page 9). The national parks are then jointly managed, with an Aboriginal majority Board of Management developing in consultation with conservation agencies a management plan for the park.

In New South Wales, legislation handing over national park land to the traditional owners, on condition of lease back to the government as a national park, was first introduced into Parliament in 1991 (page 11). Initial and subsequent attempts to pass this legislation were unsuccessful. In December 1996 the National Parks and Wildlife Amendment (Aboriginal Ownership) Bill 1996 was introduced and passed (page 15). This Act established a process by which lands of Aboriginal cultural significance can be revoked as a national park and vested on behalf of Aboriginal land owners in an Aboriginal Land Council. The land is then leased back to the Minister administering the *National Parks and Wildlife Act* for use as a national park. National Parks included for initial hand back include: Jervis Bay; Mungo; Mootwingee; Mootwingee Historic Site; Coturaundee Nature Reserve; Mount Grenfell Historic Site; and Mount Yarrowyck

Nature Reserve.

1.0 Introduction

An era of reconciliation between indigenous and modern Australians has led to a variety of processes whereby Aboriginal people can claim land. As a result, Commonwealth national park lands have been returned to traditional owners on condition of lease back to the government as a national park, and in New South Wales vacant Crown land has been claimable by Aboriginal people. In New South Wales, the National Parks and Wildlife Service is responsible for the care and management of the State's natural and Aboriginal heritage. Historically, national parks in Australia have been declared to preserve wilderness, protect scenery, and generally only included land that appeared to be of no productive economic use. The concept of wilderness is part of the mystique of the Australian countryside, used for promoting tourism and cultural inspiration. The modern concept of wilderness largely ignores the fact that the landscape has been occupied and managed by indigenous Australians for over 60,000 years.

Modern day methods of national park management, including restricting the taking or killing of plants and animals, controlling public access and government control, have in some cases dispossessed the traditional owners who have much knowledge about the environment. As a result, Aboriginal land rights are just one competing interest for access to land, along with other activities such as mining, nature conservation and resource use. In most States, national parks have been declared with no reference to the traditional owners, and are often seen by them as a major exclusionary influence.[1] In New South Wales, legislation to hand back national park land to the traditional landowners, on condition of lease back to the government as a national park, was passed in December 1996. This is part of a process of reconciliation with Aboriginal people, established on a firm footing with the passing of the *Aboriginal Land Rights Act 1983*.

2.0 The Aboriginal Land Rights Act 1983

This Act aims to assist Aboriginal self determination by improving financial independence. The intent of the Act can be found in the second reading speech by the Hon F.J. Walker, MP, Minister for Aboriginal Affairs, when he stated "In recognising prior ownership, the Government thereby recognises Aboriginal rights to obtain land. The Government believes the essential task is to ensure an equitable and viable amount of land is returned to Aborigines."[2] The Act established mechanisms to achieve this, principally by the formation of Aboriginal Land Councils making claims on Crown land. The Act also established a source of compensation in recognition that Aboriginal people have a valid claim to be financially compensated for the loss of their land and for the deprivation that loss has caused.

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1 Toyne,P and Johnston,R. "Reconciliation, or the new dispossession. Aboriginal land rights and nature conservation." in *Habitat Australia*, Vol 19, No 3, June 1991 at 9.

2 NSWPD, 24 March 1983, p 5089.

This Act established Local, Regional and State Aboriginal Land Councils, which had a variety of functions vested in them. Local Aboriginal Land Councils may be declared by the Minister administering the Act, and each Local Council maintains a roll of adult Aborigines who are members of the Council. The members of the Council elect a chairperson and other officers to run the Council. The Act makes reference to 11 functions of a Local Aboriginal Land Council, including: to acquire land; to make claims to Crown lands; to upgrade and extend residential accommodation for Aborigines in its area; and to consider applications to prospect or mine for minerals on its land and make recommendations to the NSW Aboriginal Land Council.

Regional Aboriginal Land Councils are also appointed by the Minister and are comprised of Local Aboriginal Land Councils. Functions of the Regional Councils include providing assistance to Local Councils to prepare claims for Crown land and administrative procedures.

The Act also established the New South Wales Aboriginal Land Council, which is comprised of full-time Aboriginal councillors equal in number to the number of Regional Aboriginal Land Councils. Each councillor is elected to represent a Regional Aboriginal Land Council area. The Act outlines 14 functions of the Council, including: to make claims to Crown lands, either on its own behalf or on behalf of a Local Council if requested; grant funds for the payment of administrative costs of Local and Regional Councils, conciliate disputes between other Aboriginal Land Councils; and to acquire land.

Section 36 of the Act outlines the criteria that must be satisfied for Crown land to be claimable by a Land Council. These criteria include land vested in Her Majesty that:

- are able to be lawfully sold or leased, or are reserved or dedicated for any purpose, under the Crown Lands Consolidation Act 1913 or the Western Lands Act 1901. National Parks and State Forests do not fall within the jurisdiction of the Crown Lands Act and are therefore not claimable under this Act;
- are not lawfully used or occupied;
- do not comprise lands which, in the opinion of a Crown Lands Minister, are needed or likely to be needed as residential lands;
- are not needed, nor likely to be needed, for an essential public purpose;
- do not comprise lands that are the subject of an application for a determination of native title;
- do not comprise lands that are the subject of an approved determination of native title (other than a determination that no native title exists in the lands).

The Act does not provide for the return of lands which are of cultural or traditional significance to Aboriginal people. As such, under this Act, Aborigines are not required to show a need or traditional association with the land being claimed.

Upon receipt of a claim for Crown land, the Minister administering the Crown Lands Act determines if a claim is granted or not. If refused, the Council may appeal to the Land and Environment Court, and the Court may order that the lands be transferred to the Land Council. However, upon receipt of a certificate from the Crown Lands Minister stating that any land subject of a claim is needed or likely to be needed as residential land, or is needed or likely to be needed for an essential public purpose, then that is accepted as final evidence to refuse a claim, and no appeal or review on whatever grounds is permitted.

An Aboriginal Land Council is permitted to sell land vested in it subject to a variety of provisions included in the Act. The most significant provision is that at a meeting of the Local Aboriginal Land Council, not less that 80 per cent of the members of the Council present and voting have determined that the land is not of cultural significance to Aborigines of the area and should be disposed of. The Act defines cultural significance to Aborigines as significant in terms of traditions, observances, customs, beliefs or history of Aborigines.

Since the introduction of the legislation to the end of the 1995-96 financial year, 5 863 claims for Crown land have been lodged. 4,542 of these claims have been finalised, with 1 132 claims granted covering an area of 55 463 hectares of land valued at $184 million. At 30 June 1996, 1544 claims remained under investigation by the Department of Land and Water Conservation.[3]

The 1993/94 Annual Report of the NSW Aboriginal Land Council highlighted what the Council considered a frustrating and disappointing land claims process. The low number of land claims granted; the excessive and unacceptable delay in the processing of land claims; and the highly restrictive interpretations given to the tests of claimable land by administrative departments were given as reasons for disappointment.[4]

Section 28 of the Act provides for the payment of 7.5 percent of land tax from 1984 to 1998 into the NSW Aboriginal Land Council account. The Act requires fifty percent of this money to be invested, and the interest from this to be reinvested, and the balance is used to meet expenditure for the operations of all the Land Councils. From 1999, the NSW Aboriginal Land Council is expected to be financially independent. It is estimated that there will be $530 million in the investment fund by October 1998.[5]

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3 NSW Department of Land and Water Conservation, *1995 - 96 Annual Report*, (Vol 1.) at 32.

4 New South Wales Aboriginal Land Council, *Annual Report 1993-94*, at 8.

5 NSW Aboriginal Land Council, *Beyond the Sunset*. This is a vision statement and a Policy Charter of the Land Council, formulated at a meeting in May 1996.

3.0 Conservation Reserves and Indigenous People

Historically, conservation reserves such as national parks have been declared with little regard to the traditional land owners, and in effect the conservation agenda has helped dispossess indigenous people of their land. Conservation reserve management in Australia has traditionally used the 'museum' approach, where tracts of land are 'locked' away, usually precluding settlements, promoting public ownership and government control. This approach overlooks the fact that indigenous people have been managing their environment for over 60,000 years. European management philosophy usually does not take account of the fact that existing biological diversity is attributable to Aboriginal management practices such as hunting strategies and taboos, traditional tenure systems limiting access, use of fire for renewal purposes, and sacred sites and ceremonies which gave protection over important areas.[6] Whilst there has been action nation wide to hand back national parks to traditional land owners on condition of lease back to the government, the pressure is still very much on Aboriginal people to show that they can operate within Western conservation strategies.[7]

The form of cooperation between governments and traditional land owners featured around the country in relation to Aboriginal ownership of national parks has been the concept of 'joint management'. Joint management is the sharing of control of an area by two or more different interest groups.[8] The main aim of joint management is to provide for the conservation of the park and to maintain its value to the traditional owners. The concept of joint management of national parks in Australia has been around since the early 1970's. In 1973 the Commonwealth government established the Aboriginal Land Rights Commission. In the second report, Commissioner Justice Woodward commented upon reconciling Aboriginal interests with conservation. He noted:

> I accept the view that Aboriginal interests have much in common with those of conserving the environment. However, it would be foolish to ignore the fact that there are some areas in which they will come into conflict.[9]

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6 Miller,B. "Green fingers across a black land. The Nature Conservation Act 1992 (Qld) as it relates to Aboriginal land rights and self determination" in *Aboriginal Law Bulletin*, Vol 2 No 58, October 1992.

7 Beacroft,L. "Conservation: Accommodating Aboriginal interests or the new competitor?" in *Aboriginal Law Bulletin*, No 26, June 1987.

8 Craig,D., "Environmental Law and Aboriginal Rights: Legal Frameworks for Aboriginal Joint Management of Australian National Parks" in Birckhead,J et al (Eds) *Aboriginal Involvement in Parks and Protected Areas*, Australian Institute of Aboriginal and Torres Strait Islander Studies, at 140.

9 The Parliament of the Commonwealth of Australia, *Aboriginal Land Rights Commission Second Report April 1974.* Canberra 1975, at paragraph 506.

Potential areas of conflict include the management of feral animals and plants. Many of these ferals are considered a resource by Aboriginal people, to be exploited for food and income. Nature conservation perspectives would require that feral animals and plants are not 'produced' as such, but are removed from the ecosystem. Another area of potential conflict includes traditional hunting rights for Aboriginals in national parks - especially contentious is the use of rifles for killing wildlife.

Justice Woodward also commented upon the principles of joint management:

> The principle of joint management seems to be generally accepted. ... The principles to be observed are: there should be a group of Aboriginals working together on any Board, entitled to the confidence of numbers; Aboriginal interests on the Board must not be able to be out-voted by conservation interests without having their point of view considered by an independent adjudicator; it must not be expected that Aborigines should provide, on their lands, all the conservation areas necessary to placate the conscience of the wider community; attempts should be made to reconcile Aboriginal needs and the needs of conservation by compromise within a given area; and Aboriginal interests should only be overruled where the case for conservation is a strong one - for instance if Aboriginal activities threatened the survival of a species.[10]

The basis of joint management is that conservation and Aboriginal interests are compatible. This is complemented by the growing recognition that national parks are not areas of pristine wilderness but are cultural landscapes brought about by thousands of years of Aboriginal management.[11] A fundamental aspect of joint management is as follows: Aboriginal interests are given title to the land encompassed in national parks on the condition that the land is then leased back to the appropriate conservation agency for use as a national park. The park is then jointly managed by the traditional owners and the conservation agency. Joint management is one method where the traditional owners can share their knowledge about the environment with the rest of humanity.[12] Potential disadvantages for the traditional owners include: Aboriginals are forced into a lease back agreement; and management plans need Ministerial approval. This has led

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10 The Parliament of the Commonwealth of Australia, *Aboriginal Land Rights Commission Second Report April 1974.* Canberra 1975, at paragraph 507 and 508.

11 Birckhead,J and Smith,L. "Introduction: Conservation and Country - A Reassessment" in Birckhead,J et al (Eds) *Aboriginal Involvement in Parks and Protected Areas*, Australian Institute of Aboriginal and Torres Strait Islander Studies, at 4.

12 Craig,D., "Environmental Law and Aboriginal Rights: Legal Frameworks for Aboriginal Joint Management of Australian National Parks" in Birckhead,J et al (Eds) *Aboriginal Involvement in Parks and Protected Areas*, Australian Institute of Aboriginal and Torres Strait Islander Studies, at 140.

some people to claim that joint management is "establishing new relations of domination rather than self management."[13]

Joint management and lease back of national parks began with Kakadu National Park in 1978. Since then, joint management also operates in Uluru, Gurig and Nitmiluk National Parks, all in the Northern Territory. The Uluru joint management agreement is considered to be a 'model' arrangement, and is described in more detail later in this paper.

4.0 The Royal Commission into Aboriginal Deaths in Custody

The Commission considered land management issues in its deliberations and included what is known as the Millstream Recommendation. This recommendation did not originate with the Commissioners, instead it was developed by Aboriginal representatives at a meeting with the Department of Conservation and Land Management at Millstream - Chichester National Park in Western Australia in 1990. The Royal Commission adopted the recommendation in its final report. Recommendation 315 is as follows:

Recommendation 315 (The Millstream Recommendation)[14]

a) The encouragement of joint management between identified and acknowledged representatives of Aboriginal people and the relevant State agency;

b) The involvement of Aboriginal people in the development of management plans for National Parks;

c) The excision of areas of land within National Parks for use by Aboriginal people as living areas;

d) The granting of access by Aboriginal people to National Parks and Nature Reserves for subsistence hunting, fishing and the collection of material for cultural purposes (and the amendment of legislation to enable this, where necessary);

e) Facilitating the control of cultural heritage information by Aboriginal people;

f) Affirmative action policies which give preference to Aboriginal people in employment as administrators, rangers, and in other positions within National

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13 Moreton-Robinson,A. And Runciman,C. "Land Rights in Kakadu: Self Management or Domination" *Journal for Social Justice Studies*, Vol 3, 1990, at 75.

14 Royal Commission into Aboriginal Deaths in Custody, *National Report*, Recommendation 315, 1991, AGPS.

Parks;

g) The negotiation of lease-back arrangements which enable title to land on which National Parks are situated to be transferred to Aboriginal owners, subject to the lease of the area to the relevant State or Commonwealth authority on payment of rent to the Aboriginal owners;

h) The charging of admission fees for entrance to National Parks by tourists;

i) The reservation of areas of land within National Parks to which Aboriginal people have access for ceremonial purposes; and

j) The establishment of mechanisms which enable relevant Aboriginal custodians to be in control of protection of and access to sites of significance to them.

The aim of the Millstream Recommendation is to give Aboriginal people control over their heritage, and in effect some control over their future. Presently, the NSW National Parks and Wildlife Service is responsible for protecting and managing Aboriginal heritage in the State. Some commentators believe that the response of the state and commonwealth governments to the Millstream recommendation has generally been poor. For instance, the Australian Conservation Foundation commented:[15]

> From a national perspective, the adoption of the Millstream Recommendation by the Royal Commission [into Aboriginal Deaths in Custody] has encouraged governments to support the 'soft' principles expressed in terms of 'encouraging' and 'facilitating' whilst effectively continuing with the status quo, defined by local State and Territory conditions. The fundamental principle of the right of Aboriginal people to the substantive involvement in the control and management of reserved areas is not specifically addressed in the Millstream Recommendation, although it was the overwhelming theme of the Aboriginal delegates to the Millstream Conference.

However, at least in New South Wales the recent passage of the *National Parks and Wildlife Amendment (Aboriginal Ownership) Act 1996* will help satisfy many of the principles as outlined in Recommendation 315.

5.0 The Uluru Agreement

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15 Woenne-Green,S *et al*, *Competing Interests. Aboriginal Participation in National Parks and Conservation Reserves in Australia*. Australian Conservation Foundation, 1994 at i-ii.

Under the Commonwealth *National Parks and Wildlife Conservation Act 1975*, Aboriginal lands declared as national parks and reserves are leased back to the Commonwealth Government. The parks are controlled by a Board of Management, which has a controlling majority of indigenous owners. Unlike some State Acts, the NPWC Act does not specify what conditions a lease agreement between traditional landholders and the government must contain. The Uluru National Park lease is for 99 years, renegotiated every five years. In 1991, the traditional owners were paid a rental of $75,000 and 20% of the entrance fees. Other terms the lease incorporated included:[16]

- the right for traditional owners to enter the Park
- the right to continue the traditional use of any area of the Park for hunting or food gathering
- the right to continue the traditional use of any area of the Park for ceremonial and religious purposes
- the right to reside within the Park... as specified in the Plan of Management

The Board of Management is responsible for preparing a plan of management for the Park. The management plan is very important and is the principle means by which the wishes of the traditional owners can be enacted in day to day management of the Park. The lease agreement also details some specific covenants with regard to the traditional owners of the Park. These include:

- to promote and protect the interests of relevant Aboriginals
- to protect areas and things of significance to relevant Aboriginals
- to encourage the maintenance of Aboriginal traditions
- to take all practicable steps to promote Aboriginal administration, management and control of the Park
- establish a training program for traditional owners in skills relevant to administration, management and control of the Park
- to engage as many relevant Aboriginals as is practicable to provide services in relation to the Park
- to take all practicable steps to adjust working hours and conditions to the needs and culture of Aboriginals employed in the Park
- to promote among non-Aboriginal staff and visitors to the Park a knowledge and understanding of Aboriginal culture
- to regularly consult and liaise with relevant Aboriginal councils and interests in connection with the administration, management and control of the Park
- to encourage Aboriginal business and commercial initiatives and enterprises within the Park.

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16 For greater detail in these areas see: Willis,J. "Two laws, one lease: Accounting for traditional aboriginal law in the lease for Uluru National Park." in Birckhead,J et al (Eds) *Aboriginal Involvement in Parks and Protected Areas*, Australian Institute of Aboriginal and Torres Strait Islander Studies, at 160.

The experience of Kakadu and Uluru National Park joint management has generally been a positive one. As a result, the concept of joint management of national parks on Aboriginal land is generally accepted.

6.0 In Pursuit of Legislation for New South Wales

With the commencement of the *National Parks and Wildlife Act 1974*, the control and management of Aboriginal heritage is vested in the National Parks and Wildlife Service and the Minister controlling the Service. There has been no legal mechanism for Aboriginal people to have a say in the management of their own heritage, and some have argued that legislation has actively alienated Aboriginal people from their own heritage.[17] Awareness of these limitations was highlighted in 1983 when traditional land owners at Mutawintji National Park blockaded sacred areas in a demonstration against the management practices of the NPWS.[18]

On 1 May 1991 the Minister for the Environment Hon Tim Moore MP introduced into the Legislative Assembly the National Parks and Wildlife (Aboriginal Ownership) Amendment Bill and the cognate Aboriginal Land Rights (Aboriginal Ownership of Parks) Amendment Bill. The bills lapsed due to an election and were re- introduced by Hon Tim Moore MP in July 1991. Whilst the re-introduced bills were not exactly the same as originally introduced, the substance of the legislation was the same.

The 1991 bills sought to amend the *National Parks and Wildlife Act 1974* to permit the revocation of national parks, heritage sites and nature reserves from the Act to be vested in the control of the NSW Aboriginal Land Council or a Local Aboriginal Land Council. In return for this control the responsible Council must: lease the land formerly comprising the national park or reserve back to the Minister; and the land must be reserved or dedicated as a park, historic site or reserve as the case requires. If the Aboriginal Council did not wish land to be vested to it with these two conditions the Minister had the option to negotiate the terms of an appropriate lease.

The bills specified the provisions that a lease of land back to the Minister must include:

- A lease was to be for the whole of the land vested in the Council

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17 See for example: Geering,K and Roberts,C. "Current limitations on Aboriginal involvement in Aboriginal site management in central west and northwest New South Wales." In Birckhead,J et al (Eds) *Aboriginal Involvement in Parks and Protected Areas*, Australian Institute of Aboriginal and Torres Strait Islander Studies, at 213.

18 Bates,B and Witter,D. "Cultural tourism at Mutawintji - and beyond." in Birckhead,J et al (Eds) *Aboriginal Involvement in Parks and Protected Areas*, Australian Institute of Aboriginal and Torres Strait Islander Studies, at 217.

- lease was to be of 99 years duration with options to renew with no limitations on renewal
- a nominal rental of $1 per year if demanded
- a term acknowledging that the Director of the National Parks and Wildlife Service is to continue to have the care, control and management of the land, including all authority that Director and staff are permitted to confer
- the establishment of an advisory management committee with majority Aboriginal representation
- a term acknowledging that the Aboriginal Land Council and its agents must comply with all provisions of the NPWA, notably with the provisions concerning the protection of plants and animals
- general public access to the lands in accordance with the NPWA
- a term preventing the sale of the land without the consent of the Minister.

The Minister was required to consult with the Aboriginal Land Council prior to any making or changing any regulations or plans of management in respect of the land.

Once a draft lease had been negotiated, the Minister was required to present the lease to both houses of the Parliament, either of which could disallow it. If no resolution was passed to disallow the draft lease, the national park or reservation was revoked upon notification in the Gazette.

The bill established Schedule 4 to the NPWA, called Lands of Special Cultural Significance to Aboriginal Persons. Only those Parks on this schedule could be revoked, and only an Act of Parliament could omit or insert a reserve in the schedule. The bill contained four areas for initial inclusion as Aboriginal Lands. These were: Mungo National Park; Mootwingee Historic Site; Mount Grenfell Historic Site; and Mount Yarrwyck Nature Reserve.

Upon adjournment of debate on 14 November 1991 the Minister foreshadowed further consultation and changes and stated that a new bill or bills would be drafted and submitted to a Legislation Committee. The 1991 bills were subsequently sent to a Legislation Committee, which reported back to Parliament on 25 November 1992.[19] On 25 February 1992 Hon Tim Moore MP introduced into Parliament the National Parks and Wildlife (Aboriginal Ownership) Amendment Bill 1992. The Legislation

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19 Parliament of New South Wales Legislative Assembly, *Report of the Legislation Committee upon the National Parks and Wildlife (Aboriginal Ownership) Amendment Bill 1992,* 1992.

Committee looked at both this 1992 bill and the 1991 bills.

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

The substance of the 1992 bill was similar to previous bills but with a few changes. Significantly, lease provisions for revoked reserve estate land contained much less harsh restrictions. Under the 1992 bill provisions of the lease were to include:

- the whole of the land vested in the Aboriginal Land Council
- a term of 30 years, with options to renew the lease for further terms
- nominal rental of $1 if demanded
- the naming or other identification of the traditional owners of the land, being those Aboriginal persons have a close association with the land
- a term acknowledging that the care, control and management of the land to be vested in a board of management
- the Directors powers are subject to any plan of management and to any directions given and supervision and oversight by the board of management
- a term permitting Aboriginal people the right to use the land for hunting and fishing, gathering of traditional foods for domestic, ceremonial or religious purposes to the extent that entry or use is in accordance with Aboriginal tradition
- a provision that the Aboriginal Land Council or its agents must comply with the provisions of the NPWA 1974
- a term acknowledging that the public generally has a right of access to the lands (subject to any management plan).

The bill established Schedule 4 to the NPWA, called Lands of Special Cultural Significance to Aboriginal Persons. Only those Parks on this schedule could be revoked, and only an Act of Parliament could omit or insert a reserve in the schedule. The bill contained four areas for initial inclusion as Aboriginal Lands. These were: Mungo National Park; Mootwingee Historic Site, Mootwingee National Park and Coturaundee Nature Reserve; Mount Grenfell Historic Site; and Mount Yarrwyck Nature Reserve.

8.0 Report of the Legislation Committee upon the National Parks and Wildlif e (Aboriginal Ownership) Amendment Bill 1992.

The Committee reported to Parliament in November 1992, making 29 recommendations about the legislation. The Committee recommended that the legislation proceed in

accordance with amendments as contained in an appendix to the report.

Some of the main changes to the legislation as suggested by the Committee included:

- In regard to the renewal of the lease of land back to the Minister, the lease is not automatically renewed every 30 years, instead renewal requires the consent of each party.

- the provisions for a nominal rental of $1 is removed, instead rent is to paid, calculated for the term of the lease that compensates the Aboriginal Land Council for the fact that it or they do not have the full use and enjoyment of the lands subject to the lease. The suggested amendments incorporated seven factors to help determine the rental amount.

- a Register of traditional Aboriginal owners was to be maintained by the Aboriginal Land Council in which the lands were vested in. This Register replaces the naming of Aboriginal owners in the lease agreement as per previous bills. A person who considers that their name has been wrongly placed or omitted from the Register may request the Aboriginal Land Council to rectify the Register. If refused, the person may appeal to the Land and Environment Court.

- any money, including rent paid by the Minister, is to be paid into a separate Fund to be spent in connection with the park or reserve and in accordance with the provisions of any plan of management for the park.

- a Board of Management consisting of at least 9 but not more than 13 members is to be appointed to each of the lands dedicated under this Act. The Committee recommended that a representative from the Local Council and an owner or lessee of land adjoining the park be included on the Board of Management. However, the Board only has a quorum if a majority of those members present are those persons nominated by the lessors of the land comprised within the park.

- whilst a Board of Management is under Ministerial control, the Committee suggested amendments that the Minister may not give directions to the Board in relation to: the contents of any report, advice or recommendation made by the Board; and any decision of the Board that is not inconsistent with this Act and the plan of management for the park, relating to the care, control and management of Aboriginal heritage and culture of the park.

- the National Parks and Wildlife Service is to prepare a review of the Act and the policy objectives of the Act five years after assent of the Act, with the review to be presented to the Parliament.

- a plan of management for a park dedicated under this Part of the Act is to be

prepared by the Board of Management in consultation with the Director (in previous bills the plan was to be prepared by the Director in consultation with the Board).

The government did not proceed with the bill. In 1994 C. Markham MP introduced the National Parks and Wildlife (Aboriginal Ownership) Amendment Bill as a Private Members Bill, incorporating the amendments of the Legislation Committee. This bill also did not proceed.

8.1 Other Recommendations for the National Parks and Wildlife (Aborigina l Ownership) Amendment Bill 1992.

In late 1992 the Australian Conservation Foundation released a major report on Aboriginal participation in National Parks.[20] The authors recommended that the 1992 bill proceed promptly, but with some notable exclusions. These included:

- that provisions for membership of a board of management not include a representative of the local government council and an adjoining land owner;
- that the annual rental not be paid into the Fund and spent according to the management plan, but be paid directly to the Local Aboriginal Land Council in whom the land is vested for purposes to be determined by that Council's members;
- that details of the lease provisions not be included in the bill but be made subject to direct negotiation between the National Parks and Wildlife Service and the traditional owners;
- amend the wording in the bill relating to: the purpose of the legislation; the board; the plan of management and the lease so that they all have regard to the maintenance, protection and encouragement of Aboriginal cultural heritage and aspirations;
- that the bill and or lease agreement includes a clause specifying that 'nothing in this lease/Act is intended or shall operate to extinguish or in any way diminish or impair native title'.

The authors of the report also recommended that the State government introduce Aboriginal Heritage legislation and establish an Aboriginal Heritage Council which would gradually take over the care and management of Aboriginal Heritage from the National Parks and Wildlife Service.

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[20] Woenne-Green,S *et al*, *Competing Interests. Aboriginal Participation in National Parks and Conservation Reserves in Australia*. Australian Conservation Foundation.

9.0 The National Parks and Wildlife Amendment (Aboriginal Ownership) Bil l 1996

This bill was introduced by Environment Minister Hon Pam Allan MP on 20th November 1996, and passed through all stages on 5th December 1996. The subsequent Act amends the *National Parks and Wildlife Act 1974* to enable selected reserved lands of Aboriginal cultural significance to be revoked and ownership vested on behalf of Aboriginal owners in an Aboriginal Land Council. The land is then to be leased back to the Minister to be reserved as a national park under the amended provisions of the Act. National Parks included for initial hand back include: Jervis Bay; Mungo; Mootwingee; Mootwingee Historic Site; Coturaundee Nature Reserve; Mount Grenfell Historic Site; and Mount Yarrowyck Nature Reserve.

A park on Aboriginal land is controlled by a Board of Management. The Board consists of at least 11 but no more than 13 members, appointed by the Minister, the majority of which are to be Aboriginal owners of the land. The Board is responsible for the care, control and management of the land, the preparation of plans of management for the park and supervision of payments from a Fund. The Board is still subject to the control and direction of the Minister.

The Act specifies matters that must be taken into account in the lease between the Aboriginal Land Council and the Minister. The lease must be of at least 30 years, with a renewal of the lease each 30 years, as long as each party consents to renewal. The lease must allow for the Aboriginal owners of the land and other Aboriginals with consent, to enter and use the land for hunting and fishing or gathering of traditional foods for domestic purposes or for ceremonial and cultural purposes. The lease is to be reviewed every five years, and may be amended, including the provisions relating to the rent and term of the lease.

The Minister is to pay rent under any lease entered into with an Aboriginal Land Council, with an amount as negotiated or determined by the Valuer-General. The rent is payable into a Fund, and must be spent on the management of the lands, including the preparation of a plan of management of the land, and in accordance with the provisions of a plan of management for the land.

Whilst the bill was widely supported across the community and was passed with the support of the Coalition Opposition and cross-benchers, areas of concern included threats against nature conservation in national park areas, and the use of guns in national parks by traditional owners for hunting purposes.[21] For instance, in the Legislative Council the Hon J.F. Ryan MLC read out at letter from the National Parks Association about the bill. The letter stated: "There is concern that hunting and gathering for

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[21] See "Gun use worry causes delay in park handover" in *The Sydney Morning Herald*, 4 December 1996.

'domestic' purposes is undefined and open-ended, cultural and ceremonial would seem to cover all that is needed for traditional owners and in keeping with the spirit of the Bill. NPA also needs to be convinced that these provisions cannot lead to public risk or to increased degradation of the natural ecosystems by selective taking, including taking of fire wood (already a problem in national parks)."[22]

10.0 Conclusions

Aboriginal reconciliation is the driving force behind legislative programs to hand over national park areas to their traditional owners. This approach recognises that Aboriginal people have forged a special relationship with their environment, and joint management can provide learning experiences for both conservation agencies and traditional owners. There are also other mechanisms for Aboriginal people to claim land. Under the *Native Title Act 1993 (Cth)*, Aboriginal people can claim native title to land. The Act contains a process for determining whether or not native title exists and what rights and interests native title holders have in relation to 'claimed land.' In the 1995-96 financial year, 52 applications for determination of Native Title were lodged with the Native Title Tribunal. Of these, 21 claims were made by Aboriginal people claiming to hold native title in lands throughout NSW.[23]

At present, there are several native title claims over national parks in New South Wales, including Royal National Park south of Sydney. National park tenure does not necessarily extinguish native title, and any claim over a national park would be the subject of mediation between the parties, and may subsequently be referred to the Federal Court for final determination. Clearly, aboriginal involvement in national parks and land management is an evolving issue.

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22 NSWPD, 5 December 1996, p 7054. Letter from the National Parks Association as read out by Hon J. Ryan, MLC.

23 NSW Department of Land and Water Conservation, *1995 - 96 Annual Report*, (Vol 1.) at 33.