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National Parks in NSW

by

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EXECUTIVE SUMMARY

The world's leading conservation organisation, the World Conservation Union (IUCN) defines a protected area as: "... an area of land and or sea especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means." The World Conservation Union then further defines protected areas into six categories, depending on the reason for and level of protection (page 1).

The first national park in Australia was the National Park (later Royal National Park) south of Sydney, reserved in 1879. The National Park was a Crown reserve, established not for nature conservation but for lawns and gardens and recreational pursuits.

Early legislation to protect species in New South Wales focussed on those plants and animals considered 'cute and cuddly' or pleasing to the eye (pages 2-3). The *National Parks and Wildlife Act 1967* established national parks, state parks, nature reserves and the National Parks and Wildlife Service. In 1974 a new Act was introduced which tidied up existing legislation. The *National Parks and Wildlife Act 1974* still governs the operations of the National Parks and Wildlife Service to this day (page 5).

The NSW National Parks and Wildlife Service has eight different categories of protected areas, each of which have a different 'purpose' or design. National parks are defined as: relatively large areas set aside for their predominantly unspoiled natural landscape, and flora and fauna. As at 30 May 1998, there were 103 national parks with a total area of 3 764 654 hectares (page 7).

In 1995 the NSW Government signed the National Strategy for the Conservation of Australia's Biological Diversity, which committed the Government to the establishment of a comprehensive, adequate and representative network of terrestrial and marine protected areas. The NSW Draft Biodiversity Strategy identifies performance targets for establishing a comprehensive, adequate and representative (CAR) reserve system, based on comprehensive regional assessments, for forests by the year 2000 and for all other terrestrial and marine ecosystems by the year 2010 (pages 8-9).

The current conservation reserve system in NSW does not include all ecosystems. There is a geographic bias towards more protected areas on parts of the coast, the ranges and the north-west desert. Fertile coastal plains, commercial forest ecosystems, the tablelands and the western slopes and plains remain poorly represented in the reserve system. As at the 30 May 1998, 4 551 372 hectares were reserved under the *National Parks and Wildlife Act*, which was approximately 5.67% of the total land area of NSW (pages 10-13).

Over the last few years there has been several significant amendments to the *National Parks and Wildlife Act 1974*. These include: the *National Parks and Wildlife Amendment Act (Aboriginal Ownership) Act 1996*; the *National Parks and Wildlife Amendment Act (Regional Parks) Act 1996* which created a new category of protected areas called regional parks, and the *Marine Parks Act 1997*. The passing of the *Forestry and National Park Estate Act 1998* created a large number of new national parks (pages 13-15).

1.0 Introduction

The world's leading conservation organisation, the World Conservation Union (IUCN) defines a protected area as: "... an area of land and or sea especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means."¹ As explained in section 2.0, the World Conservation Union then further defines protected areas into six categories, depending on the reason for and level of protection.

The NSW National Parks and Wildlife Service has eight different categories of protected areas, each of which have a different purpose or design. The World Conservation Union (IUCN) definition of a protected area highlights the protection of biological diversity. Historically, many of the protected areas first declared in NSW were protected for their scenic attributes and recreational pursuits. As a result of this legacy of protecting areas for their scenery, and other influences such as only protecting lands considered not worthy of any commercial production, the current protected area reserves in NSW do not include all ecosystems. There is a geographic bias towards more protected areas on parts of the coast, the ranges and the north-west desert. Fertile coastal plains, commercial forest ecosystems, the tablelands and the western slopes and plains remain poorly represented in the reserve system.

Since the election of the ALP in 1995, the Carr Government claims to have created 151 new national parks or reserves during its term. There have also been a number of amendments made to the *National Parks and Wildlife Act 1974*, which is now approaching 25 years of age. There is one school of thought that believes the Act should be totally rewritten to reflect modern approaches to conservation.

2.0 The Development of National Park Legislation

The first national park in Australia was the National Park (later Royal National Park) south of Sydney, reserved in 1879. The National Park was a Crown reserve, established not for nature conservation but for:²

- ornamental plantations, lawns and gardens;
- zoological gardens;
- racecourses;
- cricket or any other legal game;
- rifle butt or artillery range;
- bathing places; and
- "any public amusement or purpose which the Governor may ... approve."

¹ National Parks, Visions for the New Millennium. University of Sydney 16-19 July 1998. *Symposium Workshop Papers*. At 12.

² National Parks, Visions for the New Millennium. University of Sydney 16-19 July 1998. *Symposium Workshop Papers*. At 15.

The Trustees were expressly permitted to license mining and quarrying, activities which are now prohibited in national parks.

Early legislation to protect species in New South Wales focussed on those plants and animals considered ‘cute and cuddly’ or pleasing to the eye which were considered to be worthy of protection. For instance, in 1927 the *Wild Flowers and Native Plants Protection Act* came into force. In the Parliamentary second reading debate on the above bill, it was stated “we have probably the most beautiful wild flowers in the world and they are a great asset to us. If we take no measures to protect them we shall at a very early date lose that great asset.”³ Others claimed “If school children are taught to love all that is beautiful we shall not have much trouble in protecting the native flora.”⁴ Clearly the emphasis was on protecting the beauty of such plants and not the preservation of the plants for their own sake or for biodiversity reasons. In a similar fashion fauna were protected as well with the enactment of the *Fauna Protection Act 1948*.

2.1 The Fauna Protection Act 1948

This Act made provision for the protection and preservation of fauna, defined as mammals and birds. A Fauna Protection Panel was established to advise the Minister on the administration of the Act, manage faunal reserves, conduct research and engage in educational activities to awaken and maintain an appreciation of the value of bird and animal life (section 6). A Chief Guardian of Fauna was appointed, and faunal reserves were established to protect and care for, propagate and promote the study of fauna.

Schedule One of the Act contained a list of unprotected fauna. Whilst some of the animals on Schedule one were introduced pests such as rabbits, many of the birds and mammals were native species. Fauna on Schedule One were not protected and were subject to hunting and ‘pest control’, whilst all other fauna were protected. It was an offence to take or kill any protected fauna unless the Minister declared an open season for that species (s18). The Minister could also declare protected fauna to be rare, in which case an open season for that species could not be declared (s20). The Act also made provision for the taking or killing of protected fauna under licence for such occupations as trappers and traders of fauna.

In his Second Reading speech about the Fauna Protection Bill, the Minister Hon C Evatt MLA quoted from the Fauna Investigation Committee, which was established to report upon fauna protection. Mr Evatt stated: “the preservation of Australian fauna must be accepted by the State for economic reasons and as a very deep and lasting moral obligation”.⁵ Stating that the educational aspects of the Bill were very important, he continued “When the public realises the economic value and the national appeal of

³ NSWPD, 28 October 1926, page 652. Statement by the Hon J Fitzgerald MLA, Minister for Local Government

⁴ NSWPD, 28 October 1926, page 658. Statement by Lt.-Colonel Bruxner MLA

⁵ NSWPD, 9 December 1948, page 1285.

Australian bird and animal life, its protection and conservation will be that much easier”.⁶

The *Fauna Protection Act 1948* complemented the *Wildflowers and Native Plants Protection Act 1927*, with each piece of legislation protecting different parts of the environment. The *Fauna Protection Act* contained the first provisions to specially protect rare fauna, the foundation of endangered species legislation that has extended through to this day. This is significant because the *Fauna Protection Act* included restrictions on property rights - restricting the taking or killing of protected fauna. However, a balancing mechanism was introduced which allowed property holders to be granted a license to take or kill protected fauna, a provision that has lasted to this day.

The first faunal reserve dedicated was the John Gould Faunal Reserve No 1, over Cabbage Tree Island near Port Stephens, in September 1954. Faunal reserves were, arguably, the first modern protected areas in NSW.

By the mid 1960s there was a wide range of protected areas, many with different names in use. Some were created under their own legislation, some were dedicated under the *Fauna Protection Act*, but most were Crown Reserves created under the *Crown Lands Consolidation Act 1913*. The confusing and uncoordinated nature of all these protected areas led to the introduction of the *National Parks and Wildlife Act 1967*.

2.2 The National Parks and Wildlife Act 1967

This Act established national parks, state parks, nature reserves and the National Parks and Wildlife Service. All of these reserved areas are important for protecting endangered species. However, it is apparent when reviewing the Act the overwhelming importance was preserving scenery within parks and reserved areas for aesthetic reasons. For instance, section 6 provided guidelines for the Director of the NPWS to investigate proposals for the addition of areas to national or state parks. The Director was to have regard to the following principles (section 6(4)):

- (a) the areas to be reserved as national parks are spacious areas containing unique or outstanding scenery or natural features
- (b) the areas to be reserved as state parks are large areas containing unique or outstanding scenery or natural features but substantially less spacious than areas reserved as national parks

The Hon. Tom Lewis MLA, Minister for Lands and Mines and responsible for the Act, said about the National Parks and Wildlife Bill before the Parliament:

“one of the primary objects of this legislation is to put aside sufficient land within this vast State to be preserved for all time for the enjoyment of the natural solitude and beauty within various areas of the State. In addition, and certainly

⁶ NSWPD, 9 December 1948, page 1288.

with equal importance, is the need to halt civilisation's extinction of the various animal and bird life within our shores".⁷

Plans of management were to be prepared for each park, and s29 outlined six objectives of these plans, including:

- (a) the encouragement and regulation of the appropriate use, understanding and enjoyment of each park by the public
- (b) the preservation of each national park in its natural condition, the protection of the special features of the park and the conservation of wildlife therein.

Reflecting the use of national parks, the Act gave the Minister the power to grant leases within a park for the purposes of accommodation, or provision of facilities and amenities for tourists and visitors (section 30). It is apparent from the above that national parks were not to be 'no go' areas, but were to be developed to encourage people to visit as evidenced from point (a) above.

The *National Parks and Wildlife Act* provided a conceptual jump in environmental protection. No longer were just isolated parts of the environment protected, but whole environments and ecosystems were afforded protection. This is not to say that such environments were selected on their biological criteria, for example containing large populations of rare species. Instead, the principles included in the Act to guide National Park selection were based on anthropocentric concerns of protecting scenery.

Several aspects of the Minister's speech are noteworthy. For the first time, the influence of the argument for protecting the environment for future generations became apparent with the reference to parts of the State being preserved for all time. This concept of preserving the environment for future generations, now called intergenerational equity, is an important principle of contemporary endangered species legislation.

The Minister also indicated that National Parks would be proclaimed so that society could enjoy their natural solitude and beauty. He was implicitly stating that the natural environment should be protected not for its own sake but for human enjoyment and recreation, highlighting the anthropocentric nature of this legislation. Whilst the Minister makes reference to the importance of the need to halt animal extinctions, the fact that the National Parks were to be proclaimed with such anthropocentric criteria as scenery makes this a somewhat equivocal goal. No mention was made of the need to protect endangered plants or reptiles, again reinforcing the belief that some species were more important to humans than others. The guidelines for the plans of management to be prepared for each park confirm what now seems the shallow environmental ethic of this legislation.

⁷ NSWPD, 1 December 1966, page 3049.

2.3 National Parks and Wildlife Act 1974

This Act consolidated provisions of the *National Parks and Wildlife Act 1967*, the *Fauna Protection Act* and the *Wild Flowers and Native Plants Protection Act 1927*. The Act introduced the concept of endangered fauna for the first time, (redefined from rare fauna) and basically tidied up existing legislation. The Act continued the system of fauna protection (ie, Schedule 11 contained unprotected fauna, all other fauna were protected whilst Schedule 12 contained endangered fauna). For the first time, the definition of fauna was extended to include mammals, birds and reptiles. Slowly, most probably as a result of greater scientific research highlighting the fragile nature of the environment, more and more elements of the environment were being recognised as worthy of protection.

Under section 120 a licence could be issued to take or kill protected fauna for the purposes of providing specimens to a scientific institution, carrying on of any scientific investigation, exhibiting fauna or for any other specified purpose. A licence could also be issued to occupiers of land to take or kill a specified number of fauna found on the occupier's land. An occupier's licence could not be issued to take or kill endangered fauna.

3.0 What is the Purpose of a National Park

As mentioned earlier, in 1994 the World Conservation Union (IUCN) defined a protected areas as "... an area of land and or sea especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means."⁸

This definition is used as the international standard for determining which lands are part of the world's conservation system, regardless of the name or classification of the land in any particular country. The World Conservation Union (IUCN) has developed seven categories of the term protected area. They are:

Category Ia: Strict Nature Reserve: Protected area managed mainly for science. An area of land and or sea possessing some outstanding or representative ecosystems, geological or physical features and or species, available primarily for scientific research and or environmental monitoring.

Category Ib: Wilderness Area: Protected area managed mainly for wilderness protection. A large area of unmodified or slightly modified land, and or sea, retaining its natural character and influence, without permanent or significant habitation, which is protected and managed so as to preserve its natural condition.

Category II: National Park: Protected area managed mainly for ecosystem protection and recreation. A natural area of land and or sea, designated to:

⁸ National Parks, Visions for the New Millennium. University of Sydney 16-19 July 1998. *Symposium Workshop Papers*. At 12.

- (a) protect the ecological integrity of one or more ecosystems for present and future generations;
- (b) exclude exploitation or occupation inimical to the purposes of designation of the area; and
- (c) provide a foundation for spiritual, scientific, educational, recreational and visitor opportunities, all of which must be environmentally and culturally compatible.

Category III: Natural Monument: Protected area managed mainly for conservation of specific natural features. An area containing one or more, specific natural and or natural/cultural feature which is of outstanding or unique value because of its inherent rarity, representative or aesthetic qualities or cultural significance.

Category IV: Habitat/Species Management Area: Protected area managed mainly for conservation through management intervention. An area of land and or sea subject to active intervention for management purposes so as to ensure the maintenance of habitats and or to meet the requirements of specific species.

Category V: Protected Landscape/Seascape: Protected area managed mainly for landscape/seascape conservation and recreation.

Category VI: Managed Resource Protected Area: Protected area managed mainly for the sustainable use of natural ecosystems. An area containing predominantly unmodified natural systems, managed to ensure the long-term protection and maintenance of biological diversity, while providing at the same time a sustainable flow of natural products and services to meet community needs.

The World Conservation Union (IUCN) recommends that governments commit themselves to several key actions in relation to protected areas. These are:

- clarify and publish the categories of protected areas
- jointly rationalise the existing categories of protected areas
- establish criteria and processes for:
 - access and use of protected areas that is clearly consistent with the principles and objectives of ecologically sustainable development
 - determination of new protected areas
 - changes in the status of protected areas
- develop measures to facilitate nature conservation on private land.

The NSW National Parks and Wildlife Service has eight different categories of protected areas, each of which have a different 'purpose' or design. The 1996-97 Annual Report of the National Parks and Wildlife Service defines national parks as the following:⁹

⁹ NSW National Parks and Wildlife Service, Annual Report 1996-97. 1997 at 10.

National parks: are relatively large areas set aside for their predominantly unspoiled natural landscape, and flora and fauna. They are permanently declared for public education and recreation and are protected from interference other than essential management, so that their natural state is preserved. As at 30 May 1998, there were 103 national parks with a total area of 3 764 654 hectares.

In contrast, the other forms of protected areas are defined as follows:

Nature reserves: are areas of special scientific interest, containing wildlife or natural features. Management practices aim at maximising the value of the area for scientific investigation and educational purposes. Public access is generally limited. There are 216 nature reserves totalling 639 592 hectares.

Historic sites: are areas of national importance that are preserved and include buildings, objects, monuments or landscapes. There are 13 historic sites covering 2 614 hectares.

Aboriginal areas: are a place of significance to Aboriginal people or sites containing relics of Aboriginal culture. These sites are preserved for scientific and cultural values and public access to them is generally limited. There are nine Aboriginal areas with a total area of 11 519 hectares.

State recreation areas: are permanently reserved large regional parks for outdoor recreation. These areas are managed to maximise their recreation potential while preserving and protecting their natural features. There are 17 state recreation areas totalling 121 986 hectares.

Regional parks: are areas which have been substantially modified since European occupation, that offer open space and recreational opportunities for major regional population centres. These areas are managed to maximise their recreation potential while preserving and protecting their natural features. There are currently six regional parks with an area of 4 491 hectares.

State game reserves: are lands set aside primarily for propagating game species. Shooters holding game licences may cull designated species of protected fauna during a proclaimed season. There are no declared state game reserves.

Karst conservation reserves: are areas managed to protect significant surface and underground landform features. There are no declared karst conservation reserves.

4.0 What areas should be protected

In 1995 the NSW Government signed the National Strategy for the Conservation of Australia's Biological Diversity, which committed the Government to the establishment of a comprehensive, adequate and representative network of terrestrial and marine protected areas by the year 2005. The NSW Draft Biodiversity Strategy identifies performance targets for establishing a comprehensive, adequate and representative (CAR) reserve system, based on comprehensive regional assessments, for forests by the year 2000 and for all other terrestrial and marine ecosystems by the year 2010.¹⁰

The Statement provides for the Commonwealth and individual States to complete a comprehensive regional assessment of forests, leading to a Regional Forest Agreement. This process is designed to offer a mechanism for governments to resolve competing demands on forest resources, and to deliver a high level of certainty to industry and other forest users. An RFA may specify land use boundaries, forest management guidelines and consultative arrangements between governments, and is expected to last from ten to 20 years.¹¹ In late December 1994, the Prime Minister announced that export woodchips from native forests would be phased out by the year 2000 if they were from a forest not covered by an RFA.¹²

As part of a Regional Forest Agreement, the State and Federal governments have committed themselves to establish a system of reserves based on principles of comprehensiveness, adequacy and representativeness. These are known as CAR reserves. The CAR reserve system is to be managed to protect natural values, and is designed to safeguard endangered and vulnerable species and communities. The protection of old-growth forests and wilderness areas are separate strategies under the National Forest Policy Statement. Factors such as wilderness and forest recreation are therefore separate and largely independent considerations that should not be part of the CAR process.¹³

Complementary management outside CAR reserves and the promotion of the management of private forests in sympathy with nature conservation goals are other stated ways to pursue nature conservation objectives. The Statement makes it clear that forests not included in a CAR reserve will be available for a range of other uses, including logging. The Commonwealth government has prepared a draft list of Deferred Forest Areas, which will have further study to determine those forests which will be included in the CAR reserve system. The DFA proposal is aimed at protecting 15 percent of the forest area that existed before European settlement. It is important to note that this percentage figure is for a region,

¹⁰ National Parks and Wildlife Service, *Draft NSW Biodiversity Strategy*, 1997, at 17.

¹¹ Commonwealth of Australia, 1995, *Regional Forest Agreements. The Commonwealth position*.

¹² *Ibid* p 2

¹³ Recher, H, (1995) "Deferred Forest Areas", Submission on behalf of the *National Biodiversity Council*. Page 3

and not based on national averages or goals. Other factors for determining DFAs include the retention of at least 60% of old growth forests, increasing up to 100% (where practicable) for rare old growth, and protection of 90% or more wherever practicable, of areas of high quality wilderness that exceeds minimum size thresholds.¹⁴ It is the identification of these DFAs that created some anxiety in the conservation movement towards the end of 1995, and a critique of the DFA process follows in Section 3.6.

In NSW a Northern, Central, Southern and Eden region are to be assessed for a DFA, covering a total of 11.9 million ha. Of this approximately 2.1 million ha of forests are reserved and 2.19 million ha of native forest are managed by State Forests NSW, with some 68% of this estate managed for timber production. In NSW, the Resource and Conservation Assessment Council is responsible for coordinating comprehensive regional assessments with the Commonwealth to form the Regional Forest Agreements.

On the 22nd January 1996 the Minister for Land and Water Conservation Hon Kim Yeadon MP released the final list of compartments available for logging in NSW. State Forests will have a pool of 1,864 compartments from which to plan harvesting operations, and logging has been deferred in the remaining 1.5 million ha of forest pending assessment by the Resource and Conservation Assessment Council.¹⁵

Conservation reserves for terrestrial ecosystems dedicated under the National Parks and Wildlife Act cover 5.6% of NSW. The current level of NPWS managed protected areas, on a bioregional basis, is shown in Table 1¹⁶, together with the additional area of land required to meet targets of 5, 10 and 15% protection for each bioregion.

¹⁴ Commonwealth of Australia, 1995, *National Forest Conservation Reserves. Commonwealth Proposed Criteria. A Discussion Paper.*

¹⁵ "Public consultation on logging compartments complete" Media Release, Kim Yeadon, Minister for Land and Water Conservation 22 January 1996.

¹⁶ National Parks, Visions for the New Millennium. University of Sydney 16-19 July 1998. *Symposium Workshop Papers.* At 41.

Table 1: Current level of reservation of NPWS protected areas on a bioregional basis together with the additional area of land that would need to be added to the protection area network to reach bioregional targets of 5, 10 and 15%.

Bioregion	Area (km2)	% protected	5% (km2)	10% (km2)	15% (km2)
Australian Alps	4 285	80.0			
Brigalow Belt South	52 458	2.0	1 575	4 199	6 823
Broken Hill Complex	38 222	2.0	1 147	3 058	4 969
Channel Country	14 289	12.0			429
Cobar Peneplain	73 501	1.3	2 719	6 395	10 070
Darling River Plains	92 578	0.5	4 166	8 795	13 424
Mulga Lands	65 814	1.5	2 303	5 594	8 885
Murray-Darling Region	84 396	3.0	1 688	5 907	10 127
Nandewar	21 030	1.5	736	1 788	2 839
New England Tableland	27 931	2.5	698	2 095	3 771
NSW North Coast	58 189	9.0		582	3 491
NSW South-western Slopes	80 878	0.8	3 397	7 440	11 484
Riverina	69 068	0.0	3 453	6 907	13 814
Simpson-Strzelecki Dunefield	20 953	6.0		838	1 886
South-east Corner	13 459	25.0			
South-eastern Highlands	48 711	9.0		488	5 365
Sydney Basin	36 655	30.0			
Totals			21 882	54 086	91 487
% expansion required on existing network			48.2%	119.%	283.5%
% increase in area of annual land acquisition required			150%	379%	640%

Note: Blank space indicates that bioregion already exceeds the % protected category area.

The current conservation reserve system in NSW does not include all ecosystems. There is a geographic bias towards more protected areas on parts of the coast, the ranges and the north-west desert. Fertile coastal plains, commercial forest ecosystems, the tablelands and the western slopes and plains remain poorly represented in the reserve system.¹⁷

Over the last 30 years, 85% of the land added to the protected area network by the NPWS has been vacant Crown land. This supply of land is diminishing and cannot be expected to provide more than a small contribution to filling the remaining gaps in the protected area network. In 1994 it was estimated that it would cost between \$600 million and \$2000 million to purchase the land needed to complete a protected area network that met a minimum standard of representativeness at a 10% level. Clearly, these funds will not be forthcoming easily, and the importance of conserving biodiversity 'off-reserve' will gain greater importance. However, research by the NPWS has indicated that conservation efforts are tending to concentrate on the steep and infertile lands, and that this trend is continuing.¹⁸

5.0 The Expansion of the National Park Estate

As at the 30 May 1998, 4 551 372 hectares were reserved under the National Parks and Wildlife Act, which was approximately 5.67% of the total land area of NSW. Since 1967 the growth in reserve area has been substantial, as shown in Table 2 below.

Table 2 Growth in the National Park Estate¹⁹

	1967	1977	1987	1997
Area of Reserves (ha)	802 536	1 596 147	2 908 582	4 536 513
% of NSW	1	1.99	3.64	5.67
% Growth		98.99	82.23	55.96

While the percentage growth rate in the national park estate reservation is decreasing, the actual area of land reserved in each decade has risen dramatically, especially in the last ten years. This growth means that the NPWS must actively manage change and respond to new and increasing land management responsibilities. It is also noteworthy that much of the new estate reserved as protected areas has a long history of disturbance and modification. This is complicated by the fact that a large contingent of existing users are opposed to change and have strong views on the involvement of the NPWS. The size of the land management

¹⁷ National Parks, Visions for the New Millennium. University of Sydney 16-19 July 1998. *Symposium Workshop Papers*. At 41.

¹⁸ National Parks, Visions for the New Millennium. University of Sydney 16-19 July 1998. *Symposium Workshop Papers*. At 74.

¹⁹ National Parks, Visions for the New Millennium. University of Sydney 16-19 July 1998. *Symposium Workshop Papers*. At 26.

task for the NPWS is increasing, as is its complexity.

The Carr Labor Party was elected to Government in March 1995 with the promise to establish 24 new national park areas within the first 12 months of government.²⁰ Within months the first five new parks were announced (Coolah Tops, Eurobodalla, Toonumbar, Tooloom National Parks and Goobang Nature Reserve).²¹ Plans for a further 20 were described in the National Parks and Wildlife Service 1994-95 Annual Report. Table 3 below shows the number of protected areas since 1995. Announcing another eight new national parks in mid July 1998, the Government claimed to have created 61 national parks and reserves during its term of office.²² With the release of the South East Forests Agreement and the North East Forests Agreement and the subsequent passage of the *Forestry and National Park Estate Bill 1998*, the Government claimed to have created 151 new national parks or reserves during its term.²³

Table 3: Numbers of Protected Areas as at 30 June 1995, 1996 and 1997.²⁴

	30 June 1995	30 June 1996	30 June 1997
National Parks	86 (3 324 218 ha)	98 (3 504 097 ha)	103 (3 761 901 ha)
Historic Sites	13 (2 614 ha)	13 (2 614 ha)	13 (2 614 ha)
Nature Reserves	209 (607 579 ha)	215 (635 519 ha)	217 (640 230 ha)
Aboriginal Areas	9 (11 519 ha)	9 (11 519 ha)	9 (11 519 ha)
State Recreation Areas	12 (89 629 ha)	15 (119 796 ha)	16 (120 249 ha)
Total	4 030 559 ha	4 273 545 ha	4 536 513

The National Parks and Wildlife Act requires the preparation of plans of management for most classes of reserves ‘as soon as practicable’. Plans are legally binding documents and outline how a reserve will be managed in the future. In theory, no work should occur within a reserve unless it is either identified or clearly compatible with a plan of management. Of the 358 reserves gazetted as at November 1997, 20% have adopted plans of management; 7.5% have draft plans of management that are in the final stages of adoption; and 5.6% have draft plans of management that are or have been on exhibition. Plans for another 35

²⁰ The Hon Pam Allan MP, “Excerpts for a Speech to the Australian Centre for Environmental Law outlining the incoming New South Wales Government’s Environmental Law Reform Agenda.” in *Environmental and Planning Law Journal*, Vol 12 No 5, October 1995.

²¹ National Parks and Wildlife Service, *Annual Report 1994-95*, at 6.

²² “Carr’s green vote lure: 8 new parks, 40,000 extra hectares of bushland to be preserved.” in *The Sydney Morning Herald*, 18 July 1998.

²³ NSWPD, Hansard Proof, 12 November 1998, at 65.

²⁴ National Parks and Wildlife Service, *Annual Report 1994-95*, at 69; *Annual Report 1995-96*, at 79; *Annual Report 1996-97*, at 77.

reserves will be ready for exhibition before the end of June 1999.

The NPWS has identified two components in a management plan that are vital to its success. These are: the statement of significance, which defines what within a reserve is of most value, places the reserve in context and provides an insight of significant biodiversity values; and, the management objectives, which set the framework for management and provide the standard against which subsequent management decisions and performance should be measured.

The NPWS has noted that conflict around plans of management appears to be increasing, primarily due to a lack of common view between the NPWS and the community as a whole on the role and function of conservation reserves. This conflict is most often focussed on differences over appropriate recreational activities and the need to restrict or modify historical use patterns. These views can be attributed in part to: the vagueness of the legislation; most parks being created through community advocacy driven by aesthetic and recreational values rather than any scientific criteria; and reserves being declared over lands with a long history of incompatible existing use.²⁵

6.0 Recent Legislative Changes

Over the last few years there has been several significant amendments to the *National Parks and Wildlife Act 1974*. These include the *National Parks and Wildlife Amendment Act (Aboriginal Ownership) Act 1996* and the *National Parks and Wildlife Amendment Act (Regional Parks) Act 1996* which created a new category of protected areas called regional parks.

6.1 Aboriginal Ownership Amendment Act²⁶

The *Aboriginal Ownership Amendment 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. The first park to be transferred to Aboriginal ownership was Mootwingee National Park in early September 1998. The Park was renamed 'Mutawintji National Park' to acknowledge the transfer of ownership to the Mutawintji clan.²⁷ Other parks identified for initial hand back include: Jervis Bay; Mungo; 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

²⁵ National Parks, Visions for the New Millennium. University of Sydney 16-19 July 1998. *Symposium Workshop Papers*. At 28.

²⁶ For a detailed discussion on Aborigines and national parks see: NSW Parliamentary Library Briefing Paper No 2/97: *Aborigines, Land and National Parks in New South Wales*.

²⁷ "Reconciliation takes giant leap forward with National Park Joint Management Agreement." *News Release* Hon Bob Carr MP, Premier of NSW, 6 September 1998.

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.²⁸ For instance, in the Legislative Council the Hon J.F. Ryan MLC read out a letter from the National Parks Association about the bill. The letter stated: “There is concern that hunting and gathering for ‘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).”²⁹

6.2 Regional Parks

With the passage of the *National Parks and Wildlife Amendment Act (Regional Parks) Act 1996*, a new category of protected areas, called Regional Parks, was created. Regional parks aim to provide open space and recreational opportunities in an urban setting. Seven regional parks have been declared to date, including Rouse Hill and Parramatta River Regional Parks. The total area reserved as a Regional Park is currently 5,406 hectares of

²⁸ See “Gun use worry causes delay in park handover” in *The Sydney Morning Herald*, 4 December 1996.

²⁹ NSWPD, 5 December 1996, p 7054. Letter from the National Parks Association as read out by Hon J. Ryan, MLC.

land in Sydney.³⁰

6.3 Marine Parks Act 1997³¹

Of considerable importance to the protection of marine areas, the *Marine Parks Act* was passed in 1997. The Act established a Marine Parks Authority, headed by the Director-General of the Premier's Department, the Director of NSW Fisheries and the Director-General of the National Parks and Wildlife Service.

The *Marine Parks Act 1997* provides for the establishment of marine parks in New South Wales for the primary purpose of conserving marine biological diversity. The objects of the Act are to: conserve marine biological diversity and marine habitats by declaring and managing marine parks; to maintain ecological processes in marine parks; where consistent with the preceding objects, to provide for the ecologically sustainable use of fish and marine vegetation in marine parks; and to provide opportunities for public appreciation and enjoyment of, and public education in regard to, marine parks. Marine parks will be declared, not reserved. This means marine parks will form an area in which activities are managed for the purpose of conserving marine biodiversity. Ownership and tenure of the lands and waters within a marine park will not change, and indeed need not change, to achieve the desired outcome of marine conservation.³² To date, two Marine Parks have been announced, Jervis Bay on the south coast and the Solitary Islands off the mid north coast. On 1 December 1998 the Government announced that the waters of Lord Howe Island are to become the State's third marine park.³³

7.0 The Draft Nature Tourism and Recreation Strategy

One of the major initiatives of the National Parks and Wildlife Service over recent years is the publication of the above draft strategy.³⁴ There are approximately 22 million visits to protected areas in New South Wales each year, and an estimated 63% of the Australian population visited a national park during a 12 month study (1991-92). Visitor use is forecast to rise to between 27 million and 32 million visitors per annum by 2005.³⁵ National parks can play an important role in regional tourism. For instance, the new Coolah Tops National Park now attracts 4000 visitors a year. These visitors, along with NPWS spending,

³⁰ NSWPD, Hon Pam Allan MP, 22 September 1998, at p 7754.

³¹ For more information on marine parks see: *The Protection of the Marine Environment in NSW*, NSW Parliamentary Library Briefing Paper No 34/95.

³² NSWPD, 28 May 1997, at p 9455, The Hon Pam Allan MP, Minister for the Environment.

³³ "Lord Howe Island to be State's third marine park." in *The Sydney Morning Herald*, 2 December 1998.

³⁴ National Parks and Wildlife Service, *Draft Nature Tourism and Recreation Strategy. A Draft Nature Tourism and Recreation Strategy for protected areas of NSW, Australia*. 1997.

³⁵ National Parks and Wildlife Service, *Draft Nature Tourism and Recreation Strategy. A Draft Nature Tourism and Recreation Strategy for protected areas of NSW, Australia*. 1997, at 18.

contribute \$460,000 in regional business turnover and \$250,000 in gross domestic product for the nearby town of Coolah.³⁶

With these visitor levels it is clear that the NPWS has a leading role to play in the management of tourism and visitor satisfaction in the protected area estate. In response to these responsibilities, and in recognition of the increased focus on NSW during the Olympics, the Service has developed the Nature Tourism and Recreation Strategy.

The desired future resulting from the implementation of the Strategy is to:

Achieve ecologically sustainable nature tourism and recreation use of protected areas; to enhance the conservation status of these areas and to positively assist a sustainable nature tourism and recreation industry in NSW.

To achieve the above desired future, four planning outcomes are prescribed by the draft strategy. The primary outcome is to achieve ecologically sustainable visitor use of protected areas. A new 'management by objectives' approach for planning and managing sites and protected areas has been introduced. Three secondary outcomes identified include: facilitating sustainable use; improved economic benefits; and improved heritage conservation.³⁷

The Draft Strategy outlines six strategies that are to be implemented to achieve the above outcomes. These strategies include: establish a new planning framework; improve NPWS management; give priority to four key bioregions (north coast, south coast, Sydney basin, Australian Alps); promote an integrated management approach; upgrade community awareness of ecologically sustainable visitor use; and manage consistent with the 'Guiding principles of management'. Each of the six NPWS regions are to prepare their own nature tourism and recreation strategy. The NPWS will estimate the appropriate type and level of commercial tour operator visitor use for a site within a protected area, and prepare a draft nature tourism and recreation plan for a protected area. The plan will state what the Service is trying to achieve, describes the desired futures for a site and sets objectives for that site. Indicators and benchmarks will be developed to assess how successful management has been to achieve the objectives and the desired future.³⁸

The Strategy is to be implemented in three stages. Stage one will be introduced in the lead up to the Olympics and will include the introduction of new staff structures and management systems to manage for ecologically sustainable nature tourism and recreation. Stage two,

³⁶ "New spurt of growth for black stump town." in *The Sydney Morning Herald*, 2 November 1998.

³⁷ National Parks and Wildlife Service, *Draft Nature Tourism and Recreation Strategy. A Draft Nature Tourism and Recreation Strategy for protected areas of NSW, Australia*. 1997, at 36.

³⁸ National Parks and Wildlife Service, *Draft Nature Tourism and Recreation Strategy. A Draft Nature Tourism and Recreation Strategy for protected areas of NSW, Australia*. 1997, at 42.

between the years 2001 and 2005, will include the implementation of ecologically sustainable visitor use planning for the high priority destinations, and the introduction of new commercial tour operator licensing systems. Stage three, between 2006 and 2020, recognises the long lead time necessary to complete the planning and implementation of the new ecologically sustainable visitor use planning framework.

The release of the Draft Strategy attracted some criticisms from conservation groups who feared that conservation in protected areas would suffer as tourist operators were allowed more say in the planning and management of national parks. In addition, it was feared that the Strategy would allow new inappropriate accommodation developments in protected areas. However, a NPWS spokesperson commented: “The no new accommodation policy remains. The only exceptions to existing planning processes would be where there is a net overall benefit to the conservation status of the protected area. Environmental objectives still prevail.”³⁹

8.0 Problems with the National Parks and Wildlife Act 1974⁴⁰

This Act is now over 20 years old, and several deficiencies have been identified. The Act concentrates on process and regulation rather than on providing guidance as the role and functions of the protected area categories. Biodiversity is central to the idea of modern day protected areas but is not mentioned in the Act, nor are the principles used to develop a comprehensive, adequate and representative reserve system.

The Act provides no clear objectives for most reserve categories. It could be argued that if there were effective definitions and management objectives for each protected area category, this would help ensure that not only are areas reserved for the appropriate purpose but that purpose is understood by Government and the community. The definitions of protected areas in the *National Parks and Wildlife Act 1974* bear little resemblance to other definitions in national and international jurisdictions. Incorporating the World Conservation Union (IUCN) definition of a protected area and its seven categories in the Act could provide a useful set of international definitions and permit easier comparisons across jurisdictions.

Many protected area categories have potentially conflicting objectives, especially those of conservation and public enjoyment. The state recreation areas still managed by the NPWS have not been reserved in a more appropriate category because of mineral exploration and or mining. Some are managed under criteria developed for wilderness or as strict nature reserves even though the name of state recreation area implies both public access and recreation. There is a need for a reserve category that permits mineral exploration and, in some cases, underground mining, while maintaining nature or cultural heritage conservation and its principal management objectives.

³⁹ “State park ‘Hiltons’ go ahead. Green policy switch.” in *The Daily Telegraph* 30 January 1998.

⁴⁰ National Parks, Visions for the New Millennium. University of Sydney 16-19 July 1998. *Symposium Workshop Papers*. At 17.

The protected areas currently defined in the Act fail to incorporate many of the obligations and management functions to which Australia is a party through international treaties and conventions that affect protected areas in NSW. For example, the six NSW wetland sites included in the Ramsar Convention on Wetlands of International Significance are contained within national park reserves.⁴¹ The current protected area categories acknowledge neither the obligations nor the opportunities presented by these conventions.

In NSW, government agencies other than the NPWS also manage lands that meet the World Conservation Union (IUCN) definition of a protected area. There is a question of whether the NPWS should have a role in accrediting, monitoring and/or auditing the performance of other agencies in protected area creation and management.

9.0 Conclusion

Protected areas in NSW comprise some of the most important and ‘special’ areas of the State. Examples include the Blue Mountains, Sydney Harbour, Kosciuszko and Mutawintji National Parks. However, reserving land as a conservation reserve is just the beginning. Active management is required to ensure that protected areas are indeed protected. The invasion of protected areas by weeds and feral animals, and uncontrolled access by people ‘loving the area to death’, may all contribute to ecosystem decline and disruption.

Throughout the last century, protected areas were reserved for their scenery or other natural features. However, in the 1990s this has changed. Now the over-riding force to declare protected areas is the protection of biodiversity. Without this change in emphasis increased species extinction would have been the likely result. Of course, as protected areas will always be limited in their size and number, off-reserve conservation must continue to be a priority for the protection of biodiversity .

⁴¹ For more information on wetlands see: *Wetlands in NSW*, NSW Parliamentary Library Briefing Paper No 25/96.