



New South Wales

# National Parks and Wildlife Amendment (Aboriginal Ownership) Act 1996 No 142

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New South Wales

## **National Parks and Wildlife Amendment (Aboriginal Ownership) Act 1996 No 142**

Act No 142, 1996

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An Act to amend the *National Parks and Wildlife Act 1974* to provide for Aboriginal ownership of land of Aboriginal cultural significance reserved or dedicated under that Act; to amend the *Aboriginal Land Rights Act 1983* to provide for the grant of certain land claims subject to lease, and reservation or dedication, of the land under the *National Parks and Wildlife Act 1974*; to amend the *Land and Environment Court Act 1979*; and for other purposes. [Assented to 16 December 1996]

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**The Legislature of New South Wales enacts:****1 Name of Act**

This Act is the *National Parks and Wildlife Amendment (Aboriginal Ownership) Act 1996*.

**2 Commencement**

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
- (2) Schedule 4, and section 6 in its application to that Schedule, commence on the date of commencement of Division 1 of Part 4A of the *National Parks and Wildlife Act 1974* as inserted by Schedule 1 [21] of this Act or the *National Parks and Wildlife Amendment Act 1996*, whichever is the later.

**3 Amendment of National Parks and Wildlife Act 1974 No 80**

The *National Parks and Wildlife Act 1974* is amended as set out in Schedule 1.

**4 Amendment of Aboriginal Land Rights Act 1983 No 42**

The *Aboriginal Land Rights Act 1983* is amended as set out in Schedule 2.

**5 Amendment of Land and Environment Court Act 1979 No 204**

The *Land and Environment Court Act 1979* is amended as set out in Schedule 3.

**6 Amendments consequent on amendment of National Parks and Wildlife Act 1974 No 80**

Schedule 1 is amended as set out in Schedule 4.

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## Schedule 1 Amendment of National Parks and Wildlife Act 1974

(Section 3)

### [1] Section 5 Definitions

Insert in alphabetical order in section 5 (1):

*Aboriginal* has the same meaning as in the *Aboriginal Land Rights Act 1983*.

*Aboriginal owner board members*, in relation to lands reserved or dedicated under Part 4A, means the Aboriginal owners who are members of the board of management for the lands.

*Aboriginal owners* has the same meaning as in the *Aboriginal Land Rights Act 1983*.

**Note.** The term *Aboriginal owners* of land is defined in the *Aboriginal Land Rights Act 1983* to mean the Aboriginals named as persons having a cultural association with the land in the register of Aboriginal owners kept under Part 8A of that Act.

*board of management* means a board of management established under Division 6 of Part 4A.

### [2] Section 5 (5)

Insert after section 5 (4):

(5) Notes in the text of this Act do not form part of this Act.

### [3] Section 23 Functions and duties of Council

Omit “areas, and to” from section 23 (1) (a).  
Insert instead “areas, to”.

### [4] Section 23 (1) (a)

Insert “and to the terms of proposed leases under Part 4A” after “wilderness areas”.

**[5] Section 31**

Omit the section. Insert instead:

**31 Care, control and management of parks and sites**

- (1) The Director-General has the care, control and management of all national parks and historic sites except as provided by subsection (2).
- (2) On the establishment of a board of management for a national park or historic site reserved under Part 4A, the care, control and management of the park or site is vested in the board of management.

**[6] Section 45 Provisions respecting animals in parks and sites**

Insert after section 45 (5):

- (6) This section does not prevent:
  - (a) an Aboriginal owner on whose behalf the lands of a national park or historic site are held by one or more Aboriginal Land Councils in accordance with Part 4A, or
  - (b) any other Aboriginal who has the consent of the Aboriginal owner board members,from harming an animal within the park or site for domestic purposes or for ceremonial or cultural purposes (other than an animal of a threatened species or an animal protected by the plan of management for the park or site).

**[7] Section 47BA**

Insert after section 47B:

**47BA Care, control and management of state recreation areas reserved under Part 4A**

- (1) Despite section 47B, on the publication of a proclamation under Part 4A reserving lands as a state recreation area, the Director-General has the care, control and management of the state recreation area until such time as a board of management is established for the state recreation area.

- (2) On the establishment of a board of management for the state recreation area, the board of management has the care, control and management of the state recreation area.

**[8] Section 470A**

Insert after section 470 (as inserted by the *National Parks and Wildlife Amendment Act 1996*):

**470A Care, control and management of regional parks reserved under Part 4A**

- (1) Despite section 470, on the publication of a proclamation under Part 4A reserving lands as a regional park, the Director-General has the care, control and management of the regional park until such time as a board of management is established for the regional park.
- (2) On the establishment of a board of management for the regional park, the board of management has the care, control and management of the regional park.

**[9] Section 48**

Omit the section. Insert instead:

**48 Care, control and management of nature reserves**

- (1) The Director-General has the care, control and management of all nature reserves except as provided by subsection (2).
- (2) On the establishment of a board of management for a nature reserve dedicated under Part 4A, the care, control and management of the reserve is vested in the board of management.

**[ 10 ] Section 56 Provisions respecting animals in nature reserves**

Insert after section 56 (6):

- (7) Without limiting subsection (6), this section does not prevent:
- (a) an Aboriginal owner on whose behalf the lands of a nature reserve are held by one or more Aboriginal Land Councils in accordance with Part 4A, or
  - (b) any other Aboriginal who has the consent of the Aboriginal owner board members,
- from harming an animal within the reserve for domestic purposes or for ceremonial or cultural purposes (other than an animal of a threatened species or an animal protected by the plan of management for the reserve).

**[11] Section 57 Restrictions as to timber, vegetation, plants etc in nature reserves**

Insert after section 57 (6):

- (7) Without limiting subsection (6), this section does not prevent:
- (a) an Aboriginal owner on whose behalf the lands of a nature reserve are held by one or more Aboriginal Land Councils in accordance with Part 4A, or
  - (b) any other Aboriginal who has the consent of the Aboriginal owner board members,
- from picking within the reserve any tree, timber, plant (including a native plant), flower or vegetation for food for domestic purposes or for ceremonial or cultural purposes (including a protected native plant but not including a plant of a threatened species or a plant protected by the plan of management for the reserve).

**[ 12 ] Section 58A Dedication of state game reserves**

Insert “except as provided by subsection (4A)” after “Act” in section 58A (4) (c).



**[ 1 3 ] Section 58A (4A)**

Insert after section 58A (4):

- (4A) On the establishment of a board of management for a state game reserve dedicated under Part 4A, the care, control and management of the reserve is vested in the board of management.

**[ 1 4 ] Section 58H Provisions respecting animals in state game reserves**

Insert after section 58H (6):

- (7) Without limiting subsection (6), this section does not prevent:
- (a) an Aboriginal owner on whose behalf the lands of a state game reserve are held by one or more Aboriginal Land Councils in accordance with Part 4A, or
  - (b) any other Aboriginal who has the consent of the Aboriginal owner board members,
- from harming an animal within the reserve for domestic purposes or for ceremonial or cultural purposes (other than an animal of a threatened species or an animal protected by the plan of management for the reserve).

**[ 1 5 ] Section 58I Restrictions as to timber, vegetation, plants etc in state game reserves**

Insert after section 58I (6):

- (7) Without limiting subsection (6), this section does not prevent:
- (a) an Aboriginal owner on whose behalf the lands of a state game reserve are held by one or more Aboriginal Land Councils in accordance with Part 4A, or

- (b) any other Aboriginal who has the consent of the Aboriginal owner board members,

from picking within the reserve any tree, timber, plant (including a native plant), flower or vegetation for food for domestic purposes or for ceremonial or cultural purposes (including a protected native plant but not including a plant of a threatened species or a plant protected by the plan of management for the reserve).

**[16] Section 58K Dedication of karst conservation reserves**

Insert “except as provided by subsection (4A)” after “Act” in section 58K (4) (c).

**[17] Section 58K (4A)**

Insert after section 58K (4):

- (4A) On the establishment of a board of management for a karst conservation reserve dedicated under Part 4A, the care, control and management of the reserve is vested in the board of management.

**[18] Section 58Q Provisions respecting animals in karst conservation reserves**

Insert after section 58Q (6):

- (7) Without limiting subsection (6), this section does not prevent:
  - (a) an Aboriginal owner on whose behalf the lands of a karst conservation reserve are held by one or more Aboriginal Land Councils in accordance with Part 4A, or
  - (b) any other Aboriginal who has the consent of the Aboriginal owner board members,

from harming within the reserve an animal for domestic purposes or for ceremonial or cultural purposes (other than an animal of a threatened species or an animal protected by the plan of management for the reserve).

**[19] Section 58R Restrictions as to timber, vegetation, plants etc in karst conservation reserves**

Insert after section 58R (6):

(7) Without limiting subsection (6), this section does not prevent:

- (a) an Aboriginal owner on whose behalf the lands of a karst conservation reserve are held by one or more Aboriginal Land Councils in accordance with Part 4A, or
- (b) any other Aboriginal who has the consent of the Aboriginal owner board members,

from picking within the reserve any tree, timber, plant (including a native plant), flower or vegetation for food for domestic purposes or for ceremonial or cultural purposes (including a protected native plant but not including a plant of a threatened species or a plant protected by the plan of management for the reserve).

**[20] Section 63**

Omit the section. Insert instead:

**63 Care, control and management of Aboriginal areas**

- (1) The Director-General has the care, control and management of all Aboriginal areas except as provided by subsection (2).
- (2) On the establishment of a board of management for an Aboriginal area dedicated under Part 4A, the care, control and management of the area is vested in the board of management.

**[21] Part 4A**

Insert after Part 4:

**Part 4A Aboriginal land**

**Division 1 Preliminary**

**71B Definitions**

In this Part:

*Aboriginal Land Council, Local Aboriginal Land Council* and *New South Wales Aboriginal Land Council* have the same meanings as in the *Aboriginal Land Rights Act 1983*.

*Aboriginal negotiating panel* means a panel appointed in accordance with section 71G or 71H of Division 2.

*Aboriginal owner board members*—see section 5(1).

*Aboriginal owners*—see section 5 (1).

*ALR Act lands* means lands to which section 36A of the *Aboriginal Land Rights Act 1983* applies that are granted to one or more Aboriginal Land Councils under that Act.

**Note.** Part 6 of the *Aboriginal Land Rights Act 1983* makes provision as to land rights and the grant of claims to Crown lands. Section 36A, within that Part, makes provision for the grant of certain land claims, despite the fact that the lands involved are needed, or likely to be needed, for the essential public purpose of nature conservation, if the claimant Aboriginal Land Councils are prepared to lease the lands to the Minister administering this Act and are agreeable to the reservation or dedication of the lands under this Act and in accordance with the requirements of this Part.

*board of management*—see section 5 (1).

*native title* or *native title rights and interests* has the same meaning as it has in the *Native Title Act 1993* of the Commonwealth.

*Registrar* means the Registrar appointed under section 49 of the *Aboriginal Land Rights Act 1983*.

*Schedule 14 lands* means lands reserved or dedicated under this Act that are listed in Schedule 14.

### **71C Purpose of Part**

- (1) The purpose of this Part is to make provision as to the lease to the Minister, and the reservation or dedication, under this Act of Schedule 14 lands and ALR Act lands.
- (2) So far as Schedule 14 lands are concerned, this Part provides for the recognition of the cultural significance of those lands to Aboriginals and the revocation of their reservation or dedication under this Act to enable them:
  - (a) to be vested, on behalf of the Aboriginal owners, in one or more Local Aboriginal Land Councils or the New South Wales Aboriginal Land Council, and
  - (b) to be leased by the Aboriginal Land Council or Councils to the Minister, and
  - (c) to be then reserved or dedicated under this Act in accordance with this Part.
- (3) So far as ALR Act lands are concerned, this Part provides for the lease of the lands by the Aboriginal Land Council or Councils in which they are vested to the Minister and the reservation or dedication of the lands under this Act in accordance with this Part.
- (4) The taking of any action referred to in this section in relation to Schedule 14 lands or ALR Act lands is subject to any native title rights and interests existing in relation to the lands immediately before the taking of the action and does not extinguish or impair such rights and interests.

### **71D Recognition of cultural significance of certain lands to Aboriginals**

- (1) Parliament recognises that certain lands reserved or dedicated under this Act are of cultural significance to Aboriginals. Land is of cultural significance to Aboriginals if the land is significant in terms of the traditions, observances, customs, beliefs or history of Aboriginals.
- (2) The lands listed in Schedule 14 are identified as being of cultural significance to Aboriginals.

## **Division 2 Negotiations for lease**

### **71E Application of Division**

This Division applies to and in respect of Schedule 14 lands and ALR Act lands.

### **71F Purpose of negotiations**

- (1) Negotiations under this Division are to be conducted for 2 purposes.
- (2) Firstly, so far as Schedule 14 lands are concerned, negotiations are to be conducted to determine whether one or more Local Aboriginal Land Councils or the New South Wales Aboriginal Land Council wishes to have the present reservation or dedication of lands revoked so that the lands may be vested, subject to native title, in the Aboriginal Land Council or Councils in return for:
  - (a) a lease of the lands from the Aboriginal Land Council or Councils to the Minister, and
  - (b) the reservation or dedication of the lands in accordance with this Part.
- (3) So far as lands that are the subject of a claim referred to in section 36A of the *Aboriginal Land Rights Act 1983* are concerned, negotiations are to be conducted with the Aboriginal Land Council or Councils that have claimed the lands under that Act to determine whether the Aboriginal Land Council or Councils are agreeable, if the claim is granted, to the lease of the lands to the Minister and the reservation or dedication of the lands in accordance with this Part.
- (4) Secondly, if negotiations under subsection (2) or (3) result in an affirmative response, the negotiations are to continue with a view to settling the provisions of the proposed lease between the Aboriginal Land Council or Councils concerned and the Minister.

**71G Selection of representatives for negotiations before  
Aboriginal owners identified**

- (1) This section applies if, at the time negotiations under this Division commence, Aboriginal owners of the lands that are the subject of the negotiations have not been identified.
- (2) The Minister administering the *Aboriginal Land Rights Act 1983* may, for the purposes of the conduct of negotiations under this Division in circumstances referred to in subsection (1), appoint a negotiating panel from Aboriginals to represent Aboriginals who, in the Minister's opinion, have a cultural association with the lands concerned.
- (3) The Minister may, for the purposes of making appointments to the panel, consult with any other person or body (including any group formed by Aboriginals) that may, in the Minister's opinion, assist the Minister to ensure that the panel is appropriately constituted.

**71H Selection of representatives for negotiations after  
Aboriginal owners identified**

- (1) This section applies if, at the time negotiations under this Division commence, the Minister administering the *Aboriginal Land Rights Act 1983* is, after consulting the Registrar, satisfied a sufficient number of Aboriginal owners of the lands concerned has been identified to enable that Minister to select a negotiating panel from their number that will adequately represent the wishes of Aboriginals who have a cultural association with the lands.
- (2) The Minister administering the *Aboriginal Land Rights Act 1983* may, for the purposes of the conduct of negotiations under this Division in circumstances referred to in subsection (1), and after consulting the Aboriginal owners of the lands concerned or any group representing them concerning nominees to the negotiating panel, appoint a negotiating panel from the Aboriginal owners to represent Aboriginals who have a cultural association with the lands concerned.

- (3) The Minister may, for the purposes of making appointments to the panel, consult with any other person or body (including any group formed by Aboriginals) that, in the Minister's opinion, may assist the Minister to ensure that the panel is appropriately constituted.

#### **71I Role of Aboriginal negotiating panel**

The role of an Aboriginal negotiating panel is:

- (a) to participate in negotiations with the Minister and one or more Aboriginal Land Councils for the purposes of this Division, and
- (b) to provide the Minister with advice as to the cultural significance to Aboriginals of any ALR Act lands that are the subject of negotiations under this Part, and
- (c) to recommend a name for any lands to be reserved or dedicated pursuant to this Part as a result of the negotiations.

#### **71J Minister may negotiate with Aboriginal negotiating panel and Aboriginal Land Councils**

- (1) The Minister may enter into negotiations for the purposes of this Division with an Aboriginal negotiating panel appointed in accordance with this Division and:
- (a) one or more Local Aboriginal Land Councils whose members have a cultural association with Schedule 14 lands, or
  - (b) the New South Wales Aboriginal Land Council on behalf of one or more Local Aboriginal Land Councils referred to in paragraph (a), or
  - (c) the New South Wales Aboriginal Land Council on its own behalf, or
  - (d) one or more Aboriginal Land Councils that have made a claim for lands to which section 36A of the *Aboriginal Land Rights Act 1983* applies.



- (2) The Minister may enter into negotiations with one Local Aboriginal Land Council whose members have a cultural association with Schedule 14 lands with which members of one or more other Local Aboriginal Land Councils also have a cultural association only if:
- (a) the members of each of those Councils, and
  - (b) the Aboriginal negotiating panel,
- consent to the Minister negotiating with that Local Aboriginal Land Council.

**71K Referral of disagreements between Aboriginal negotiating panel and Aboriginal Land Councils to mediation**

- (1) Any disagreement between an Aboriginal negotiating panel and an Aboriginal Land Council or Councils concerning negotiations under this Division that cannot be resolved otherwise is to be referred to a mediator selected by, and acceptable to, the Aboriginal negotiating panel and the Aboriginal Land Council or Councils for resolution.
- (2) The Minister may decline to proceed with the negotiations until the disagreement has been resolved.
- (3) The Aboriginal negotiating panel and the Aboriginal Land Council or Councils concerned are to be jointly responsible for payment of the costs of the mediation.
- (4) The regulations may make provision for or with respect to the mediation of disagreements under this section including the exoneration of mediators from liability.

**71L Preference to vesting in Local Aboriginal Land Council—Schedule 14 lands**

If both a Local Aboriginal Land Council or Councils and the New South Wales Aboriginal Land Council on its own behalf indicate that they wish Schedule 14 lands to be vested in them, the Minister is to give preference with respect to the vesting:

- (a) if the Minister is satisfied, after consulting the Registrar, that sufficient Aboriginal owners of the lands have been identified to adequately represent the wishes of Aboriginals who have a cultural association with the lands—to the wishes of the Aboriginal owners, or
- (b) if Aboriginal owners of the lands have not been so identified—to the wishes of the Local Aboriginal Land Council or Councils.

**Division 3 Vesting and reservation or dedication of Schedule 14 lands**

**71M Application of Division**

This Division applies to and in respect of Schedule 14 lands only unless this Act otherwise expressly provides.

**Note.** See Division 4 as to the application of sections 71R–71U to ALR Act lands and Division 8 as to the application of sections 71R–71T to lands added to national parks or other areas reserved or dedicated under this Part.

**71N Tabling of proposal if change of land classification involved**

- (1) This section applies if, as a result of negotiations concerning Schedule 14 lands, it is proposed that the classification of the lands concerned under this Act, as listed in Schedule 14, be changed to another classification (such as, for example, from a nature reserve to a national park) when the lands are vested in an Aboriginal Land Council or Councils under this Part.
- (2) The Minister is to cause a notification of such a proposal to be laid before each House of Parliament as soon as practicable after the parties to the negotiations decide that the classification of the lands should be changed.
- (3) If a House of Parliament passes a resolution of which notice has been given within 15 sitting days of that House after a notification has been laid before it (whether or not those sitting days occur during the same session) and the resolution disallows the notification, no further action is to be taken in the matter.

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

**710 Vesting and reservation or dedication of Schedule 14 lands**

- (1) This section applies if:
- (a) no change in the classification of the Schedule 14 lands to which negotiations relate is proposed, or
  - (b) no resolution disallowing a notification concerning a change in the classification of the Schedule 14 lands is or can be passed.
- (2) On completion of negotiations concerning the Schedule 14 lands and preparation of a draft lease in respect of those lands that is acceptable to, and has been executed in escrow by, the Minister and the Aboriginal Land Council or Councils concerned, the Governor may, by proclamation published in the Gazette:
- (a) revoke the existing reservation or the dedication under this Act of the lands that are the subject of the proposed lease, and
  - (b) vest those lands in the Aboriginal Land Council or Councils that are to lease the lands to the Minister (and, if more than one, as joint tenants (without the benefit of survivorship)), subject to the following:
    - (i) any native title rights and interests that exist in relation to the lands concerned,
    - (ii) any existing interest within the meaning of section 39,
    - (iii) any licence issued under Part 9,
    - (iv) any lease, licence, franchise or easement granted under Part 12,
    - (v) any authority or consent issued under this Act or the regulations, and
  - (c) reserve or dedicate those lands, with the appropriate classification, under this Act, subject to any matter referred to in paragraph (b) (i) (v).

**71P Effect of publication of proclamation**

- (1) On publication of the proclamation, the existing reservation or dedication under this Act of the lands described in the proclamation is revoked. This subsection has effect despite anything else in this Act.
- (2) On publication of the proclamation, the lands described in the proclamation vest, by virtue of the proclamation and the operation of this section, in the Aboriginal Land Council or Councils (and, if more than one, as joint tenants (without the benefit of survivorship)) named as lessor or lessors in the lease for an estate in fee simple without the necessity for any further assurance, but subject to the following:
  - (a) any native title rights and interests that exist in relation to the lands concerned,
  - (b) any existing interest within the meaning of section 39,
  - (c) any licence issued under Part 9,
  - (d) any lease, licence, franchise or easement granted under Part 12,
  - (e) any authority or consent issued under this Act or the regulations.
- (3) On publication of the proclamation, the lease takes effect and is taken to have been executed on, and its term commences to run from, the date of publication of the proclamation.
- (4) On publication of the proclamation, the lands described in the proclamation are, despite the fact that the lands are vested in the Aboriginal Land Council or Councils, reserved or dedicated, with the appropriate classification, under this Act in accordance with this Part, subject to any matter referred to in subsection (2) (a)–(e).

**71Q Certain other consequences of publication of proclamation**

On publication of the proclamation:

- (a) the Director-General continues, until the establishment of a board of management for the lands, to have the care, control and management of

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the lands and may exercise on and with respect to those lands any power, authority, duty or function conferred or imposed on the Director-General by or under this or any other Act, and

- (b) the Service and the officers, employees and contractors of the Minister, the Director-General and the Service may (subject to any plan of management in force with respect to the lands and to any directions given and supervision and oversight exercised by the board of management for the lands) exercise on and with respect to those lands any power, authority, duty or function conferred or imposed on any one or more of them by or under this or any other Act, and
- (c) any regulations that, immediately before that publication, applied to the lands continue to apply to the lands and may be amended and repealed accordingly, and
- (d) any plan of management that, immediately before that publication, applied to the lands continues, subject to this Act, to apply to the lands and may be amended, altered or cancelled accordingly, and
- (e) any existing interest (within the meaning of section 39), any licence issued under Part 9, any lease, licence, franchise or easement granted under Part 12 and any authority or consent issued under this Act or the regulations that affect the lands, or any part of the lands, and that are current at the date of the proclamation continue to have effect and may be terminated or otherwise dealt with in accordance with this Act or the instrument under which they were granted, and
- (f) any fee, rent or other sum that is payable under or with respect to any matter referred to in paragraph (e) is, despite any other requirement to the contrary, to be paid as required by section 138, and

- (g) any declaration made under Division 3 of Part 4 or under the *Wilderness Act 1987* with respect to the lands, or any part of the lands, continues in force and may be varied or revoked accordingly.

**71R Certain provisions not to apply to lands reserved or dedicated under Division**

- (1) Division 2 of Part 3 (Advisory committees) and sections 33–36, 46, 47, 47B–47F, 49 (1), (2) and (4)–(6), 50, 51, 58, 58A (1), (2), (4), (5) and (8), 58B, 58C, 58J, 58K (1), (2) and (4)–(6), 58L, 58S and 62 do not apply to or in respect of lands reserved or dedicated under this Division.
- (2) Sections 47GA–47GG, 47O, 47P (1) and 47Q–47Y (as inserted by the National Parks and Wildlife Amendment Act 1996) do not apply to or in respect of a state recreation area or a regional park reserved under this Part.
- (3) Subsection (1) does not limit section 71Q.

**71S Application of certain provisions to lands reserved under Division**

- (1) Sections 37–44, 47G, 47H, 47I, 47J, 47K and 47L apply to and in respect of lands reserved under this Division in the same way as they apply to and in respect of lands reserved under Part 4.
- (2) Sections 47P (2), 47Z, 47ZA and 47ZB (as inserted by the *National Parks and Wildlife Amendment Act 1996*) apply to and in respect of lands reserved under this Division in the same way as they apply to and in respect of lands reserved under Part 4.

**71T Application of certain provisions to lands dedicated under Division**

- (1) Sections 39, 43, 44, 58F, 58O and 64 apply to and in respect of lands dedicated under this Division in the same way as they apply to and in respect of lands reserved under Part 4.

- (2) Sections 49 (3), 52–55, 58A (3), (6) and (7), 58D, 58E, 58G, 58K (3), 58M, 58N and 58P apply to lands dedicated under this Division in the same way as they apply to lands dedicated under Part 4.

#### **71U Name of Schedule 14 lands**

- (1) The proclamation laid before Parliament under this Division must assign a name to the Schedule 14 lands (or the part or parts of Schedule 14 lands) proposed to be reserved or dedicated under this Division.
- (2) The name so assigned must be the name recommended by the Aboriginal negotiating panel involved in the negotiations for the vesting and leasing of the lands, and may be the same name as, or a different name from, that listed in Schedule 14.
- (3) The Governor may, on the recommendation of the Aboriginal owner board members for lands reserved or dedicated under this Division, by proclamation published in the Gazette:
- (a) alter the name of the lands, and
  - (b) amend Schedule 14 by omitting the former name, and by inserting instead the new name, of the lands.
- (4) If a part or parts only of Schedule 14 lands are reserved or dedicated under this Division, the Governor may, by proclamation published in the Gazette, assign a new name for the part or parts of the Schedule 14 lands that are not reserved or dedicated under this Division.
- (5) Section 12 (1) of the *Geographical Names Act 1966* does not apply to a name assigned under this Division (or that name as altered or amended). The name so assigned, or the name as so altered or amended, is, for the purposes of the *Geographical Names Act 1966*, the geographical name of the place to which it relates.
- (6) If, before the reservation or dedication under this Division of Schedule 14 lands, the name of the lands is altered pursuant to the publication of a proclamation under Part 4 of this Act, that proclamation or another

proclamation published in the Gazette may amend Schedule 14 by omitting the former name, and by inserting instead the new name, of the lands.

**71V No consideration payable by Aboriginal Land Council on vesting of lands**

- (1) No consideration is payable to the Crown by an Aboriginal Land Council or Councils in relation to the vesting in the Council or Councils of lands pursuant to the publication of a proclamation under this Division.
- (2) No stamp duty under the *Stamp Duties Act 1920* is payable by an Aboriginal Land Council or Councils in relation to any such vesting.

**71W Reservation or dedication of part only of Schedule 14 lands**

- (1) Nothing in this Part prevents the negotiation of a lease and the reservation or dedication under this Part of a part or parts only of Schedule 14 lands.
- (2) In that event:
  - (a) on the establishment of a board of management for the part or parts of the Schedule 14 lands that are the subject of the lease, the care, control and management of that part or those parts only of the Schedule 14 lands vest in the board of management, and
  - (b) the provisions of this Act relating to the harming of animals and the picking of timber, vegetation, plants and similar things by Aboriginals apply to and in respect of the part or parts only of the Schedule 14 lands that are the subject of the lease, and
  - (c) the provisions of this Part relating to Schedule 14 lands that are leased and reserved or dedicated under this Part apply to and in respect of the part or parts only of the Schedule 14 lands that are the subject of the lease.



**Note.** See sections 31, 47BA, 47OA, 48, 58 (4A), 58K (4A) and 63 as to the vesting of reserved or dedicated lands on the establishment of a board of management under this Part and sections 45 (6), 56 (7), 57 (7), 58H (7), 58I (7), 58Q (7) and 58R (7) as to the harming of animals and the picking of timber, vegetation, plants and similar things by Aboriginals.

#### **Division 4      Reservation or dedication of ALR Act lands**

##### **71X Application of Division**

- (1) This Division applies to and in respect of lands to which section 36A of the Aboriginal Land Rights Act 1983 applies and to ALR Act lands only.
- (2) This Division applies to lands only if:
  - (a) the Minister is satisfied that the lands proposed to be reserved or dedicated under this Act are of sufficient natural conservation value to justify such reservation or dedication, and
  - (b) negotiations under Division 2 concerning the preparation of a draft lease in respect of the lands have been concluded and a lease, prepared as the result of the negotiations, has been executed in escrow by the Minister and the Aboriginal Land Council or Councils concerned.

**Note.** Section 36A of the Aboriginal Land Rights Act 1983 applies to certain Crown lands having nature conservation value that are the subject of a claim under that Act.

##### **71Y Reservation or dedication of ALR Act lands**

The Governor may, on the grant under the *Aboriginal Land Rights Act 1983* of ALR Act lands that are referred to in section 71X (2), by proclamation published in the Gazette:

- (a) reserve, as a national park, historic site, state recreation area or regional park, or
- (b) dedicate, as a nature reserve, state game reserve, karst conservation reserve or Aboriginal area,

the lands under this Act in accordance with this Part.

**71Z Effect of publication of proclamation**

- (1) On publication of the proclamation, the lease of the lands takes effect and is taken to have been executed on, and its term commences to run from, the date of publication of the proclamation.
- (2) On publication of the proclamation, the lands described in the proclamation are, despite the fact that the lands are vested in the Aboriginal Land Council or Councils, reserved or dedicated under this Act according to the tenor of the proclamation.
- (3) The leasing and vesting of ALR Act lands under this section is subject to the following:
  - (a) any native title rights and interests that exist in relation to the lands concerned,
  - (b) any existing interest within the meaning of section 39.

**71AA Certain other consequences of publication of proclamation**

On publication of a proclamation under this Division:

- (a) the Director-General has, until the establishment of a board of management for the lands, the care, control and management of the lands and may exercise on and with respect to those lands any power, authority, duty or function conferred or imposed on the Director-General by or under this or any other Act, and
- (b) the Service and the officers, employees and contractors of the Minister, the Director-General and the Service may (subject to any plan of management in force with respect to the lands and to any directions given and supervision and oversight exercised by the board of management for the lands) exercise on and with respect to those lands any power, authority, duty or function conferred or imposed on any one or more of them by or under this or any other Act.

### **71AB Applications of certain provisions to ALR Act lands**

- (1) Sections 71R, 71S and 71T apply to and in respect of ALR Act lands in the same way that they apply to and in respect of Schedule 14 lands.
- (2) Section 71U (1)–(4) applies to and in respect of ALR Act lands in the same way that it applies to and in respect of Schedule 14 lands except that:
  - (a) references in those subsections to a proclamation under Division 3 are to be read as references to a proclamation under this Division, and
  - (b) references in those subsections to Schedule 14 lands are to be read as references to ALR Act lands.

### **Division 5 Provisions as to leases**

#### **71AC Application of Division**

This Division applies to and in respect of Schedule 14 lands and ALR Act lands.

#### **71AD Matters to be covered in lease between Aboriginal Land Council and Minister**

- (1) A lease of lands under this Part must make provision for the following:
  - (a) the leasing of the whole of the lands vested in the Aboriginal Land Council or Councils to the Minister, subject to native title,
  - (b) a term of at least 30 years,
  - (c) the renewal of the lease for a further term of at least 30 years, with no limitation on the number of times the lease may be so renewed, provided that each party consents to the renewal,
  - (d) the manner in which the lease is to be renewed,
  - (e) the replacement of the lease, in accordance with this Part, with a new lease,
  - (f) an acknowledgement that the care, control and management of the lands is to be vested in a board of management established under this Part,

- (g) an acknowledgement that the Aboriginal Land Council or Councils in which the lands are vested hold the lands on behalf of the Aboriginal owners of the lands,
- (h) an acknowledgement that the Service and the officers, employees and contractors of the Minister, the Director-General and the Service are (subject to any plan of management in force with respect to the lands and to any directions given and supervision and oversight exercised by the board of management for the lands) entitled to exercise on and with respect to the lands any power, authority, duty or function conferred or imposed on any one or more of them by or under this or any other Act,
- (i) an acknowledgement that the Aboriginal owners of the lands, and any other Aboriginals who have the consent of the Aboriginal owner board members, are entitled (subject to this and any other Act applying to the lands and any plan of management in force with respect to the lands) to enter and use the lands for hunting or fishing for, or the gathering of, traditional foods for domestic purposes and for ceremonial and cultural purposes to the extent that that entry or use is in accordance with the tradition of the Aboriginal owners,
- (j) an acknowledgement that the Aboriginal Land Council or Councils in which the lands are vested and their employees, contractors and agents must comply with the provisions of this and any other Act applying to the lands, the regulations and any plan of management in force with respect to the lands, including provisions concerning the protection of animals, trees, timber, plants, flowers and vegetation,
- (k) an acknowledgement that the lease is subject to any existing interest within the meaning of section 39, any licence issued under Part 9, any lease, licence, franchise or easement granted under Part

- 12 and any authority or consent issued under this Act or the regulations affecting the lands, or any part of the lands, that is current on the date on which the lands are vested in the Aboriginal Land Council or Councils,
- (l) the grant, extension or extinguishment of any interest, licence, lease, franchise, easement, authority or consent of a kind referred to in paragraph (k) subject to the requirements of this Act and, in the case of an extension or extinguishment, to any instrument under which the interest, licence, lease, franchise, easement, authority or consent was granted,
  - (m) an acknowledgement that the public generally has (subject to any plan of management in force with respect to the lands) a right of access to the lands in accordance with this Act and the regulations,
  - (n) a term acknowledging that the lands, or any part of the lands, may not be the subject of any sale, exchange, disposal or mortgage and providing that, to the extent to which the lands may otherwise be dealt with, any such dealing must be only with the prior written consent of the Minister.
- (2) A lease under this Part must also make provision for the following:
- (a) a requirement that the Minister consult with the Aboriginal Land Council or Councils in which the lands are vested before the making, amending or repealing of any regulations in respect of the lands,
  - (b) a requirement that consultations concerning the operation of the lease are to involve the Director-General and the board of management for the lands,
  - (c) the compliance by the parties to the lease with any requirements that arise because the lands are, or a part of the lands is, situated in an area listed as an item of cultural heritage or natural heritage of outstanding universal value in accordance with:

- (i) the *World Heritage Properties Conservation Act 1983* of the Commonwealth, and
  - (ii) the Convention for the Protection of the World Cultural and Natural Heritage adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization, being the convention a copy of the English text of which is set out in the Schedule to the Commonwealth Act referred to in subparagraph (i).
- (3) As a condition of a lease under this Part, the Minister must undertake to use the Minister's best endeavours to implement the Aboriginal Employment and Training Plan 1991–1996 published by the National Parks and Wildlife Service in October 1991 or any plan replacing that Plan and, in particular, any timetable set out in such a plan. The Minister must report to Parliament from time to time on progress achieved in implementing any such plan.
- (4) The lease may make provision for such other matters, not inconsistent with this Act or the regulations, as the Minister and the Aboriginal Land Council or Councils consider appropriate.

**71AE Rent payable under lease**

- (1) The Minister is to pay rent under any lease entered into with an Aboriginal Land Council or Councils under this Part.
- (2) All rent payable by virtue of this section is payable out of the Consolidated Fund, which, to the necessary extent, is appropriated accordingly.
- (3) The rent is to be an amount, negotiated by the parties or otherwise fixed in accordance with this section, that compensates the Aboriginal Land Council or Councils for the fact that it or they do not have the full use and enjoyment of the lands the subject of the lease.

- (4) In negotiating the rent, the parties are to have regard to the following matters:
- (a) the nature, size and location of the lands concerned and the nature of the infrastructure and improvements, if any, on the lands,
  - (b) the nature of the ownership rights in the lands that the Aboriginal Land Council or Councils possess,
  - (c) the provisions of this Act and the lease relating to the lands,
  - (d) the extent to which the cultural significance of the lands to Aboriginal persons restricts the use that may be made of the lands under the lease,
  - (e) the arrangements contained in this Act and the lease for the care, control, management and development of the lands,
  - (f) the amount of rent payable under leases of lands adjoining or in the vicinity of the lands the subject of the lease,
  - (g) the amounts realised on recent sales of freehold or leasehold land adjoining or in the vicinity of the lands the subject of the lease.
- (5) If the parties are unable to agree on the rent to be paid, the matter is to be referred to a mediator, experienced in valuation matters, selected by, and acceptable to, the Minister and the Aboriginal Land Council or Councils.
- (6) The regulations may make provision for and with respect to the mediation of a matter under this section including the remuneration of mediators and the exoneration of mediators from liability.
- (7) If the mediator is unable to resolve the matter within a reasonable period, the Minister may request the Valuer-General to fix the rent to be paid.

- (8) The Valuer-General, in fixing the rent, is to have regard to the matters referred to in subsection (4) and any other matters that the Valuer-General notifies to the parties and considers to be relevant. The decision of the Valuer-General as to the rent is final.
- (9) The rent is payable by the Minister, on annual rests, to the credit of the separate account in the Fund referred to in section 138 (1B) for payment out in accordance with section 139 (5).

#### **71AF Dating of lease**

On publication of a proclamation under Division 3 or 4, the Minister must cause the date of publication of the proclamation to be inserted in the lease as:

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

#### **71AG Registrar-General to enter particulars of vesting and lease in register**

- (1) On publication of a proclamation under Division 3 or 4, there must be lodged at the Land Titles Office:
  - (a) all title documents held by the Minister or the Director-General (in the case of Schedule 14 lands) or by the Aboriginal Land Council or Councils concerned (in the case of ALR Act lands) in relation to the lands referred to in the proclamation, and
  - (b) the lease, completed with the date of execution and commencement of the term.
- (2) On lodgment of those documents, the Registrar-General must enter in the appropriate register particulars of
  - (a) in the case of Schedule 14 land—the vesting of the lands in the Aboriginal Land Council or Councils concerned, and



- (b) in the case of Schedule 14 lands and ALR Act lands—of the lease of those lands to the Minister.
- (3) Following entry of the particulars, the Registrar-General must deliver the title documents to the Aboriginal Land Council or Councils.

#### **71AH Regular review of lease required**

- (1) At least once every 5 years during the term of a lease under this Part:
  - (a) the Director-General, on behalf of the Minister, and
  - (b) the Aboriginal Land Council or Councils in which the lands are vested, and
  - (c) the Aboriginal owner board members for the lands concerned,must consider whether or not any one or more of the provisions of the lease (including provisions relating to rent and the term of the lease) require amendment.
- (2) The review must include a consideration of the adequacy of the then existing arrangements for management of the lands concerned and whether a recommendation should be made for amendments to this Act to meet specific requirements relating to the management of those lands.
- (3) If a party to the lease or the Aboriginal owner board members fail to agree to an amendment proposed by another party, the disagreement is to be arbitrated in accordance with this Part.
- (4) A lease may be amended by agreement of the parties and the Aboriginal owner board members as a result of the consultations despite any other provision of this or any other Act or law or of the lease.

**71AI Renegotiation of lease before expiry of lease term**

- (1) At least 5 years before the expiry of each term of a lease under this Part:
  - (a) the Director-General, on behalf of the Minister, and
  - (b) the Aboriginal Land Council or Councils in which the lands are vested, and
  - (c) the Aboriginal owner board members for the lands concerned,

must consider whether or not any one or more of the provisions of the lease should be amended to enable the lease to operate more effectively.
- (2) If it is agreed that a provision does require amendment, the Director-General, the Aboriginal Land Council or Councils and the Aboriginal owner board members must negotiate on and prepare the required amendment at least 2 years before the expiry of the then current term of the lease.
- (3) Any amendment prepared in accordance with subsection (2) and agreed to by the Aboriginal Land Council or Councils must be presented to the Minister for approval at least 18 months before the expiry of the then current term of the lease.
- (4) If an amendment is approved by the Minister, a new lease must be prepared incorporating the amended provision.
- (5) At least 6 months before the expiry of the then current term of the lease, the new lease should, if at all possible, be executed in escrow by the Minister and the Aboriginal Land Council or Councils in which the lands are vested.
- (6) A lease executed under subsection (5) takes effect, in substitution for the previous lease between the Minister and the Aboriginal Land Council or Councils, on the expiration of the term of the previous lease.

- (7) If the Director-General and the Aboriginal Land Council or Councils agree that no provisions of the lease require amendment, the lease between the parties operates for a further term of 30 years, commencing on the expiration of the current term of the lease, in accordance with its provisions and the requirements of this Part.
- (8) The times specified by this section for the consideration of the provisions of the lease, the negotiation and preparation of amendments, the presentation of the amendments to the Minister and the execution of the lease may be varied by the agreement of the parties.

#### **71AJ Dating and registration of renegotiated lease**

- (1) The Minister must cause the date on which a re-negotiated lease takes effect under this Division to be inserted in the lease as:
  - (a) the date of execution of the lease, and
  - (b) the date of the commencement of the term of the lease.
- (2) The Aboriginal Land Council or Councils in which the lands are vested must cause all title documents held by the Aboriginal Land Council or Councils in relation to the lands referred to in the re-negotiated lease to be lodged at the Land Titles Office to enable the lease to be lodged for registration and the Registrar-General to enter in the appropriate register particulars of the lease.
- (3) Following entry of the particulars, the Registrar-General must return the title documents to the Aboriginal Land Council or Councils.

#### **71AK Variation of lease**

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

### **71AL Holding over under lease**

- (1) A lease under this Part does not expire by effluxion of time except as otherwise provided by this Part.
- (2) On the expiry of the then current term of a lease under this Part, the Minister holds over under the lease until such time as the lease is renewed or replaced.
- (3) The term of a lease that renews or replaces a lease whose term has expired runs from the date of execution of the new lease by the Minister.

### **Division 6 Boards of management**

#### **71AM Application of Division**

This Division applies to and in respect of Schedule 14 lands and ALR Act lands.

#### **71AN Boards of management**

- (1) There is to be a board of management for each area of Schedule 14 lands and ALR Act lands leased and reserved or dedicated under this Part. A board of management is to be established as soon as practicable after the lands are leased and reserved or dedicated.
- (2) A board of management is to consist of at least 11, but no more than 13, members appointed by the Minister with the concurrence of the Minister administering the *Aboriginal Land Rights Act 1983*.
- (3) Of the members:
  - (a) the majority are to be Aboriginal owners of the lands concerned nominated by themselves or by another Aboriginal owner of the lands with the consent of the nominee, and
  - (b) one is to be a person appointed from nominees of a Local Aboriginal Land Council or Councils in whose area or areas the whole or part of the lands are located, and

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- (c) one is to be a person appointed to represent the local council or councils (if any) whose area or areas comprise, or adjoin, the lands, and
  - (d) one is to be an officer of the Service for the time being nominated by the Director-General, and
  - (e) one is to be a person appointed from a panel of persons nominated by a group concerned in the conservation of the region in which the lands are located to represent conservation interests, and
  - (f) one is to be a person appointed on the nomination of owners, lessees and occupiers of land adjoining or in the vicinity of the lands to represent those owners, lessees and occupiers.
- (4) The Minister, in appointing Aboriginal owners under subsection (3) (a), is to have regard to such matters as the gender of the nominees and their cultural affiliations and family groupings in an endeavour to ensure that a representative group of members is appointed.
  - (5) The members of the board of management are to appoint one of the persons referred to in subsection (3) (a) as the chairperson of the board of management.
  - (6) A meeting of a board of management has a quorum only if a majority of the members present are persons referred to in subsection (3) (a).
  - (7) The regulations may make provision with respect to the constitution and procedure of a board of management including the declaration of pecuniary interests by members.

#### **71AO Functions of boards of management**

- (1) A board of management for lands to which this Division applies has the following functions:
  - (a) the care, control and management of the lands,

- (b) the preparation of plans of management for the lands,
  - (c) the supervision of payments from the Fund with respect to the lands.
- (2) Without limiting subsection (1), a board of management has the function of considering proposals for the carrying out, by Aboriginal owners or other Aboriginal persons, of cultural activities (such as hunting and gathering) within the lands and of approving, or refusing to approve, the carrying out of those activities.
- (3) A board of management must exercise its functions in accordance with any plan of management in force with respect to the lands for which it is established.
- (4) In the exercise of its functions, a board of management is subject to the control and direction of the Minister.
- (5) Despite subsection (4), the Minister may not give directions to a board of management in relation to:
  - (a) the contents of any report, advice, information or recommendation that is to be or may be made or given by the board, or
  - (b) any decision of the board, that is not inconsistent with this Act and the plan of management for the lands for which it was established, relating to the care, control and management of Aboriginal heritage and culture within the lands.
- (6) In the exercise of its functions with respect to the care, control and management of lands for which no plan of management is in force, a board of management is to consult with and have regard to the advice of the Director-General.
- (7) In this section:
  - exercise* a function includes perform a duty.
  - function* includes a power, authority or duty.

**71AP Term of office of board members**

Subject to the regulations, a member of a board of management holds office for such period (being not less than 4 years and not more than 6 years) as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

**71AQ Board of management to keep accounts**

- (1) A board of management must cause proper accounts and records to be kept in relation to all of its operations.
- (2) A board of management must prepare financial statements for each financial year in accordance with section 41B (1) of the *Public Finance and Audit Act 1983*.
- (3) The financial statements must be submitted for verification and certification to an auditor who is a registered company auditor within the meaning of the Corporations Law.
- (4) The financial statements must be prepared and submitted to the auditor not later than 6 weeks after the end of the financial year to which they relate.
- (5) A board of management must furnish to the Minister the audited financial statements and a certificate of the auditor, in a form prescribed by the regulations, not later than 4 months after the end of each financial year.

**Division 7 Addition of lands to Schedule 14**

**71AR Application of Division**

This Division applies to and in respect of lands proposed for addition to Schedule 14 only.

**71AS Proposals for additions to Schedule 14**

- (1) Any person or body (including a statutory authority) may submit to the Director-General a written proposal that lands reserved or dedicated under this Act be identified as having cultural significance to Aboriginals and listed in Schedule 14.

- (2) A copy of the proposal is to be given to the Registrar who must notify the following persons and bodies of the proposal:
  - (a) the New South Wales Aboriginal Land Council, and
  - (b) the Local Aboriginal Land Council or Councils in whose area or areas the lands the subject of the proposal are located, and
  - (c) the Aboriginal owners of the lands concerned (if they have been identified), and
  - (d) any body representing Aboriginals that the Registrar considers to be relevant.
- (3) The Registrar is to provide the Director-General with the names of the persons and bodies that the Registrar has notified of the proposal.

#### **71AT Assessment of proposals**

- (1) The Director-General must, after receiving a proposal, make an assessment of the cultural significance to Aboriginals of the lands referred to in the proposal and make a report to the Minister in relation to the proposal.
- (2) The Director-General is to consult with:
  - (a) the person or body that submitted the proposal, and
  - (b) the persons and bodies notified of the proposal by the Registrar, and
  - (c) any other person or body that the Director-General considers should be consulted,in relation to the making of the assessment and report.

#### **71AU Report to Minister**

- (1) In preparing a report for the Minister, the Director-General is to consider the following:
  - (a) whether the lands concerned contain places of spiritual or mythological importance in accordance with Aboriginal custom or lore,



- (b) whether the lands contain places used for the conduct of ceremonial activities by Aboriginals, including areas recognised for gender specific cultural activities,
  - (c) whether the lands contain areas that are significant for their association with Aboriginal life after occupation of the area in which the lands are situated by persons of European extraction.
- (2) The Director-General's report is to make comment on the following matters in relation to the lands concerned:
- (a) whether Aboriginal burials or remains, or both, are present,
  - (b) the rarity of types of Aboriginal sites and objects on the lands in the context of the cultural area in which the lands are located,
  - (c) the diversity of Aboriginal sites and objects on the lands,
  - (d) the antiquity of Aboriginal sites and objects on the lands,
  - (e) whether the lands have been listed:
    - (i) in the Register of the National Estate kept in pursuance of the *Australian Heritage Commission Act 1975* of the Commonwealth, or
    - (ii) as an item of cultural heritage of outstanding universal value in accordance with the *World Heritage Properties Conservation Act 1983* of the Commonwealth and the Convention for the Protection of the World Cultural and Natural Heritage that, is referred to in section 71AD (2) (c) (ii),

on the basis, or partly on the basis, of their cultural significance to Aboriginals.

- (3) The Director-General must also indicate in the report whether any disagreement exists among the persons or bodies consulted by the Director-General regarding the proposal as to whether the lands are of cultural significance to Aboriginals or should be listed in Schedule 14, or both.
- (4) The Director-General may include any other matters in the report that the Director-General considers to be relevant.

**71AV Consideration of report by Minister**

- (1) On receiving a report from the Director-General, the Minister is to consider whether the lands concerned are of cultural significance to Aboriginals and, if so, whether the Minister should recommend to the Governor that the lands be listed in Schedule 14.
- (2) The Minister is not to make a recommendation that the lands be listed in Schedule 14 unless the Minister is satisfied that the cultural significance of the lands to Aboriginals is at least equivalent to that of the lands already listed in the Schedule.

**71AW Listing of additional lands in Schedule 14**

- (1) Additional lands may be listed in Schedule 14 only by an Act of Parliament.
- (2) If Parliament approves of the listing of lands in Schedule 14 following the making of a recommendation by the Minister to the Governor that the lands be so listed, the lands may be dealt with in accordance with the provisions of this Part that apply to Schedule 14 lands and, in particular, with the provisions of Divisions 2, 3, 5 and 6.

**Division 8      Addition of lands to Schedule 14 lands or  
ALR Act lands leased under Part**

**71AX Application of Division**

This Division applies to and in respect of Schedule 14 lands and ALR Act lands that are leased and reserved or dedicated under this Part.

**71AY Definition of “area”**

In this Division, *area* means lands reserved under this Part as a national park, historic site or state recreation area or dedicated under this Part as a nature reserve, state game reserve, karst conservation reserve or Aboriginal area.

**71AZ Additions may be made to reserved or dedicated lands leased under Part**

- (1) Nothing in this Act prevents the reservation or dedication of lands, in accordance with this Division, as part of an area that has been leased and reserved or dedicated in accordance with this Part.
- (2) Lands may be reserved or dedicated as part of an area referred to in this section only with the consent of:
  - (a) the Aboriginal Land Council or Councils in which they are vested, and
  - (b) the board of management for the area.

**71BA Addition of lands already reserved or dedicated under Act**

- (1) Lands that are reserved or dedicated under this Act may be added as part of an area that is leased under this Part only if the lands are listed in Schedule 14.
- (2) The Governor may, by proclamation published in the Gazette, declare that the whole or part of lands listed in Schedule 14, be taken to be reserved or dedicated as part of an area reserved or dedicated under this Part.

- (3) On the publication of the proclamation:
- (a) the lands are reserved or dedicated as part of the area, and
  - (b) the lands are vested in the Aboriginal Land Council or Councils in which the area is vested, and
  - (c) the care, control and management of the lands is to be exercised:
    - (i) by the board of management for the area, or
    - (ii) if a board of management has not been established for the area, by the Director-General until a board of management is established for the area, and
  - (d) the lease over the area negotiated under this Part is taken to extend and apply to the lands in the same way that the lease applies to the area, and
  - (e) the provisions of this Act and any instrument made under this Act (including any plan of management or regulations) apply to the lands in the same way that they apply to the area.
- (4) Subsections (2) and (3) apply, in relation to the lands added to the area, subject to the following:
- (a) any native title rights and interests that exist in relation to the lands,
  - (b) any existing interest within the meaning of section 39,
  - (c) any licence issued under Part 9,
  - (d) any lease, licence, franchise or easement granted under Part 12,
  - (e) any authority or consent issued under this Act or the regulations.

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**71BB Tabling of proclamation to add lands if change of land classification involved**

- (1) A copy of a proclamation published under section 71BA is to be laid before each House of Parliament within 14 sitting days of that House after the publication of the proclamation if the classification of the lands specified in the proclamation is changed from the classification that the lands have in Schedule 14.
- (2) If a House of Parliament passes a resolution of which notice has been given within 15 sitting days of that House after a copy of a proclamation has been laid before it under this section (whether or not those sitting days occur during the same session) and the resolution disallows the reservation or dedication taken to be effected by the proclamation of any lands:
  - (a) the reservation or dedication of the lands as part of the area leased under this Part ceases to have effect on the disallowance, and
  - (b) the lands cease to be part of the area concerned and revert to the classification, as lands reserved or dedicated under this Act and listed in Schedule 14, that they had before the publication of the proclamation, and
  - (c) the vesting of the lands in an Aboriginal Land Council or Councils is of no effect, and
  - (d) the care, control and management of the lands is to be exercised by the person or body that had the care, control and management of the lands before the publication of the proclamation, and
  - (e) the lease of the lands does not operate in respect of the lands, and
  - (f) the provisions of this Act and any instrument made under this Act that applied to the lands by reason only of the publication of the proclamation cease to apply to the lands.

**71BC Addition of lands not already reserved or dedicated under Act**

- (1) The Governor may, by proclamation published in the Gazette, reserve or dedicate, as part of an area leased under this Part any of the following:
  - (a) Crown lands,
  - (b) lands of the Crown,
  - (c) lands acquired under section 145, 146 or 148,
  - (d) Aboriginal lands.
- (2) On the publication of the proclamation:
  - (a) the lands described in the proclamation become Crown lands to the extent to which they were not Crown lands immediately before that publication, and
  - (b) if a trustee of all or any part of the lands so described was holding office under any this or any other Act immediately before that publication, the trustee ceases to hold that office in respect of those lands, and
  - (c) any by-laws or regulations that, immediately before that publication, applied to the lands cease to apply so far as they relate to the lands, and
  - (d) the lands are reserved or dedicated as part of the area, and
  - (e) the lands are vested, or in the case of Aboriginal lands, remain vested, in the Aboriginal Land Council or Councils in which the area is vested, and
  - (f) the care, control and management of the lands is to be exercised:
    - (i) by the board of management for the area, or
    - (ii) if a board of management has not been established for the area, by the Director-General until a board of management is established for the area, and

- (g) the lease over the area is taken to extend and apply to the lands in the same way that it applies to the area, and
  - (h) the provisions of this Act and any instrument made under this Act (including any plan of management or regulations) apply to the lands in the same way that they apply to the area.
- (3) Subsection (2) applies, in relation to the lands added to the area, subject to the following:
  - (a) any native title rights and interests in relation to the lands,
  - (b) any existing interest within the meaning of section 39.
- (4) To the extent to which a dedication or reservation (other than a dedication or reservation under Division 4 or this Division), Crown grant or vesting affects lands described in a proclamation published under this section, the publication revokes the dedication, reservation, grant or vesting, and the instruments of title (if any) must be surrendered for cancellation or notation.
- (5) In this section, **Aboriginal lands**, in relation to an Aboriginal Land Council or Councils that are the lessors of an area leased under this Part, means:
  - (a) lands owned in fee simple by the Aboriginal Land Council or Councils (other than lands referred to in paragraph (b)), or
  - (b) lands granted to the Aboriginal Land Council or Councils under Part 6 of the Aboriginal Land Rights Act 1983, whether or not subject to conditions of the kind referred to in section 36A (2) of that Act,

that the Aboriginal Land Council or Councils have requested, by written notice served on the Minister, be reserved or dedicated as part of the area vested in the Aboriginal Land Council or Councils.

**71BD Application of certain provisions to additional lands**

- (1) Sections 71R, 71S and 71T apply to and in respect of lands added to an area reserved or dedicated under this Part in the same way that they apply to and in respect of lands reserved or dedicated under Division 3 or 4 except as provided in this section.
- (2) Despite subsection (1), sections 34, 47C, 47I, 47Q (as inserted by the *National Parks and Wildlife Amendment Act 1996*), 47Z (as inserted by that Act), 49, 50, 58B and 58N apply to and in respect of lands reserved or dedicated under this Part.

**71BE Review of lease after addition of lands**

- (1) A party to a lease under this Part may request a review of the provisions of the lease if:
  - (a) lands are added to the lands originally leased, and
  - (b) the next regular review of the lease in accordance with the requirements of Division 5 is not due within the 2 years next following the date of publication of the proclamation by which lands are added to the lands originally leased.
- (2) Section 71AH applies to and in respect of the review of a lease under this section in the same way that it applies to and in respect of a lease referred to in that section.

**Division 9 Miscellaneous**

**71BF Application of Division**

This Division applies to and with respect to Schedule 14 lands and ALR Act lands.

**71BG Aboriginal Land Councils to act with agreement of Aboriginal owner board members**

An Aboriginal Land Council or Councils in which reserved or dedicated lands are vested must, when exercising any power, authority, duty or function



conferred or imposed on it or them under this Act or under the lease of the lands made under this Part (but subject to the requirements of this Act and any instrument, including the lease, made under this Act), act only with the agreement of the Aboriginal owner board members for the lands.

**71BH Regard to be had to interests of Aboriginal owners**

The Director-General and the National Parks and Wildlife Service must, when exercising any power, authority, duty or function conferred or imposed on them under this Act in relation to management of the lands to which this Part applies (but subject to the requirements of this Act and any instrument, including the lease, made under this Act), have regard to the interests of the Aboriginal owners of the lands concerned.

**71BI Land management activities subject to native title**

- (1) Despite any other provision of this Act:
- (a) the exercise of functions by a board of management, and
  - (b) the exercise of powers, authorities, duties and functions by the Director-General and the National Parks and Wildlife Service,

in relation to the management of the lands to which this Part applies is subject to the preservation of native title rights and interests (if any) that exist in relation to the lands.

- (2) If at any time an approved determination of native title is made that native title exists in relation to lands to which this Part applies, the Minister, the Aboriginal Land Council or Councils in which the lands concerned are vested and the board of management for the lands are authorised to enter into arrangements with the common law native title holders or their representatives (or both) to ensure that the native title rights and interests in relation to the lands are preserved.

- (3) An arrangement of the kind referred to in subsection (2) may be entered into despite any provision of this or any other Act or law and despite the fact that the entry into of the arrangement may involve the breach of another previously concluded arrangement.
- (4) No compensation is payable in respect of the breach of an arrangement because of the operation of this section.

**Note.** Approved determination of native title is defined in section 253 of the *Native Title Act 1993* of the Commonwealth.

#### **71BJ Arbitration of disputes**

- (1) Any dispute between:
  - (a) the Director-General and a board of management, or
  - (b) the Minister or Director-General and an Aboriginal Land Council or Councils,concerning matters arising under this Part (other than matters in respect of which a direction has been given to the Director-General by a board of management in accordance with this Part) is to be arbitrated by a panel of 3 arbitrators.
- (2) One of the 3 arbitrators is to be appointed by the Director-General, one by the board of management for the lands concerned and the third by agreement between the first 2 arbitrators or, failing such agreement, by the Chief Judge of the Land and Environment Court.
- (3) The procedures to apply to an arbitration are to be determined by the panel of arbitrators.
- (4) In conducting an arbitration, the arbitrators are to have regard to:
  - (a) the preservation of the rights and interests of native title holders, and
  - (b) the views on the subject of the dispute expressed by the Aboriginal owner board members,in relation to the lands concerned.

- (5) The regulations may make provision with respect to the arbitration of disputes under this section including as to the fixing and payment of the remuneration and expenses of the arbitrators.

### **71BK Dissolution of Local Aboriginal Land Council**

- (1) If lands to which this Part applies are vested:
- (a) in one Local Aboriginal Land Council and that Council is dissolved, or
  - (b) in more than one Local Aboriginal Land Council and each of the Councils in which the lands are vested is dissolved,

the lands are on and from the date of dissolution vested in the Aboriginal owners of the lands recorded in the register of Aboriginal owners until a new Aboriginal Land Council or Councils are constituted for the area or areas that constituted or included the area or areas of the dissolved Aboriginal Land Council or Councils.

- (2) On the constitution of the new Aboriginal Land Council or Councils, the lands vest in that Council or those Councils.
- (3) If lands to which this Part applies are vested in more than one Aboriginal Land Council and one or more but not all of the Councils in which the lands are vested are dissolved, on constitution of a new Aboriginal Land Council or Councils to replace the dissolved Council or Councils, the lands vest in that new Council or those new Councils for the interest held immediately before the dissolution by the dissolved Council or Councils.

### **71BL Status of leased lands and board of management**

- (1) A lease of lands to the Minister under this Part is taken, for the purposes of any Act or law, not to be a lease of lands for private purposes.

- (2) Each board of management is taken, for the purposes of the *Environmental Planning and Assessment Act 1979* and any regulation or planning instrument made under that Act, to be a public authority and, for all purposes under that Act and any such regulation or planning instrument, to occupy in respect of the lands of which it has care, control and management under this Part, the same position that the Director-General occupies in respect of lands of which the Director-General has care, control and management under this Act.

#### **71BM Omission of land from Schedule 14**

Schedule 14 may be amended by the omission of lands only by Act of Parliament.

#### **71BN Review of Part**

- (1) The Minister is to review the operation of this Part to determine whether the policy objectives of the Part remain valid and whether the terms of the Part remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the *National Parks and Wildlife Amendment (Aboriginal Ownership) Act 1996*.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

#### **[22] Section 72 Plans of management**

Insert before section 72 (2):

- (1C) A plan of management for lands reserved or dedicated under Part 4A is to be prepared by the board of management for the lands concerned in consultation with the Director-General.

- (1D) If a part or parts only of lands listed in Schedule 14 are reserved or dedicated under Part 4A:
- (a) the Director-General may prepare a separate plan of management for the part or parts of the lands that are not so reserved or dedicated in accordance with this Part, or
  - (b) the Director-General and the board of management may agree that the plan of management prepared for the lands reserved or dedicated under Part 4A should extend and apply to the lands that are not so reserved or dedicated in which event the provisions of this Part applying to the preparation of plans of management by boards of management apply to the plan.
- (1E) Subsections (1C) and (1D) do not require a plan of management to be prepared if an existing plan of management is in force when the lands are reserved or dedicated under Part 4A. However, any such existing plan, in so far as it relates to lands reserved or dedicated under Part 4A, must be reviewed by the board of management for the lands concerned within 2 years after the lands are so reserved or dedicated and may be amended, altered or cancelled in accordance with this section.
- (1F) Without limiting subsection (1) (c), in the case of lands for which a plan of management is not in force when the lands are reserved or dedicated under Part 4A, a plan of management is to be prepared by the board of management for the lands within 2 years after that reservation or dedication.
- (1G) After a plan of management has been prepared by a board of management, the board must give notice in a form approved by the Minister that the plan of management has been prepared and must, in that notice:
- (a) specify the address where copies of the plan of management may be inspected, and

- (b) specify the address to which representations in connection with the plan of management may be forwarded.
- (1H) Any person interested may, within 1 month or such longer period as may be specified in the notice, make representations to the board of management in connection with the plan of management.
- (1I) The board of management must, on the expiration of the period referred to in subsection (1H), refer the plan of management, and any representations forwarded to the board of management, to the Council for its consideration and advice.
- (1J) The board of management must then submit the plan of management to the Minister together with any comments or suggestions of the Council.
- (1K) The Minister is to consider the comments and suggestions of the Council before adopting the plan of management.
- (1L) The Minister may adopt the plan of management without alteration or with such alterations as the Minister thinks fit or may refer it back to the board of management and the Council for further consideration.
- (1M) The Minister may, on the recommendation of the board of management for lands reserved or dedicated under Part 4A:
  - (a) amend or alter the plan of management for the lands from time to time, or
  - (b) cancel the plan, or
  - (c) cancel the plan and substitute a new plan.
- (1N) The provisions of subsections (2) and (4) and section 74 apply to and in respect of an amendment or alteration referred to in subsection (1M) in the same way as they apply to or in respect of the plan of management for lands reserved or dedicated under Part 4A and as if the reference in section 74 (2) to the Director-General was a reference to the board of management.

**[23] Section 72 (2AA)**

Insert after section 72 (2):

(2AA) Without limiting subsection (2), a plan of management for lands reserved or dedicated under Part 4A may provide for the use of the lands for any community development purpose prescribed by the regulations.

**[24] Section 72 (2AB)**

Insert before section 72 (2A):

(2AB) Without limiting subsection (2), a plan of management for lands reserved or dedicated under Part 4A may provide for the conduct of studies concerning the threat, if any, to threatened species of animals or plants posed by the exercise of rights to hunt or fish, or to gather traditional foods, by the Aboriginal owners or other Aboriginal persons before any such rights are exercised, and for the regular monitoring of the exercise of those rights.

**[25] Section 72 (4) (j1)**

Omit “and”.

**[26] Section 72 (4) (l)**

Insert at the end of section 72 (4):

, and

(l) in the case of lands reserved or dedicated under Part 4A, the need to maintain its national or international significance and to comply with the provisions of any relevant national or international agreement by which the State is bound.

**[27] Section 75 Adoption of plan of management for national park or historic site**

Insert “(other than a national park or historic site reserved under Part 4A)” after “site” in section 75 (1).

**[28] Section 75A Adoption of plan of management for state recreation area**

Insert “(other than a state recreation area reserved under Part 4A)” after “state recreation area” where firstly occurring in section 75A (1).

**[29] Section 76 Adoption of plan of management for nature reserve, state game reserve or karst conservation reserve**

Insert “(other than a nature reserve, state game reserve or karst conservation reserve dedicated under Part 4A)” after “reserve” where lastly occurring in section 76 (1).

**[30] Section 77 Adoption of plan of management for Aboriginal area**

Insert “(other than an Aboriginal area dedicated under Part 4A)” after “area” in section 75A (1).

**[31] Section 79A**

Insert after section 79:

**79A Lapsing of plans of management**

- (1) A plan of management for lands reserved or dedicated under Part 4A expires on the tenth anniversary of the date on which it was adopted unless it is sooner cancelled under this Part.



- (2) Not less than 6 months before a plan of management expires, the board of management for the lands concerned must prepare a new plan of management to replace it.
- (3) The board of management is to have regard to a plan of management that has expired until the new plan of management comes into effect.

**[32] Section 81 Operations under plan of management**

Omit “subject to subsection (5)” from section 81(1).  
Insert instead “subject to subsections (5) and (6)”.

**[33] Section 81 (6)**

Insert after section 81 (5):

- (6) If the Minister has adopted a plan of management for lands reserved or dedicated under Part 4A, it is to be carried out and given effect to by the board of management for the lands.

**[34] Section 85A**

Insert after section 85:

**85A Transfer of relics**

- (1) The Director-General may, despite any other provision of this Act, dispose of relics that are the property of the Crown:
  - (a) by returning the relics to an Aboriginal owner or Aboriginal owners entitled to, and willing to accept possession, custody or control of the relics in accordance with Aboriginal tradition, or

- (b) by otherwise dealing with the relics in accordance with any reasonable directions of an Aboriginal owner or Aboriginal owners referred to in paragraph (a), or
  - (c) if there is or are no such Aboriginal owner or Aboriginal owners—by transferring the relics to a person, or a person of a class, prescribed by the regulations for safekeeping.
- (2) Nothing in this section is taken to limit the right of an Aboriginal owner or Aboriginal owners accepting possession, custody or control of any relic pursuant to this section to deal with the relic in accordance with Aboriginal tradition.
- (3) The regulations may make provision as to the manner in which any dispute concerning the entitlement of an Aboriginal owner or Aboriginal owners to possession, custody or control of relics for the purposes of this section is to be resolved.

**[35] Section 90 Destruction etc of relics or Aboriginal places**

Insert after section 90 (1):

- (1A) Subsection (1) does not apply with respect to a relic that is dealt with in accordance with Aboriginal tradition pursuant to section 85A.

**[36] Section 117 Restriction on picking or possession of native plant**

Insert “or in lands reserved or dedicated under Part 4A by an Aboriginal owner on whose behalf the lands are vested in an Aboriginal Land Council or Councils under that Part or any other Aboriginal person who has the consent of the Aboriginal owner board members for the lands for purposes referred to in section 57 (7)” after “refuge” in section 117 (2).

**[37] Section 138 Payments into the Fund**

Insert “(including money provided for the expenses incurred or likely to be incurred by boards of management in connection with the preparation of plans of management for, and the care, control and management of, lands reserved or dedicated under Part 4A)” after “this Act” in section 138 (1) (a).

**[38] Section 138 (1) (b1)**

Insert after section 138 (1) (b):

- (b1) all money received in respect of
  - (i) rent paid by the Minister in respect of lands leased under Part 4A, and
  - (ii) matters of a kind referred to in paragraph (b) in respect of those lands,

**[39] Section 138 (1B) and (1C)**

Insert before section 138 (2):

- (1B) Subject to subsections (2) and (3), any money paid into the Fund, including rent paid by the Minister, in respect of lands leased under Part 4A is to be carried into a separate account in the Fund.
- (1C) Any money referred to in subsection (1B) may, pending its application in accordance with this Act, be invested by the Minister with the Treasurer or in any manner in which trustees are for the time being authorised to invest trust funds.

**[40] Section 139 Payments out of the Fund**

Insert after section 139 (4):

- (5) Any money in a separate account kept under section 138 (1B) in respect of lands reserved or dedicated under Part 4A must be applied:
  - (a) for the management of the lands (including the preparation of a plan of management for the lands), and
  - (b) in accordance with the provisions of any plan of management for the lands.

**[41] Section 144B**

Insert after section 144A:

**144B Annual report**

The Service is to include a statement of its operations and expenditure in connection with lands reserved or dedicated under Part 4A in each report it makes under the *Annual Reports (Departments) Act 1985*.

**[42] Section 145 Acquisition of land for reservation or other purposes**

Insert “or Part 4A” after “Part 4” in section 145.

**[43] Section 148 Power of Minister to accept gifts**

Insert “or Part 4A” after “Part 4” in section 148 (4).

**[44] Section 149 Disposal of property**

Insert after section 149 (2):

(3) Nothing in this section affects the operation of Part 4A.

**[45] Section 150 Minister to be corporation sole for certain purposes**

Insert “Part 4A and” after “functions under” in section 150 (1).

**[46] Section 151 Leases of and licences over reserved or dedicated lands**

Insert after subsection (4):

(5) Nothing in this section affects the operation of Part 4A.

**[47] Schedule 3 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*National Parks and Wildlife Amendment (Aboriginal Ownership) Act 1996*

**[48] Schedule 3, clauses 25 and 26**

Insert at the end of the Schedule:

**25 Advisory committees to cease to function on vesting of Schedule 14 lands**

An advisory committee that immediately before the publication of a proclamation under Division 3 or 8 of Part 4A in respect of lands listed in Schedule 14 exercised functions in respect of those lands, ceases to exercise those functions on the date of that publication.

**26 Dissolution of certain state recreation area on vesting of Schedule 14 lands**

- (1) On the publication of a proclamation under Division 3 or 8 of Part 4A in respect of lands listed in Schedule 14:
  - (a) any state recreation area trust in existence for the lands immediately before that publication is dissolved, and
  - (b) the members of the state recreation area trust are removed from office.
- (2) However, if the proclamation relates to a part or parts of lands listed in Schedule 14, the state recreation area trust ceases to hold office under this Act in relation to that part or those parts of the lands only on the date of that publication.

**[49] Schedule 7 The Council**

Omit “13” from clause 1 (1) (b). Insert instead “15”.

**[50] Schedule 7, clause 1 (3) (j)**

Omit “and”.

**[51] Schedule 7, clause 1 (3) (l)**

Insert at the end of clause 1 (3) (k):

, and

- (l) 2 are to be Aboriginals selected by the Minister from nominees of the New South Wales Aboriginal Land Council.

**[52] Schedule 14**

Insert after Schedule 13:

**Schedule 14 Lands of cultural significance to  
Aboriginals**

(Sections 71D (2), 71U, 71AW and 71BM)

Jervis Bay National Park

Mungo National Park

Mootwingee Historic Site, Mootwingee National Park and  
Coturaundee Nature Reserve

Mount Grenfell Historic Site

Mount Yarrowyck Nature Reserve

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## **Schedule 2    Amendment of Aboriginal Land Rights Act 1983**

(Section 4)

### **[ 1 ]    Section 4 Definitions**

Insert in alphabetical order in section 4 (1):

*Aboriginal owners of land* means the Aboriginals named as persons having a cultural association with the land in the register of Aboriginal owners kept under Part 8A.

*NPW Act* means the *National Parks and Wildlife Act 1974*.

### **[2]    Section 12 Functions of a Local Aboriginal Land Council**

Insert after section 12 (a):

- (a1) to negotiate the acquisition by the Council or by the Council and one or more other Local Aboriginal Land Councils of lands of cultural significance to Aboriginals that are listed in Schedule 14 to the NPW Act and the lease of those lands to the Minister administering that Act, and
- (a2) to submit proposals to the Director-General of National Parks and Wildlife for the listing in that Schedule of other lands of cultural significance to Aboriginals that are reserved or dedicated under the NPW Act, and
- (a3) to negotiate the lease by the Council or by the Council and one or more other Local Aboriginal Land Councils of lands to which section 36A applies to the Minister administering the NPW Act, and

**[3] Section 12 (2)**

Insert at the end of section 12:

- (2) A Local Aboriginal Land Council must, when exercising its functions with respect to lands that are the subject of a lease, or proposed lease, under Part 4A of the NPW Act, act in the best interests of the Aboriginal owners of the lands concerned.

**Note.** Part 4A of the NPW Act deals with lands, reserved or dedicated under that Act, that are vested in an Aboriginal Land Council or Councils and are leased by that Council or those Councils to the Minister administering that Act.

**[4] Section 23 Functions of the Council**

Insert after section 23 (c):

- (c1) to negotiate the acquisition by the Council or by one or more Local Aboriginal Land Councils of lands of cultural significance to Aboriginals that are listed in Schedule 14 to the NPW Act and the lease of those lands to the Minister administering that Act,
- (c2) to submit proposals to the Director-General of National Parks and Wildlife for the listing in that Schedule of other lands of cultural significance to Aboriginals that are reserved or dedicated under the NPW Act,
- (c3) to negotiate the lease by the Council or by one or more Local Aboriginal Land Councils of lands to which section 36A applies to the Minister administering the NPW Act,



**[5] Section 23 (2)**

Insert at the end of section 23:

- (2) The New South Wales Aboriginal Land Council must, when exercising its functions with respect to lands that are the subject of a lease, or proposed lease, under Part 4A of the NPW Act, act in the best interests of the Aboriginal owners of the lands concerned.

**Note.** Part 4A of the NPW Act deals with lands, reserved or dedicated under that Act, that are vested in an Aboriginal Land Council or Councils and are leased by that Council or those Councils to the Minister administering that Act.

**[6] Section 36A**

Insert after section 36:

**36A Special provision concerning certain Crown lands having nature conservation value**

- (1) This section applies in relation to lands that:
  - (a) are the subject of a claim by one or more Aboriginal Land Councils under section 36, and
  - (b) the Crown Lands Minister is satisfied would be claimable Crown lands except for the fact that the lands are needed, or likely to be needed, for the essential public purpose of nature conservation.
- (2) If the Aboriginal Land Council or Councils making the claim agree to the imposition of the conditions that, before the grant of a claim to lands to which this section applies, the Aboriginal Land Council or Councils:
  - (a) must negotiate a lease of the lands, that complies with the requirements of Part 4A of the NPW Act, with the Minister administering that Act, and
  - (b) must agree:
    - (i) to enter into a lease of the lands to the Minister administering the NPW Act in the terms negotiated in accordance with paragraph (a), and

- (ii) to the simultaneous reservation or dedication of the lands under the NPW Act, and
- (iii) to hold the lands as lands reserved or dedicated under the NPW Act, and
- (iv) to comply with the requirements of the NPW Act and, in particular, the requirements of Part 4A of that Act in relation to the lands,

the Crown Lands Minister may, despite section 36 (5) (b), grant a claim to lands to which this section applies.

**Note.** Part 4A of the NPW Act deals with lands, reserved or dedicated under that Act, that are vested in an Aboriginal Land Council or Councils and are leased by that Council or those Councils to the Minister administering that Act.

- (3) The Crown Lands Minister must not grant a claim to lands to which this section applies unless the Minister administering the NPW Act:
  - (a) has agreed to the reservation or dedication of the lands under Division 4 of Part 4A of that Act, and
  - (b) has notified the Crown Lands Minister in writing that a lease, negotiated in pursuance of subsection (2) with the Aboriginal Land Council or Councils concerned, is acceptable to the Minister and has been executed in escrow by the proposed parties to it.

**Note.** Division 4 of Part 4A of the NPW Act deals with the reservation or dedication and leasing under that Act of lands to which section 36A applies that have been granted by the Crown Lands Minister to an Aboriginal Land Council or Councils under this Act.

- (4) If a claim by one or more Aboriginal Land Councils relates partly to lands to which this section applies and partly to other lands, nothing in this section prevents the Crown Lands Minister from granting the claim:

- (a) as to so much of the lands to which this section applies—subject to and in accordance with this section, and
  - (b) as to the balance of the lands—in accordance with the other provisions of this Part.
- (5) This section does not limit section 36 and the provisions of that section (in so far as they are applicable) apply to the lands to which this section applies, and to their transfer.
- (6) Parts 7 and 8 do not apply to lands to which this section applies on and from the date of their reservation or dedication under the NPW Act.
- (7) In this section, claimable Crown lands and Crown Lands Minister have the same meanings as in section 36.

**[7] Section 38 Purchase, lease etc of property**

Insert after section 38 (4):

- (5) Nothing in this Act prevents the vesting of lands pursuant to Division 3 of Part 4A of the NPW Act in more than one Local Aboriginal Land Council as joint tenants (without the benefit of survivorship).

**Note.** Division 3 of Part 4A of the NPW Act deals, among other matters, with the vesting in an Aboriginal Land Council or Councils of lands, reserved or dedicated under that Act, that are of cultural significance to Aboriginals and that are listed in Schedule 14 to that Act.

**[8] Section 40AA Disposal of land subject to native title restricted**

Insert at the end of section 40AA:

- (2) Subsection (1) does not apply to or in respect of the lease of land by the New South Wales Aboriginal Land Council or one or more Local Aboriginal Land Councils to the Minister administering the *National Parks and Wildlife Act 1974* under Part 4A of that Act in accordance with a condition imposed under section 36A (2).

**[9] Section 40AB**

Insert after section 40AA:

**40AB Disposal of land reserved or dedicated under NPW Act restricted**

- (1) The New South Wales Aboriginal Land Council or a Local Aboriginal Land Council or Councils may not sell, exchange, lease, dispose of, mortgage or otherwise deal with lands that are vested in them and that are reserved or dedicated under Part 4A of the NPW Act except in accordance with that Act.
- (2) Sections 40A–40D and 41 do not apply with respect to lands referred to in subsection (1).

**Note.** Part 4A of the NPW Act deals with lands, reserved or dedicated under that Act, that are vested in an Aboriginal Land Council or Councils and are leased by that Council or those Councils to the Minister administering that Act.

**[10] Part 8A**

Insert after section 48:

**Part 8A Registrar and register of Aboriginal owners**

**49 Appointment of Registrar**

There is to be a Registrar employed under Part 2 of the *Public Sector Management Act 1988* who has the functions conferred or imposed on the Registrar by or under this or any other Act or law.

**49A Definitions**

In this Part:

*Crown Lands Minister* has the same meaning as in section 36.

*register* means the register of Aboriginal owners established under this Part.

#### **49B Register of Aboriginal owners**

- (1) The Registrar must establish and keep a register of Aboriginal owners.
- (2) The register is to be kept in a form prescribed by the regulations or, if no form is prescribed, in a form determined by the Registrar.
- (3) The register may consist of 2 or more parts, each containing some of the information that must be entered in the register.

#### **49C Contents of register**

- (1) The Registrar is to use the Registrar's best endeavours to enter in the register:
  - (a) the name of every Aboriginal who has a cultural association with land in the State, and
  - (b) the location of the land with which the Aboriginal has a cultural association, and
  - (c) the nature of the cultural association that the Aboriginal has with the land.
- (2) The name of an Aboriginal must not be entered in the register unless the Aboriginal:
  - (a) is directly descended from the original Aboriginal inhabitants of the cultural area in which the land is situated, and
  - (b) has a cultural association with the land that derives from the traditions, observances, customs, beliefs or history of the original Aboriginal inhabitants of the land, and
  - (c) has consented to the entry of the Aboriginal's name in the register.
- (3) The Registrar is to give priority to the entry in the register of the names of Aboriginals who have a cultural association with the lands listed in Schedule 14 to the NPW Act.

**Note.** Schedule 14 to the NPW Act lists lands of cultural significance to Aboriginals that are reserved or dedicated under that Act.

**49D Requests for entry of names in register**

- (1) Any Aboriginal may make a written request to the Registrar to enter the name of an Aboriginal in the register.
- (2) A request must specify the cultural area with which the Aboriginal nominated for inclusion in the register has a cultural association.
- (3) A request must not be made without the written consent of the Aboriginal nominated for inclusion in the register.

**49E Requests for opening of parts of register**

- (1) The Minister administering the NPW Act may request the Registrar to open a part of the register for the purpose of entering the names of Aboriginals who have a cultural association with lands that the Minister administering the NPW Act has recommended to the Governor be listed in Schedule 14 of that Act.
- (2) The Registrar is to comply with a request made by a Minister under this section.
- (3) An Aboriginal or an Aboriginal Land Council may also request the Registrar to open a part of the register for the purpose of entering the names of Aboriginals who have a cultural association with a particular area of land specified in the request.

**49F Rectification of register**

- (1) An Aboriginal or group of Aboriginals that consider that his, her or their names have been wrongly entered on or omitted from the register may request the Registrar to rectify the register.
- (2) If the Registrar:
  - (a) fails to rectify the register in the manner requested within 6 months after the making of the request, or
  - (b) refuses, within that time, to rectify the register in the manner requested,

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the Aboriginal or group of Aboriginals that made the request may appeal to the Land and Environment Court.

- (3) On the hearing of an appeal under this section, the Court may:
  - (a) order the Registrar to rectify the register, or
  - (b) decline to order that the register be rectified, or
  - (c) make such other order as to the Court appears appropriate.
- (4) An appeal is to be made within the time and in the manner provided by the rules of the Court.
- (5) In deciding an appeal, the Court:
  - (a) has the functions and discretions of the Registrar under this Part, and
  - (b) is not bound by the rules of evidence and may inform itself on any matter in any way that the Court considers to be just.
- (6) A decision of the Court on an appeal is final and is to be given effect to as if it were the decision of the Registrar.
- (7) The Court may award costs in an appeal under this section in exceptional circumstances only.

#### **49G Reference by Registrar to Land and Environment Court**

- (1) The Registrar may refer to the Land and Environment Court, for decision by the Court:
  - (a) a request for the entry of the name of an Aboriginal in the register, or
  - (b) a request for the omission of the name of an Aboriginal from the register, or
  - (c) any other question arising under this Part in relation to the keeping of the register by the Registrar.
- (2) The Chief Judge of the Court is to determine whether or not the Court should deal with the request or question.

- (3) The Court may:
  - (a) hear and determine the request or question, or
  - (b) refer the request or question back to the Registrar, with such directions or recommendations as the Court considers appropriate.
- (4) The Court may hear and determine a part of a question and refer the remainder back to the Registrar.
- (5) The Registrar is to give effect to a determination of the Court under this section.

**[11] Section 49 Registrar**

Omit the section.

**[12] Section 58A Dissolution of Regional or Local Aboriginal Land Councils**

After section 58A (3), insert:

- (3A) Despite subsection (3), lands vested in a Local Aboriginal Land Council under Part 4A of the NPW Act do not vest in the New South Wales Aboriginal Land Council on the dissolution of the Local Aboriginal Land Council but vest in accordance with that Part.

**Note.** Part 4A of the NPW Act deals with lands, reserved or dedicated under that Act, that are vested in an Aboriginal Land Council or Councils and are leased by that Council or those Councils to the Minister administering that Act.

**[13] Section 68 Regulations**

Insert after section 68 (2) (g):

- (g1) the keeping and operation of the register of Aboriginal owners.



**[14] Schedule 4 Savings, transitional and other provisions**

Omit “*Aboriginal Land Rights (Amendment) Act 1990*” from clause 1A (1).

Insert instead:

following Acts:

*Aboriginal Land Rights (Amendment) Act 1990*

*National Parks and Wildlife Amendment (Aboriginal Ownership) Act 1996*

**[15] Schedule 4, Part 4**

Insert after Part 3 of Schedule 4:

**Part 4 Provisions consequent on enactment of National Parks and Wildlife Amendment (Aboriginal Ownership) Act 1996**

**16 Definitions**

In this Part:

*appointed day* means the day on which Schedule 2 [6] to the *National Parks and Wildlife Amendment (Aboriginal Ownership) Act 1996* commences.

*Crown Lands Minister* has the same meaning as in section 36.

**17 Extension of certain provisions to claims to Crown lands**

The provisions of this Act, as amended by the *National Parks and Wildlife Amendment (Aboriginal Ownership) Act 1996*, extend to the following claims and the Crown Lands Minister may deal with the claims accordingly:

- (a) claims made before the appointed day that were not determined by the Crown Lands Minister before that day,

- (b) claims made before the appointed day that have been refused by the Crown Lands Minister but in respect of the refusal of which the right to appeal to the Land and Environment Court has not expired before the appointed day,
- (c) claims in respect of which appeals to the Land and Environment Court are pending on the appointed day.

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## **Schedule 3    Amendment of Land and Environment Court Act 1979**

(Section 5)

### **Section 20 Class 4—environmental planning and protection and development contract civil enforcement**

Insert after section 20 (ck):

- (cl) appeals under section 49F of the *Aboriginal Land Rights Act 1983*,
- (cm) references under section 49G of the *Aboriginal Land Rights Act 1983*,

## **Schedule 4 Amendments consequent on amendment of National Parks and Wildlife Act 1974**

(Section 6)

### **[1] Section 71R Certain provisions not to apply to lands reserved or dedicated under Division**

Omit “47B–47F” from section 71R (1) (as inserted by Schedule 1 [21]).

Insert instead “47B–47D, 47F (as amended by the *National Parks and Wildlife Amendment Act 1996*)”.

### **[2] Section 71S Application of certain provisions to lands reserved under Division**

Insert “(as substituted by the *National Parks and Wildlife Amendment Act 1996*)” after both “471” and “47L” in section 71S (1) (as inserted by Schedule 1 [21]).

### **[3] Section 71AY Definition of “area”**

Omit “or state recreation area” from section 71AY (as inserted by Schedule 1 [21]).

Insert instead “, state recreation area or regional park”.

### **[4] Section 71BD Application of certain provisions to additional lands**

Insert “(as substituted by the *National Parks and Wildlife Amendment Act 1996*)” after “471” in section 71BD (2) (as inserted by Schedule 1 [21]).

### **[5] Section 75A Adoption of plan of management for state recreation area or regional park**

Omit “(other than a state recreation area reserved under Part 4A)” from section 75A (1) (as amended by Schedule 1 [28]).

Insert instead “but not including a state recreation area or a regional park reserved under Part 4A” after “local council” where firstly occurring in section 75A (1) (as substituted by the *National Parks and Wildlife Amendment Act 1996*).

**[6] Schedule 3 Savings, transitional and other provisions**

Omit clause 26 (as inserted by Schedule 1 [48]). Insert instead:

**26 Dissolution of certain SRA trusts and regional park trusts on vesting of Schedule 14 lands**

- (1) On the publication of a proclamation under Division 3 or 8 of Part 4A in respect of lands listed in Schedule 14:
  - (a) any SRA trust or regional park trust in existence for the lands immediately before that publication is dissolved, and
  - (b) the members of the SRA trust board or the regional park board are removed from office.
- (2) However, if the proclamation relates to a part or parts of lands listed in Schedule 14, the SRA trust or regional park trust ceases to hold office under this Act in relation to that part or those parts only of the lands on the date of that publication.

[Minister’s second reading speech made in—  
Legislative Assembly on 20 November 1996  
Legislative Council on 5 December 1996]