

[Act 1996 No 142]



New South Wales

National Parks and Wildlife Amendment (Aboriginal Ownership) Bill 1996

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The objects of this Bill are:

- (a) to amend the *National Parks and Wildlife Act 1974* (the NPW Act):
 - to provide for the recognition by Parliament that certain lands that are reserved or dedicated under the NPW Act and identified in a Schedule to that Act are of cultural significance to Aboriginals and to provide a mechanism for adding other lands of like significance to that Schedule with Parliamentary approval, and

* Amended in committee—see table at end of volume.

- to enable the reservation or dedication of lands of cultural significance to Aboriginals that are listed in the Schedule to be revoked so that the lands can be vested in one or more Aboriginal Land Councils (subject to any native title existing in the lands) and simultaneously re-reserved or re-dedicated under the NPW Act and leased to the Minister administering the Act, and
- to enable the reservation or dedication under the NPW Act and leasing to the Minister administering the Act of lands of nature conservation value that are granted to one or more Aboriginal Land Councils under the *Aboriginal Land Rights Act 1983* (the ALR Act), and
- to provide for the care, control and management of lands vested in Aboriginal Land Councils under the NPW Act or granted to Aboriginal Land Councils under the ALR Act and subsequently reserved or dedicated under the NPW Act to be exercised by a board of management, the majority of whose members have been identified, as Aboriginals having a cultural association with the lands, by entry in the register of Aboriginal owners kept under the ALR Act, and
- to authorise the Director-General of National Parks and Wildlife to return relics that are the property of the Crown to Aboriginal owners who are entitled to possession of them in accordance with Aboriginal tradition or to transfer them to other persons prescribed by the regulations for safekeeping, and
- to provide for the appointment by the Minister administering the NPW Act of 2 Aboriginal nominees of the New South Wales Aboriginal Land Council to the National Parks and Wildlife Advisory Council, and
- to make consequential changes, to enable regulations of a savings or transitional nature to be made as a consequence of enactment of the proposed Act and to insert transitional provisions, and

- (b) to amend the *Aboriginal Land Rights Act 1983*:
- to expand the functions of Aboriginal Land Councils so that they may negotiate:
 - (i) the reservation or dedication and lease of lands of cultural significance to Aboriginals that are reserved or dedicated under the NPW Act with the Minister administering that Act so that the lands can be vested in them, or
 - (ii) the reservation or dedication and lease under the NPW Act of lands that are granted to them under the ALR Act, and
 - to enable the Minister administering legislation dealing with the sale or lease of Crown lands (**the Crown Lands Minister**) to grant claims under the ALR Act to lands having nature conservation value that could not otherwise be granted on the condition that the lands are reserved or dedicated under the NPW Act and leased to the Minister administering that Act, and
 - to provide for the keeping by the Registrar appointed under the ALR Act of a register of Aboriginal owners of land, and
 - to provide for appeals from decisions of the Registrar concerning the keeping of the register of Aboriginal owners to the Land and Environment Court and for the reference of matters by the Registrar to that Court for hearing and determination, and
 - to make consequential changes, to enable regulations of a savings or transitional nature to be made as a consequence of enactment of the proposed Act and to insert a transitional provision, and
- (c) to amend the *Land and Environment Court Act 1979* consequentially, and
- (d) to amend certain of the provisions of the NPW Act (as amended or inserted by the proposed Act) in consequence of the commencement of the *National Parks and Wildlife Amendment Act 1996* (which deals with regional parks and state recreation areas).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 is a formal provision giving effect to the amendments to the *National Parks and Wildlife Act 1974* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Aboriginal Land Rights Act 1983* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendment to the Land and Environment Court Act 1979 set out in Schedule 3.

Clause 6 is a formal provision giving effect to amendments to the amendments to the *National Parks and Wildlife Act 1974* set out in Schedule 1 that are made in consequence of the commencement of the *National Parks and Wildlife Amendment Act 1996*.

Schedule 1 Amendment of National Parks and Wildlife Act 1974

Aboriginal land

The proposed Act inserts Part 4A (Aboriginal land), containing 9 Divisions (proposed sections 71B–71BN) in the NPW Act and Schedule 14 to that Act. (See Schedule 1 [21] and [52])

Division 1 Preliminary

Division 1 (proposed sections 71B–71D) of proposed Part 4A deals with certain preliminary matters.

Certain definitions are provided for the purposes of the proposed Part. (See proposed section 71B. See also Schedule 1 [1] for additional definitions (proposed for insertion in section 5 of the NPW Act) of terms that are used generally in the Act.) Defined terms include the following:

Aboriginal owner board members of lands reserved or dedicated pursuant to proposed Part 4A, being Aboriginal owners who are members of the board of management appointed under Division 6 of the proposed Part for the lands.

Aboriginal owners of land (defined by reference to the definition to be inserted in the ALR Act), being Aboriginals having a cultural association with the land who are named in the register of Aboriginal owners to be kept under proposed Part 8A of the ALR Act.

ALR Act lands, being lands to which proposed section 36A of the ALR Act applies, that are granted to one or more Aboriginal Land Councils under that Act. (Proposed section 36A of the ALR Act deals with the circumstances in which claims to Crown lands that are needed, or likely to be needed, for the essential public purpose of nature conservation may be granted.)

Registrar, being the Registrar appointed under proposed section 49 of the ALR Act. (See notes below on amendments to that Act in Schedule 2.)

Schedule 14 lands, being lands reserved or dedicated under the NPW Act, that are listed in Schedule 14 to that Act.

The terms **Aboriginal**, **Aboriginal Land Council**, **Local Aboriginal Land Council** and **New South Wales Aboriginal Land Council** have the same meanings as in the ALR Act.

The purpose of the proposed Part is to make provision for the lease to the Minister administering the NPW Act, and the reservation or dedication under that Act, of Schedule 14 lands and ALR Act lands.

So far as Schedule 14 lands are concerned, the proposed Part provides for the recognition of the cultural significance of those lands to Aboriginals and for the revocation of the reservation or dedication of those lands to enable them:

- (a) to be vested, on behalf of the Aboriginal owners, in one or more Local Aboriginal Land Councils or in the New South Wales Aboriginal Land Council, and
- (b) to be leased by that Aboriginal Land Council or Councils to the Minister, and
- (c) to be then reserved or dedicated in accordance with the proposed Part.

So far as ALR Act lands are concerned, the proposed Part provides for the lease of the lands by the Aboriginal Land Council or Councils in which they are vested to the Minister administering the NPW Act and for the reservation or dedication of the lands under that Act.

The taking of such action in respect of Schedule 14 lands or ALR Act lands is subject to any native title rights and interests (within the meaning of the *Native Title Act 1993* of the Commonwealth) existing in relation to the lands concerned immediately before the action is taken and does not extinguish or impair any such rights and interests. (See proposed section 71C.)

Provision is made for the recognition by Parliament that certain lands reserved or dedicated under the NPW Act are of cultural significance to Aboriginals. Land is stated to be of cultural significance to Aboriginals if the land is significant in terms of the traditions, observances, customs, beliefs or history of Aboriginals. This is the same concept as is employed in the ALR Act. (See proposed section 71D.) Reserved or dedicated lands identified as being of cultural significance to Aboriginals are listed in proposed Schedule 14. (See Schedule 1 [52].) These lands are:

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

Division 7 of the proposed Part (as to which, see notes below) makes provision as to the addition of lands to Schedule 14 by Act of Parliament following consideration of proposals, and the making of recommendations, for this purpose. Lands may be omitted from Schedule 14 only by Act of Parliament. (See proposed section 71BM in Division 9.)

Division 2 Negotiations for lease

Division 2 (proposed sections 71E–71L) makes provision as to negotiations for leases under the proposed Part. The Division applies in respect of both Schedule 14 lands and ALR Act lands. (See proposed section 71E.)

Lease negotiations under the proposed Part are conducted for 2 purposes.

Firstly, and so far as Schedule 14 lands are concerned, the aim of the negotiations is to ascertain whether an Aboriginal Land Council or Councils wish to have lands that are listed in Schedule 14, freed from their existing reservation or dedication under the Act but subject to native title, vested in the Aboriginal Land Council or Councils in return for a lease of the lands by the Aboriginal Land Council or Councils to the Minister and subsequent re-reservation or re-dedication of the lands under the Act.

So far as ALR Act lands are concerned, the first aim of the negotiations is to determine whether one or more Aboriginal Land Councils that have claimed the lands under the ALR Act are agreeable, if the claim is granted, to lease the lands to the Minister administering the NPW Act and to the reservation or dedication of the lands under that Act.

Secondly, if the negotiations referred to above result in an affirmative response, negotiations may continue with a view to settling the terms of the lease of the lands between the Minister and the Aboriginal Land Council or Councils concerned. (See proposed section 71F.)

The proposed Part makes provision for the appointment of an Aboriginal negotiating panel to participate in the negotiations concerning a lease with the Minister and an Aboriginal Land Council or Councils. If Aboriginal owners of the lands concerned have not been ascertained when the negotiations commence, the Minister may, after consulting with the Minister administering the ALR Act, appoint a negotiating panel from among Aboriginals who, in the Minister's opinion, have a cultural association with the lands concerned. If the Aboriginal-owners of the lands have been identified when the negotiations commence, the Minister is, after consulting with the Aboriginal owners or their representatives, to appoint the panel members from among the Aboriginal owners. The Minister may consult with relevant persons or bodies who, in the Minister's opinion, may assist the Minister to ensure that negotiating panels are appropriately constituted. (See proposed sections 71G and 71H.)

The role of an Aboriginal negotiating panel is to participate in the negotiations with the Minister and one or more Aboriginal Land Councils for the purposes of the Division, to provide the Minister administering the NPW Act with an assessment of the cultural significance of ALR Act lands and to recommend a name for any lands that are to be reserved or dedicated under the NPW Act as a result of the negotiations. (See proposed section 711.)

The Minister is specifically authorised to enter into negotiations with Aboriginal negotiating panels and one or more Local Aboriginal Land Councils or the New South Wales Aboriginal Land Council for the purposes of the Division. (See proposed section 715.)

Any disagreement between an Aboriginal negotiating panel and one or more Aboriginal Land Councils concerning the negotiations that cannot be resolved otherwise is to be referred to mediation for resolution. The Minister may decline to proceed with negotiations until a dispute has been resolved. (See proposed section 71K.)

In the event that both one or more Local Aboriginal Land Councils and the New South Wales Aboriginal Land Council wish to have Schedule 14 lands vested in them or it, the Minister is to give preference, if Aboriginal owners of the lands have been identified, to their wishes or, if Aboriginal owners of the lands have not been identified, to the wishes of the Local Aboriginal Land Council or Councils. (See proposed section 71L.)

Division 3 Vesting and reservation or dedication of Schedule 14 lands

This Division applies to Schedule 14 lands only unless the NPW Act otherwise expressly provides. (See proposed section 71M.)

If, as a result of negotiations concerning Schedule 14 lands, it is proposed to change the classification of the lands from that listed in Schedule 14 to another classification (such as, for example from a nature reserve to a national park), the Minister is to cause a notification of the proposal to be laid before each House of Parliament. If a House of Parliament passes a resolution disallowing the notification, no further action is to be taken at that time with respect to the matter. An option to enable the matter, with or without amendments, to be re-submitted at a later date is provided. (See proposed section 71N.)

If no change in the classification of Schedule 14 lands is proposed or no resolution disallowing a notification to allow such a change is or can be passed, on completion of the negotiations and preparation of a draft lease, the Governor may, by proclamation published in the Gazette:

- revoke the existing reservation or dedication under the NPW Act of the Schedule 14 lands that are the subject of the lease, and
- vest the lands in the Aboriginal Land Council or Councils that are leasing the lands to the Minister (subject to any existing native title rights and interests in relation to the lands and any other existing interests under the NPW Act), and
- reserve or dedicate the lands under the NPW Act. (See proposed section 71O.)

On publication of the proclamation, the current reservation or dedication of the lands is revoked, the lands vest in the Aboriginal Land Council or Councils named as lessor or lessors in the lease (but subject to any native title existing in relation to the lands and any existing registered interest in the lands), the lease takes effect and its term commences to run, and the lands are reserved or dedicated under the NPW Act. (See proposed section 71P.)

The Division also contains provisions dealing with various matters that are of general application. These matters include the management of the lands by the Director-General of National Parks and Wildlife pending establishment of a board of management, the role of the staff of the National Parks and Wildlife Service, the protection of existing interests relating to the lands and the application of existing regulations to the lands. (See proposed section 714.)

The Division also provides that certain provisions of the NPW Act that are inapplicable to Schedule 14 lands do not apply in respect of those lands. These provisions cover such matters as advisory committees, reservation and dedication procedures, the naming of the lands and the transfer of property and staff where trustees are involved. The Division makes it clear however that certain other provisions of the NPW Act, dealing with such matters as the revocation of reservations or dedications, existing interests, restrictions on disposal of or dealing with reserved or dedicated lands, mining and the application of legislation dealing with forestry, soil conservation and fisheries management, do apply for the benefit of such lands. (See proposed sections 71R–71T.)

Provision is made as to the naming of the reserved or dedicated lands. The name assigned is to be that recommended by the Aboriginal negotiating panel involved in the negotiations for the vesting and leasing of the lands. Provision is also made as to the manner in which the name assigned to the lands may, on the recommendation of the Aboriginal owner board members, be changed. (See proposed section 71U.)

No consideration or stamp duty is payable by an Aboriginal Land Council or Councils for or in respect of the vesting of lands in the Aboriginal Land Council or Councils under the Division. (See proposed section 71V.)

Provision is made for the leasing and reservation or dedication under the proposed Part of a part or parts only of lands listed in Schedule 14. (See proposed section 71W.)

Division 4 Reservation or dedication of ALR Act lands

This Division applies to lands to which section 36A (Special provision concerning certain Crown lands having nature conservation value) of the ALR Act applies and to ALR Act lands only, and it applies only if lease negotiations concerning the lands have been concluded and have resulted in the preparation of a draft lease that has been executed in escrow by the Minister and the Aboriginal Land Council or Councils concerned. (See proposed section 71X.)

The Governor may, on the grant of the ALR Act lands that are the subject of the lease, by proclamation published in the Gazette, reserve or dedicate the lands under the NPW Act. On publication of the proclamation, the lease takes effect and its term commences to run and the lands are reserved or dedicated under the NPW Act (but subject to any native title rights or interests or other interests that exist in relation to the lands). (See proposed sections 71Y and 71Z.)

The Division also contains provisions dealing with various matters that are of general application. These matters include the management of the lands by the Director-General of National Parks and Wildlife pending establishment of a board of management, the role of the staff of the National Parks and Wildlife Service and the application of certain provisions of Division 3 (that deals with the reservation or dedication of Schedule 14 lands) to ALR Act lands that are reserved or dedicated under this Division. (See proposed sections 71AA and 71AB.)

Division 5 Provisions as to leases

This Division applies to both Schedule 14 lands and ALR Act lands. (See proposed section 71AC.)

A lease negotiated under the proposed Part must contain certain terms that are specified in this Division. These terms include requirements that the lease must cover the whole of the lands vested in the Aboriginal Land Council or Councils and must be for a term of at least 30 years with unlimited successive renewals of at least 30 years each if each party agrees to the renewal.

Care, control and management of the lands is to be vested in a board of management.

The Aboriginal Land Council or Councils in which the lands are vested are required to acknowledge in the lease that they hold the lands on behalf of the Aboriginal owners.

The lease must also make provision for the Director-General of National Parks and Wildlife to exercise his or her functions on and with respect to the lands (for example, regarding staffing, administration and enforcement of regulations). These functions are to be exercised subject to any plan of management for the lands and directions given by the board of management.

Aboriginal owners, and any other Aboriginals (with the consent of the Aboriginal owner board members) are entitled (subject to the NPW Act and any plan of management in force for the land) to enter and use the land for hunting or fishing for, or the gathering of, traditional foods for domestic, ceremonial and religious purposes within the bounds of Aboriginal tradition.

Interests granted under the NPW Act or other Acts and existing at the date of the lease are to be protected.

The lease must contain a term guaranteeing the public access to the lands subject to the plan of management, the NPW Act and the regulations under that Act.

The Aboriginal Land Council or Councils are precluded from dealing with the lands in specified ways and other dealings that are permitted require the Minister's consent.

Other required lease terms include the making of provision for the Minister to consult with the Aboriginal Land Council or Councils in which the land is vested concerning regulations. Compliance with any special requirements that may apply if the lands are listed as, or as part of, a World Heritage property is to be covered as is a requirement for the Minister to use the Minister's best endeavours to implement any National Parks and Wildlife Service plan concerning Aboriginal employment.

The Minister and the Aboriginal Land Council or Councils may agree on insertion of such other lease terms, not inconsistent with the NPW Act or regulations under it, as they consider appropriate. (See proposed section 71AD.)

The Division provides for the Minister to pay rent under any lease entered into out of the Consolidated Fund which is, to the necessary extent, appropriated for this purpose. The manner of calculating the rent is specified. Any rent paid by the Minister is to be carried into a separate account in the National Parks and Wildlife Fund maintained under the NPW Act and is to be disbursed for the benefit of, and in accordance with any plan of management for, the lands concerned. (See proposed section 71AE, and Schedule 1 [37]–[40] as to payments into and out of the National Parks and Wildlife Fund.)

Provision is made as to the dating and registration of leases (as well as the registration of the vesting of Schedule 14 lands). (See proposed sections 71AF and 71AG.)

Provision is made for the review of a lease at least once every 5 years during its term as well as for the re-negotiation of lease provisions at least 5 years before a lease expires. The Division also includes provisions dealing with the dating and registration of re-negotiated leases, variation of leases and holding over under leases. (See proposed sections 71AH–71AL.)

Division 6 Boards of management

This Division applies with respect to both Schedule 14 lands and ALR Act lands. (See proposed section 71AM.)

Provision is made for the establishment of a board of management for lands reserved or dedicated under the proposed Part. A board is to have at least 11,

but no more than 13, members. The members are to be appointed by the Minister administering the NPW Act with the concurrence of the Minister administering the ALR Act.

The majority of the members of the board are to be Aboriginal owners of the lands concerned who may nominate themselves or be nominated by another Aboriginal owner with the consent of the nominee. One member is to be appointed from nominees of Local Aboriginal Land Councils in whose area the lands are situated. One member is to be appointed to represent the local council or councils (if any) for the area comprising, or adjoining, the lands concerned. One member is to be an officer of the National Parks and Wildlife Service, one member is to be appointed to represent local conservation interests and one member is to be appointed to represent owners, lessees and occupiers of land adjoining or in the vicinity of the lands. (See proposed section 71AN.)

The functions of a board are to exercise care, control and management of the lands concerned, to prepare a plan of management for the lands and to supervise payments from the National Parks and Wildlife Fund with respect to the lands. In the exercise of its functions, a board is subject to the Minister's control and direction. However, the Minister may not give directions concerning certain reports, advice or recommendations prepared, given or made by the board or concerning any decision of the board, not inconsistent with the NPW Act or any plan of management for the lands, that relates to the care, control and management of Aboriginal heritage and culture within the lands. (See proposed section 71AO.)

Members of a board of management may be appointed for a term of not less than 4 and not more than 6 years, and are eligible for re-appointment (if otherwise qualified). (See proposed section 71AP.)

The board of management is required to keep proper accounts and records as to its operations in the manner specified by the Division. (See proposed section 71AQ.)

Division 7 Addition of lands to Schedule 14

This Division applies to Schedule 14 lands only. (See proposed section 71AR.)

The Division provides for the making of proposals for the identification of lands reserved or dedicated under the NPW Act as lands of cultural

significance to Aboriginals for addition to Schedule 14 of the NPW Act. The Registrar appointed under the ALR Act is required to notify specified persons and bodies of such proposals. (See proposed section 71AS.)

The Director-General is required to make an assessment of the cultural significance of the lands concerned to Aboriginals and to make a report to the Minister in relation to the proposal. The Director-General may consult with specified persons or bodies for this purpose. (See proposed section 71AT.)

Provision is made as to the matters to which the Director-General must refer in the report to the Minister. (See proposed section 71AU.)

On receiving a report from the Director-General, the Minister is required to consider whether the lands concerned are of cultural significance to Aboriginals and, if so, whether the Minister should recommend to the Governor that they be listed in Schedule 14. The Minister is not to make a recommendation unless the Minister is satisfied that the significance of the lands to Aboriginals is at least equivalent to that of lands already listed in Schedule 14. (See proposed section 71AV.)

Additional lands may be listed in Schedule 14 only by an Act of Parliament. If lands are so listed, the lands may be dealt with in accordance with Divisions 2,3,5 and 6 of the proposed Part. (See proposed section 71AW and previous notes concerning Divisions 2,3,5 and 6.)

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

This Division applies to Schedule 14 lands and ALR Act lands that are leased and reserved or dedicated under proposed Part 4A. (See proposed section 71AX.)

Area is defined for the purposes of the Division to mean a land classification (that is, a national park or other site, area, park or reserve type that is capable of reservation or dedication under the NPW Act) that is leased and reserved or dedicated under the proposed Part. (See proposed section 71AY.)

The Division makes it clear that lands may be reserved or dedicated as part of an area already reserved or dedicated under the proposed Part but only with the consent of the Aboriginal Land Council or Councils in which the area is vested and the board of management for the area. (See proposed section 71AZ.)

Lands already reserved or dedicated under the NPW Act may be added as part of an area only if they are listed in Schedule 14. Provision is made as to

the manner in which such lands may be added to an area and as to the consequences of the addition of the lands, including the application of the existing lease between the Aboriginal Land Council or Councils and the Minister over the area to those lands. Provision is made as to the tabling, and disallowance, of a proclamation by which such an addition is made if the proclamation effects a change from the existing classification of the lands under the NPW Act to another classification. (See proposed sections 71BA and 71BB.)

Provision is also made for the addition to areas of certain specified lands that are not already reserved or dedicated under the NPW Act, as to the manner in which such lands may be added to areas and as to the consequences of the addition of the lands. (See proposed section 71BC)

The Division stipulates that certain provisions of Division 3 (that deals with the initial reservation or dedication of Schedule 14 lands under the proposed Part) apply, with modifications, to lands that are added to areas under this Division. (See proposed section 71BD.)

On the addition of lands to an area, a party to the lease over the area may request a review of the provisions of the lease if the next regular review of the lease provided for by Division 5 of the proposed Part is not due within the next 2 years. A review for the purposes of this Division is to be conducted in the same way as a review under Division 5. (See proposed section 71BE.)

Division 9 Miscellaneous

This Division applies to both Schedule 14 lands and ALR Act lands. (See proposed section 71BF)

Aboriginal Land Councils in which reserved or dedicated lands are vested are required, when acting under the NPW Act or a lease of the lands made under the proposed Part, to act only with the agreement of the Aboriginal owner board members for the lands. (See proposed section 71BG.)

The Director-General of National Parks and Wildlife and the National Parks and Wildlife Service are required, when acting under the NPW Act in relation to the management of lands to which the proposed Part applies, to have regard to the interests of the Aboriginal owners of the lands. (See proposed section 71BH.)

Provision is made that the exercise of land management activities by a board of management, the Director-General of National Parks and Wildlife or the

National Parks and Wildlife Service is subject to the preservation of any native title rights and interests that exist in relation to the lands. If native title is found to exist in relation to the lands, the Minister, the Aboriginal Land Council or Councils in which the lands 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. (See proposed section 71BI.)

The Division makes provision for the arbitration of disputes between the Director-General of National Parks and Wildlife and a board of management or between the Minister or Director-General and an Aboriginal Land Council or Councils concerning matters arising under the proposed Part. (See proposed section 71BJ.)

If the only Local Aboriginal Land Council in which lands are vested is dissolved or if all the Local Aboriginal Land Councils in which one parcel of lands are vested are dissolved, the lands vest in the Aboriginal owners of the lands recorded in the register of Aboriginal owners kept under the ALR Act until such time as a new Aboriginal Land Council or Councils are constituted for the area in which the lands concerned are situated whereupon the lands vest in that Council or those Councils. (See proposed section 71BK.)

The Division provides that, in the absence of an express statement to the contrary in the NPW Act or any other Act or law, lands leased by the Minister under the proposed Part are taken not to be leased for private purposes but are to be taken, for all purposes, to be lands reserved or dedicated under Part 4 of the NPW Act and that a board of management of lands vested under Part 4A is taken, for all purposes, to be a public authority. (See proposed section 71BL.)

Provision is made that proposed Schedule 14 (in which the lands of cultural significance to Aboriginals are listed) may be amended by the omission of lands only by an Act of Parliament. (See proposed section 71BM.) (As noted above, lands may only be added to Schedule 14 by Act of Parliament. See proposed section 71AW.)

The operation of the proposed Part is to be reviewed within 5 years after the date of commencement of the proposed Act. (See proposed section 71BN.)

Amendments in consequence of insertion of provisions concerning Aboriginal land

Consequential amendments are made to the NPW Act to reflect and complement the changes envisaged by proposed Part 4A (Aboriginal land).

For example, provision is made for the National Parks and Wildlife Advisory Council to provide the Minister with advice concerning the terms of proposed leases negotiated under the proposed Part and for the Minister to enter into such leases as a corporation sole. Other amendments deal with such matters as the care, control and management of lands vested in Aboriginal Land Councils by boards of management appointed under the proposed Part, the taking of animals or plants from lands reserved or dedicated under the proposed Part by Aboriginals for domestic, ceremonial or cultural purposes, the preparation of plans of management for such lands, the making of payments into and from the National Parks and Wildlife Fund in respect of such lands and the acquisition of lands for addition to areas reserved or dedicated under Part 4A. (See Schedule 1 [1]–[20], [22]–[33] and [36]–[46].)

Provision is also made for the making of regulations of a savings or transitional nature in consequence of the enactment of the proposed Act, and transitional matters. (See Schedule 1 [47] and [48].)

Transfer of relics

The proposed Act inserts a new provision (proposed section 85A) that authorises the Director-General (who is the authority for the protection of relics, a term that includes Aboriginal remains) to dispose of relics that are the property of the Crown:

- by returning them to Aboriginal owners who are entitled and willing to accept possession of them in accordance with Aboriginal tradition, or
- by otherwise dealing with them in accordance with any reasonable directions of the Aboriginal owners, or
- if there are no Aboriginal owners—by transferring them to a person, or a person of a class, prescribed by the regulations for safekeeping.

Aboriginal owners to whom relics are returned in accordance with proposed section 85A are entitled to deal with the relics in accordance with Aboriginal tradition. The regulations may make provision for the manner of resolution of disputes about the entitlement of Aboriginal owners to possession of relics for the purposes of the proposed provision. (See Schedule 1 [34].)

Section 90 (1) of the NPW Act that, among other things, makes it an offence to knowingly destroy, deface or damage a relic, or to cause or permit this to be done, does not apply with respect to a relic that is dealt with in accordance with Aboriginal tradition under proposed section 85A. (See Schedule 1[35].)

Additional members of National Parks and Wildlife Advisory Council

The proposed Act amends Schedule 7 (The Council) to increase the membership of the National Parks and Wildlife Advisory Council from 13 to 15 members by making provision for the appointment of 2 Aboriginals selected by the Minister administering the NPW Act from nominees of the New South Wales Aboriginal Land Council. A consequential amendment is also made to the Schedule. (See Schedule 1[49]–[5].)

Schedule 2 Amendment of Aboriginal Land Rights Act 1983

Functions of Aboriginal Land Councils

The functions of Local Aboriginal Land Councils and the New South Wales Aboriginal Land Council are expanded to enable the Councils:

- to negotiate with the Minister administering the NPW Act concerning the acquisition and lease of lands listed in Schedule 14 (Lands of cultural significance to Aboriginals) to the NPW Act, and
- to submit proposals to the Director-General of National Parks and Wildlife for the listing in Schedule 14 to the NPW Act of other lands that are reserved and dedicated under that Act as lands of cultural significance to Aboriginals, and
- to negotiate the lease under the NPW Act of lands of nature conservation value that are granted to the Councils under the ALR Act.

Aboriginal Land Councils are required, when exercising functions in relation to lands that are leased under Part 4A (Aboriginal land) of the NPW Act to act in the best interests of the Aboriginals who are entered in the register of Aboriginal owners as the owners of the lands concerned. (See Schedule 2 [2]–[5] and the note below as to the register of Aboriginal owners. See also Schedule 2 [1] for definitions of *Aboriginal owners* and *NPW Act*.)

Grant of Crown lands having nature conservation value

The proposed Act inserts a new provision (proposed section 36A) in the ALR Act in relation to lands that:

- are the subject of a claim by one or more Aboriginal Land Councils under the ALR Act, and

- the Crown Lands Minister is satisfied would be claimable Crown lands except for the fact that they are needed, or likely to be needed, for the essential public purpose of nature conservation.

If the claimant Aboriginal Land Council or Councils agree to negotiate a lease of the lands to the Minister administering the NPW Act, to the reservation or dedication of the lands under that Act and to hold the lands under and in accordance with the requirements of that Act, the Crown Lands Minister is empowered to grant a claim to the lands under the ALR Act. (See Schedule 2 [6].)

A transitional provision is inserted to enable the Crown Lands Minister to deal, in accordance with proposed section 36A, with certain claims to Crown lands that have not been finally determined when that section commences. (See Schedule 2[141].)

Register of Aboriginal owners

The proposed Act inserts Part 8A (proposed sections 49–49G in the ALR Act. (See Schedule 2[9], and Schedule 2 [1] as to the definition of *Aboriginal owners*.)

The proposed Part revises a current provision dealing with the appointment and functions of the Registrar so that the Registrar may exercise functions as required under the ALR Act and other legislation (such as the NPW Act). (See proposed section 49.) (Schedule 2 [10] makes a consequential amendment.)

Certain definitions are provided for the purposes of the Part. (See proposed section 49A.)

The proposed Part requires the Registrar to keep, in one or more parts, a register of Aboriginal owners of land. Entries of Aboriginals may be made in the register only in relation to Aboriginals who:

- are directly descended from the original Aboriginal inhabitants of the cultural area in which the land concerned is situated, and
- have a cultural association with the land deriving from the traditions, observances, customs, beliefs or history of the original Aboriginal inhabitants, and
- have consented to being included in the register.

Explanatory note

In the first instance, the Registrar is required to give priority to the identification and entry in the register of Aboriginals who have a cultural association with the lands listed in Schedule 14 (Lands of cultural significance to Aboriginals) to the NPW Act. (See proposed sections 49B and 49C.)

Any Aboriginal may make a request for the entry of the name of an Aboriginal (with that person's consent) in the register. (See proposed section 49D.)

The Minister administering the NPW Act may require the Registrar to open parts of the register for the purpose of entering the names of Aboriginals who have a cultural association with specified lands (such as, for example, lands of nature conservation value that are the subject of a land claim under the ALR Act or lands recommended by the Minister administering the NPW Act for listing in Schedule 14 to that Act). Aboriginals or Aboriginal Land Councils may also request the Registrar to open a part of the register to enter the names of Aboriginals who have a cultural association with land specified in the request. (See proposed section 49E.)

Provision is made for the making of requests for the rectification of the register, for appeals to the Land and Environment Court against decisions of the Registrar regarding such requests and for the Registrar to refer requests for the entry or omission of matter in or from the register or concerning other questions arising under the proposed Part to that Court. (See proposed sections 49F and 49G and the note below concerning the amendment of the *Land and Environment Court Act 1979* contained in Schedule 3 to this Bill.)

Consequential amendments

The proposed Act also makes certain consequential amendments to ensure that Aboriginal Land Councils are able to exercise their new functions and to specify which provisions of the ALR Act do, or do not, apply to lands held by Aboriginal Land Councils under the new arrangements under the ALR and NPW Acts. In this regard:

- Section 38 (Purchase, lease etc of property) is amended to make it clear that land dealt with under Part 4A of the NPW Act may vest in more than one Local Aboriginal Land Council. (See Schedule 2[7].)
- Section 40AB (Disposal of land reserved or dedicated under NPW Act restricted) is inserted to make it clear that lands that are vested in Aboriginal Land Councils under the NPW Act may be dealt with only

in accordance with that Act and that sections of the ALR Act that deal with the transfer of land between Aboriginal Land Councils, the sale or lease of lands by Aboriginal Land Councils and the exercise of certain other powers by Aboriginal Land Councils with respect to property do not apply with respect to such lands. (See Schedule 2 [8].)

- Section 58A (Dissolution of Regional or Local Aboriginal Land Councils) is amended to make it clear that, on dissolution of a Local Aboriginal Land Council, lands vested in it under Part 4A of the NPW Act do not vest in the New South Wales Aboriginal Land Council but vest in accordance with the arrangements set out in that Part. (See Schedule 2 [11].)

Provision is also made for the making of regulations concerning the keeping and operation of the register of Aboriginal owners, and of regulations of a savings or transitional nature in consequence of the enactment of the proposed Act. (See Schedule 2 [13].)

Schedule 3 Amendment of Land and Environment Court Act 1979

Extension of jurisdiction of Land and Environment Court

The proposed Act specifies that the Class 4 jurisdiction of the Land and Environment Court (which relates to environmental planning and protection and development contract civil proceedings) is extended to include jurisdiction to hear and dispose of appeals and references arising under proposed Part 8A (Registrar and register of Aboriginal owners) of the *Aboriginal Land Rights Act 1983*.

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

Amendments necessitated by National Parks and Wildlife Amendment Act 1996

This Schedule amends certain of the provisions of the NPW Act that are amended or inserted in Schedule 1 to take account of certain amendments made to that Act by the *National Parks and Wildlife Amendment Act 1996* that had not commenced by the date on which the Bill for this Act was introduced into Parliament. Those amendments relate to state recreation areas and regional parks. (See Schedule 4[1]–[6].)