



New South Wales

Crown Lands (Prevention of Sale) Bill 2004

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to identify and protect the values of certain Crown land (termed *protected land*) by requiring specified Government agencies and the Director-General of the Department of Lands to participate in an assessment process and by preventing the sale, or the revocation of any reservation from sale applying to, protected land in certain circumstances, and
- (b) to enable certain nominated agencies to recommend that protected land be reserved from sale.

No restriction is placed on the types of values that may be identified for the purposes of assessing Crown land under the proposed Act. However, examples set out in Schedule 1 to the proposed Act include value for the purpose of ensuring or assisting environmental protection, nature conservation, conservation of water resources and protection and conservation of Aboriginal and European heritage and for recreation.

The proposed Act operates retrospectively by rendering void any dealings of specified kinds with protected land that may occur after the date of introduction of this Bill into the Legislative Council.

Outline of provisions

Part 1 Preliminary

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 on the date of assent.

Clause 3 defines certain words and expressions used in the proposed Act. *The agencies* are defined to mean the Commissioner of the Soil Conservation Service, the Department of Infrastructure, Planning and Natural Resources, the Department of Environment and Conservation, the Department of Primary Industries, the Heritage Council, local councils and the Department of Aboriginal Affairs. The Minister referred to in the proposed Act is the Minister administering the *Crown Lands Act 1989* and the Director-General of the Department is the Director-General of the Department of Lands.

Clause 4 sets out the objects of the proposed Act which are as stated above.

Clause 5 identifies the land to which the proposed Act applies. This land is referred to in the proposed Act as *protected land* and consists of Crown land:

- (a) in the Eastern and Central Division of the State that is leased and would otherwise be available for purchase under the *Crown Lands (Continued Tenures) Act 1989*, or
- (b) that is the subject of a wilderness proposal under the *Wilderness Act 1987*, or
- (c) that is entered in the Register of the National Estate kept under the *Australian Heritage Council Act 2003* of the Commonwealth, or
- (d) that is declared World Heritage property within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth (being property listed in the World Heritage List maintained under the Convention for the Protection of the World Cultural and Natural Heritage or property declared by the Minister for the Environment and Heritage under section 14 of that Act to be declared World Heritage property), or
- (e) that is remnant native vegetation, or
- (f) that is a travelling stock reserve.

Clause 6 provides that the proposed Act is to have effect despite the provisions of any other Act.

Part 2 Restrictions on, and assessment of values of, protected land

Clause 7 provides that the Minister must not sell, grant an application to purchase, or revoke a reservation from sale applying to, protected land unless the requirements of the proposed Act have been complied with and the sale, granting of the application or the revocation is not prevented by an objection to the sale, grant or revocation made by an agency under either the proposed Act or the *Forestry Act 1916*.

Clause 8 provides that the Director-General must give each agency notice of any proposed sale of, application to purchase, or revocation of a restriction from sale applying to, protected land.

Clause 9 requires that the notice must adequately identify the protected land to which it applies.

Clause 10 requires the Director-General of the Department to give public notification of the notice given to the agencies under clause 8.

Clause 11 enables the Director-General of the Department of Environment and Conservation to object to the proposed sale or revocation of the reservation from sale within a specified time.

Clause 12 confers a similar right on the Department of Primary Industries and also makes it clear that the existing entitlement of the Department of Primary Industries to make objections to the sale of Crown land under the *Forestry Act 1916* is unaffected.

Clause 13 requires the Director-General of the Department to inform other agencies as soon as practicable after an objection is made under clause 11 or 12 by the Director-General of the Department of Environment and Conservation or the Department of Primary Industries.

Clause 14 requires each of the agencies, if neither the Director-General of the Department of Environment and Conservation nor the Department of Primary Industries have lodged an objection, to provide the Director-General of the Department with a report commenting on the values of protected land, including values of a kind referred to in Schedule 1 to the proposed Act, or a certificate certifying that the agency believes that the values of protected land are of insufficient significance to justify the agency objecting to its sale or to the revocation of a reservation from sale applying to it.

Clause 15 states that reports and certificates provided to the Director-General of the Department are to be available for public inspection.

Clause 16 imposes on the Director-General of the Department an obligation to assess, and prepare an assessment report on, the values of protected land. In making the assessment, the Director-General is to have regard to reports or certificates concerning the protected land provided by the agencies and to any assessment of its capabilities made under the *Crown Lands Act 1989*.

Clause 17 requires the Director-General of the Department to complete, and to give notice of completion of, an assessment report in a specified time. The Minister is also to cause a copy of the assessment report to be tabled in each House of Parliament.

Clause 18 provides that, in a specified time after publication of a notice of completion of an assessment report, any of the agencies, including the Director-General of the Department of Environment and Conservation and the Department of Primary Industries, may object to the sale of, granting of an application to purchase, or the revocation of a reservation from sale applying to, protected land.

Clause 19 states that if an objection is made, any purported sale of, granting of an application to purchase, or revocation of a reservation from sale applying to, protected land is void. No further proposal for sale, application to purchase or application for revocation of a reservation from sale applying to the land concerned may be considered or dealt with, under the proposed Act, until 5 years after the date on which a proposal or application in respect of it was last refused.

Clause 20 requires an agency making an objection to give public notice of the objection.

Clause 21 entitles a member of the public to obtain a copy of an objection from the agency making it.

Part 3 Miscellaneous

Clause 22 enables agencies to recommend that protected land be reserved from sale.

Clause 23 requires the Director-General of the Department to make material relating to protected land available for public inspection.

Clause 24 enables the Director-General of the Department to delegate functions to any person employed in the Department.

Clause 25 enables persons to seek to remedy or restrain a breach of the proposed Act by taking proceedings in the Land and Environment Court even though they would otherwise have no standing to do so.

Clause 26 contains provisions of a transitional nature relating to dealings with protected land that may occur between the date of introduction of this Bill into the Legislative Council and the date on which the Bill receives assent. Any dealings of a specified kind with protected land that occur after the introduction of the Bill are stated to be void.

Clause 27 is a regulation-making power.

Clause 28 makes consequential amendments to the *Land and Environment Court Act 1979*.

Schedule 1 Values

Schedule 1 provides examples of the kinds of values to be taken into account by the agencies and the Director-General of the Department in assessing protected land.



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New South Wales

Crown Lands (Prevention of Sale) Bill 2004

No. , 2004

A Bill for

An Act to identify and protect the values of certain Crown land by preventing sales of certain land, preventing the revocation of reservations from sale applying to certain land and facilitating the making of reservations from sale in relation to certain land; and for other purposes.

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

1 Name of Act 3

This Act is the *Crown Lands (Prevention of Sale) Act 2004*. 4

2 Commencement 5

This Act commences on the date of assent. 6

3 Definitions 7

(1) In this Act: 8

assessment report means a report referred to in section 16. 9

Crown land has the same meaning as in the *Crown Lands Act 1989*. 10

Department means the Department of Lands. 11

exercise a function includes perform a duty. 12

function includes power, authority or duty. 13

notice means a notice under section 8. 14

protected land means land referred to in section 5. 15

the agencies means the following: 16

(a) the Commissioner of the Soil Conservation Service, 17

(b) the Department of Infrastructure, Planning and Natural Resources, 18
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(c) the Department of Environment and Conservation, 20

(d) the Department of Primary Industries, 21

(e) the Heritage Council, 22

(f) the local council of an area in which relevant land that is the subject of a notice is situated, 23
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(g) the Department of Aboriginal Affairs. 25

the Minister means the Minister for the time being administering the *Crown Lands Act 1989*. 26
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(2) A reference in this Act to protected land is a reference to the whole or any part of protected land. 28
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4 Objects of this Act

The objects of this Act are:

- (a) to provide for the identification and protection of the values, including values of the kind specified in Schedule 1, of certain Crown land:
 - (i) by requiring the Director-General of the Department and the agencies to participate in the identification and assessment of the values of the land, and
 - (ii) by preventing the sale of, or the revocation of a reservation from sale applying to, the land in certain circumstances, and
- (b) to enable the agencies to recommend that certain Crown land be reserved from sale.

5 Land to which this Act applies: “protected land”

This Act applies to Crown land:

- (a) in the Eastern and Central Division (within the meaning of the *Crown Lands Act 1989*) that is held under a lease of a kind referred to in Part 1 of Schedule 7 to the *Crown Lands (Continued Tenures) Act 1989*, or
- (b) that is the subject of a proposal submitted to the Director-General of the Department of Environment and Conservation under section 7 of the *Wilderness Act 1987* (not being land that has been reserved under the *National Parks and Wildlife Act 1974* or declared to be a wilderness area within the meaning of the *Wilderness Act 1987*), or
- (c) that is entered as part of the national estate in the Register of the National Estate kept under the *Australian Heritage Council Act 2003* of the Commonwealth, or
- (d) that is declared World Heritage property within the meaning of section 13 of the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth, or
- (e) that contains remnant native vegetation (within the meaning of the *Native Vegetation Act 2003*), or
- (f) that is a travelling stock reserve (within the meaning of Part 8 of the *Rural Lands Protection Act 1998*).

Clause 6 Crown Lands (Prevention of Sale) Bill 2004

Part 1 Preliminary

6 Effect of this Act

This Act has effect despite the provisions of the *Crown Lands Act 1989*, the *Crown Lands (Continued Tenures) Act 1989* or any other Act.

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Part 2	Restrictions on, and assessment of values of, protected land	1
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7	Restriction on sale of, or revocation of reservations from sale applying to, protected land	3
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	The Minister must not sell protected land, grant an application to purchase protected land or revoke a reservation from sale that applies to protected land unless the other provisions of this Part have been complied with in relation to the proposed sale, the application or the proposed revocation and the sale, the granting of the application or the revocation is not prevented by an objection under section 11, 12 or 18 of this Act or section 25E of the <i>Forestry Act 1916</i> .	5
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8	Notice of proposed sale or revocation of reservation from sale	13
(1)	Before protected land may be sold, an application for the purchase of protected land may be dealt with or a reservation from sale of protected land may be revoked, the Director-General of the Department must give each agency not less than 28 days' written notice of the proposed sale, the making of the application or the proposed revocation.	14
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(2)	The duty imposed by this section applies to each proposal for the sale of protected land, each application for the purchase of protected land and each proposal to revoke a reservation from sale of protected land, subject to section 19 (3).	20
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9	Description of land in notice	24
	A notice must describe the protected land to which it relates with sufficient particularity to enable the land to be readily identified by an agency.	25
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10	Public notification that a notice has been given	28
	The Director-General of the Department must, not later than 21 days after the notice is given, publish notification of the giving of the notice in the Gazette and in a newspaper circulating generally in the area in which the protected land concerned is situated.	29
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11	Objection: Department of Environment and Conservation	1
	The Director-General of the Department of Environment and Conservation may, within 3 months after receiving a notice, inform the Director-General of the Department, in writing, that the Director-General of the Department of Environment and Conservation objects to the sale of, or the revocation of the reservation from sale that applies to, the protected land concerned.	2 3 4 5 6 7
12	Objection: Department of Primary Industries	8
	(1) The Department of Primary Industries may, within 3 months after receiving a notice concerning the revocation of a reservation from sale, inform the Director-General of the Department, in writing, that the Department of Primary Industries objects to the revocation of the reservation from sale that applies to the protected land concerned.	9 10 11 12 13 14
	(2) Nothing in this Act (except section 19 (3)) affects section 25E of the <i>Forestry Act 1916</i> concerning an application for the purchase of land that may be or includes protected land.	15 16 17
13	Notice of objections to agencies	18
	The Director-General of the Department must inform each other agency as soon as practicable after an objection is made under section 11 or 12 or section 25E of the <i>Forestry Act 1916</i> .	19 20 21
14	Agencies to provide Director-General of Department with reports or certificates for assessment purposes	22 23
	Unless an agency has made an objection, or has been informed of an objection made, under section 11 or 12 or section 25E of the <i>Forestry Act 1916</i> , each agency must, within 4 months after receiving a notice, provide the Director-General of the Department with:	24 25 26 27 28
	(a) a report that assesses the values (including values of the kind specified in Schedule 1) of protected land described in the notice from the perspective of the agency concerned (having regard to the principal functions that the agency exercises) and that takes into account land evaluation criteria that the agency considers are applicable to the assessment, or	29 30 31 32 33 34
	(b) a certificate certifying that, after having had regard to applicable land evaluation criteria, the agency is of the opinion that, from its perspective (having regard to the principal functions that the agency exercises) the values of the	35 36 37 38

protected land are of insufficient significance to justify the
agency objecting to the sale of, the grant of the application to
purchase, or the revocation of the reservation from sale
applying to, the protected land.

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15 Public access to reports and certificates

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- (1) A person may inspect a report or certificate provided by an agency to the Director-General of the Department at the principal office of the Department during normal business hours.
- (2) A person may obtain a copy of the whole or part of such a report or certificate on payment of a reasonable fee fixed for the purpose by the Director-General of the Department.

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16 Director-General of Department to assess values of protected land

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- (1) If no objection is made under section 11 or 12 or section 25E of the *Forestry Act 1916* within 6 months after a notice is given to the agencies, the Director-General of the Department must assess, and prepare an assessment report on, the values of the protected land described in the notice.
- (2) In making the assessment, the Director-General must have regard to:
- (a) reports or certificates provided by the agencies under section 14, and
- (b) any assessment of the capabilities of the land made under Part 3 of the *Crown Lands Act 1989*.

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17 Assessment report: publication and tabling of notice of completion

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- (1) Within 7 months after giving a notice, the Director-General of the Department must complete an assessment report on the values of the relevant land and must give notice of completion of the report in the Gazette.
- (2) The Director-General must give copies of the assessment report to the Minister.
- (3) The Minister must cause a copy of the assessment report to be laid before each House of Parliament as soon as practicable after the report is completed.

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18	Objections following publication of notice of completion and assessment report	1 2
	Within 3 months after notice of completion of the assessment report is published in the Gazette, any agency, including the Director-General of the Department of Environment and Conservation or the Department of Primary Industries, may inform the Director-General of the Department, in writing, that it objects to the sale of, the granting of the application to purchase or the revocation of the reservation from sale that applies to, the protected land to which the assessment report relates.	3 4 5 6 7 8 9 10
19	Effect of objections	11
	(1) If an agency objects to the sale of or the granting of an application to purchase protected land, any such application pending at the time of the objection is taken to have been refused on the date on which the objection is received by the Director-General of the Department.	12 13 14 15
	(2) If an agency objects to the revocation of a reservation from sale applying to protected land, the reservation from sale must not be revoked.	16 17 18
	(3) If an application to purchase protected land or revoke a reservation from sale applying to relevant land is refused in accordance with this section, another application to purchase the protected land concerned or to revoke the reservation from sale applying to the protected land concerned must not be considered or otherwise dealt with until after 5 years from the date on which the application was last refused (or last taken to be refused).	19 20 21 22 23 24 25
	(4) Any action taken in contravention of this section is void.	26
20	Gazette notification of objections	27
	An objection made by an agency under this Part (and an objection made under section 25E of the <i>Forestry Act 1916</i>) must be notified in the Gazette by the agency concerned not later than 14 days after the objection is made.	28 29 30 31
21	Public access to objections	32
	A person may obtain a copy of an objection from the agency making it on payment of a reasonable fee fixed by the agency.	33 34

Part 3	Miscellaneous	1
22	Agencies may recommend reservation of protected land from sale	2
	An agency may recommend, in writing, to the Director-General of the Department that the Minister reserve protected land from sale.	3 4
23	Public access to information concerning protected land	5
(1)	The Director-General of the Department must make available for public inspection all documents and other material held by the Department that relate to protected land and, in particular, to any assessment, recommendation or decision made by the Department or the Minister as to whether:	6 7 8 9 10
	(a) applications to purchase protected land should be granted, or	11
	(b) reservations from sale should be made or revoked in respect of protected land.	12 13
(2)	A person may inspect the documents and other material at the principal office of the Department during normal business hours.	14 15
(3)	A person may obtain a copy of the whole or part of the documents and other material on payment of a reasonable fee fixed by the Director-General.	16 17 18
(4)	Nothing in this section requires the Director-General to disclose any document or other material concerning the personal affairs of any person.	19 20 21
24	Delegation by Director-General of the Department	22
	The Director-General of the Department may delegate any of his or her functions, other than this power of delegation, to any person employed within the Department.	23 24 25
25	Restraint of breaches of this Act	26
(1)	Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.	27 28 29 30
(2)	Proceedings under this section may be brought by a person on his or her own behalf or on behalf of himself or herself and on behalf of other persons (with their consent), or a body corporate or	31 32 33

	unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.	1 2 3
(3)	Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.	4 5 6
26	Transitional arrangements	7
	If, between the date of introduction of the Bill for this Act into the Legislative Council and the date of assent, the Minister has sold or entered into a contract to sell protected land, has granted an application to purchase protected land or has revoked a reservation from sale that applies to protected land, the sale or contract, the grant of the application or the revocation of the reservation from sale is void.	8 9 10 11 12 13 14
27	Regulations	15
	The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	16 17 18 19
28	Amendment of Land and Environment Court Act 1979 No 204 (s 20, Class 4—environmental planning and protection and development contract civil enforcement)	20 21 22
	The <i>Land and Environment Court Act 1979</i> is amended:	23
(a)	by inserting after section 20 (1) (dh) the following paragraph:	24
(di)	proceedings under section 25 of the <i>Crown Lands (Prevention of Sale) Act 2004</i> ,	25 26
(b)	by inserting in alphabetical order in the list of Acts and provisions in section 20 (3) (a) the words “ <i>Crown Lands (Prevention of Sale) Act 2004</i> ,”.	27 28 29

Schedule 1 Values

(Sections 4 and 14)

Value for the purpose of ensuring or assisting the protection of the environment, including conservation, or potential for restoration, of natural areas and features, and preservation of open space.

Value for the purpose of ensuring or assisting nature conservation, including protection of native fauna and flora and their communities and habitats, including forests.

Value for the purpose of ensuring or assisting conservation of water resources, including water catchments and sources of ground water.

Value for the purpose of ensuring or assisting conservation of wilderness and wild and scenic rivers.

Value for the purpose of ensuring or assisting the protection and conservation of the spiritual, social or cultural heritage of Aboriginal persons, including protection and conservation of sacred or ceremonial sites.

Value for protection and conservation of areas or items of significance or importance to European heritage or history.

Value for purposes of recreation and tourism.

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