

1985

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA
HOUSE OF REPRESENTATIVES

NATIONAL PARKS AND WILDLIFE
CONSERVATION AMENDMENT BILL 1985

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Arts, Heritage and
Environment, the Hon. Barry Cohen, M.P)

NATIONAL PARKS AND WILDLIFE CONSERVATION AMENDMENT

BILL 1985

OUTLINE

The purpose of the National Parks and Wildlife Conservation Amendment Bill 1985 is to amend the National Parks and Wildlife Conservation Act 1975 so as:

- . to facilitate the granting of the freehold title of an existing park or reserve, namely Uluru (Ayers Rock - Mount Olga) National Park, to the traditional Aboriginal owners,
- . to provide for the establishment of a Board for an area of Aboriginal land that is within a prescribed park or reserve, namely Uluru (Ayers Rock - Mount Olga) National Park and such other park or reserve as declared by regulations,
- . to provide for procedures for resolution of disagreements, should they arise, between the Board and the Director of National Parks and Wildlife in relation to a park or reserve for which a Board has been established,
- . to incorporate amendments necessary to indicate a Board's role in regard to the preparation of a plan of management for a park or reserve for which it is established and in regard to the management and future development of that park,
- . to provide for other amendments clarifying various procedures in relation to the Proclamation of a park or reserve and the preparation of a plan of management that, otherwise for this Bill, would have been included in the Statute Law (Miscellaneous Provisions) Bill (No.1) 1985.

Additional finances would be required in the next financial year to meet rental and certain administrative costs associated with the operation of a Board. Total cost is estimated to be \$150,000 per annum.

Notes on clauses

Clause 1: Short title

Specifies mode of citation and identifies the Principal Act.

Clause 2: Commencement

The legislation will come into operation on the day it receives the Royal Assent.

Clause 3: Interpretation

This clause amends the definition section (section 3) of the Principal Act by, in particular,

- (a) inserting a 'prescribed park or reserve' to mean Uluru (Ayers Rock - Mount Olga) National Park and any other park or reserve declared by regulations to be a prescribed park or reserve;
- (b) amending the definition of "Region" to include not only the existing definition but also the area described as "Uluru" in Schedule 1 to the Aboriginal Land Rights (Northern Territory) Act 1976.
- (c) by amending the definition of Territory Commission as a consequence of the Conservation Commission Act 1980 (Northern Territory); and
- (d) by inserting a definition "traditional Aboriginal owners" corresponding to the meaning as in the Aboriginal Land Rights (Northern Territory) Act 1976.

Clause 4 - Parks and reserves established by Governor-General

This clause amends section 7 of the Principal Act so as to ensure that the interest referred to in sub-sections (7A) and (10B) includes freehold interest.

Clause 5 - Restriction of disposal, etc., of land in parks and reserves

This clause amends section 9 of the Principal Act so as to ensure that the Director may transfer freehold interest in land in a park or reserve within the Region to the Commonwealth.

Clause 6 - Plans of management

This clause amends section 11 of the Principal Act to specify the role of a Board in the process of the drawing up of a plan of management. In particular, the clause provides, by insertion of new sub-section (2), that where a Board has been established for a prescribed park or reserve, the Board, in conjunction with the Director, shall, as soon as practicable after the Board is established, prepare a plan of management unless there is already a plan in force.

This will not preclude the Board's role in amending an existing plan of management or replacing a plan of management at any time in accordance with the amendments to section 13 of the Principal Act (see clause 8).

The procedural mechanisms for section 11 of the Principal Act, such as the giving of notice and inviting interested persons to make representations in relation to a plan of management, lie with the Director even where a Board is established. However by virtue of minor amendments in this clause any functions of the Director in relation to a plan of management, such as giving consideration to representations made, or altering a plan to give effect to those representations, in relation to a park or reserve for which a Board has been established, are to be performed by the Director and the Board.

The clause provides, by inserting a new sub-section (11A), that where the Director and the Board are unable to agree on the preparation of a plan of management or an alteration to be made to that plan, or on the submission of that plan, as the case may be, the Director and the Board shall advise the Minister accordingly.

Sub-section (11B) as inserted by this clause, provides that where the Minister is so advised, he shall take such steps as he considers appropriate to resolve the disagreement.

Sub-sections (11C) and (11D), as inserted by this clause, provide that where the Minister is unable to resolve the disagreement, the Minister appoints an arbitrator to enquire into the matter and submit a report, together with recommendations, to the Minister.

Sub-sections (11E) and (11F), as inserted by this clause, provide that the Minister then shall give such directions as appropriate, together with reasons and a copy of the arbitrator's report and recommendations to the Director and the Board, who shall comply with such directions.

Where various representations have been made under the Principal Act in connection with the plan of management the Director and the Board may, as they see fit, alter the plan accordingly. The Director shall then submit the plan to the Minister subject to the consent of the Board (as provided in proposed new sub-section 12A) together with representations received and comments if any, made on those representations by the Board and the Director, where relevant.

If the Minister is satisfied there is a substantial difference of opinion between the Chairman of a relevant Land Council and the Director and Board, as relevant, the Minister shall refer the

plan to the Director together with his suggestions for further consideration by the Director and the Board.

In any other situation the Minister may accept the plan, as submitted, or refer it to the Director together with his suggestions for further consideration by the Director and the Board.

Where the Director and the Board receive the plan for further consideration and so consider, the Director shall submit, subject to the consent of the Board (as provided for in proposed subsection (15A), the plan to the Minister together with his comments on the Minister's suggestions and his comments on representations received from the Chairman and the Territory Commission in accordance with the Principal Act.

If the parties are unable to agree on the submission of a plan of management the resolution of conflict mechanism provided for in proposed new subsections (11B) - (11F) inclusive applies.

Clause 7 - Plan of management to be laid before Parliament

This clause amends section 12 of the Principal Act so as to provide that where a plan of management that is laid before the House of the Parliament is disallowed, the Minister shall give a direction to the Director that a fresh plan be prepared which would then be prepared in accordance with the procedure specified in section 11, as amended, of the Principal Act. The clause also ensures that there is now a responsibility on the Director and the Board, where appropriate, to ensure that a new plan of management be prepared and operational at the expiry of a current plan of management.

Clause 8 - Amendment or revocation of plan of management

This clause amends section 13 of the Principal Act, as a consequence to amendments providing for Boards, to provide that the procedure for the preparation of a plan of management (see clause 6) also applies where there is an amendment to a plan of management.

Clause 9 - Disagreement between the Director and Board over implementation of plan of management

This clause inserts a new section 14A, which in effect provides that where the Director considers that a decision of the Board is substantially detrimental to the good management of the park or reserve, or is inconsistent with the plan of management, the Director shall advise the Minister who shall take such steps as appropriate to resolve the disagreement. Where the Minister is unable to resolve the disagreement, he shall appoint an arbitrator who enquires into the matter and submits a report together with the recommendations to the Minister. The Minister shall then give such directions as he thinks appropriate to the Director and the Board, together with his reasons for so doing and a copy of the arbitrator's report and recommendations. Where a direction has been given, the Board and the Director must comply with it.

Clause 10 - Part IIA - Boards

Clause 10 inserts a new Part 11A comprising new sections 14B, 14C, 14D, 14E, 14F, 14G, 14H, 14J and 14K which specifically provide for the establishment of Boards, functions of such Boards, appointment of members to such Boards, and general procedural matters relating to the conduct of those Boards.

New section 14B, as inserted by this clause, provides for the definition of "relevant Land Council", and "relevant preconditions" which are eligibility requirements for membership to a Board.

New section 14C, as inserted by this clause, places a duty on the Minister to establish a Board for a prescribed park or reserve where the Minister and the relevant Land Council agree to do so and agree on the constitution and other relevant details pertaining to a Board. The notice establishing a Board is to specify the relevant preconditions of membership to the Board, the number of persons who are to constitute the Board, the name of the Board and the park or reserve for which the Board is established. The Minister may not amend or revoke such a notice unless the relevant Land Council has agreed. Where a Board is established for a park or reserve wholly comprising Aboriginal land, a majority of the members shall be Aboriginals nominated by the traditional Aboriginal owners of that Aboriginal land. The actions of a Board apply notwithstanding any alteration to the constitution of that Board.

New section 14D, as inserted by this clause, establishes the functions of the Board which are to prepare, in conjunction with the Director, plans of management in respect of the park or reserve for which it is established, to make decisions consistent with the plan of management in relation to that park or reserve, to monitor, in conjunction with the Director, the management of that park or reserve, and to give advice, in conjunction with the Director, on all aspects of future development of that park or reserve.

New section 14E, as inserted by this clause, provides for the Minister to appoint persons to membership of the Board once relevant preconditions are satisfied, and on such terms and conditions as he determines. Should an office of the Board become vacant the Minister shall appoint another person who satisfies the relevant preconditions to that office as soon as practicable.

New section 14F, as inserted by this clause, provides that a person who is appointed to a Board holds office for 5 years or

less, as specified in the instrument of appointment. The person may also be eligible for re-appointment. The appointment will cease if that person ceases to satisfy the relevant preconditions, resigns in writing delivered to the Minister or has his appointment terminated by the Minister for misbehaviour or physical or mental incapacity. The Minister may also terminate an appointment where a member is absent from 3 consecutive meetings without leave from the Board but is obliged to terminate the appointment where the member fails to disclose without reasonable excuse to the Board any pecuniary interest. An appointment shall also be terminated if the Minister is requested by a group to do so where a member is a nominee of that particular group. An appointment will not be invalidated by reason of an irregularity in relation to the appointment of that member.

New section 14G, as inserted by this clause, provides for deputies of members. A deputy of a member representing a group that comprises traditional Aboriginal owners of Aboriginal land in a park or reserve for which a Board has been established, may also be nominated by that group. A member who is appointed otherwise than by nomination of traditional Aboriginal owners may, with the approval of the Minister, nominate a deputy who satisfies the same relevant precondition as that member. A deputy may thus attend a meeting in the absence of the member for whom he is deputy with the same duties and obligations of the member for whom he is a deputy, but shall not preside at a meeting. Provision is also made for revocation of nomination of deputies.

New section 14H, as inserted by this clause, provides that a Board may appoint a presiding member to hold office for such period as the Board determines, or until the Board revokes that appointment or the member resigns or ceases to be a member, whichever is the sooner.

New section 14J, as inserted by this clause, provides for the disclosure of pecuniary interests of members of the Board in a matter being considered or about to be considered by the Board, such disclosure to be recorded in the minutes of a meeting.

New section 14K, as inserted by this clause, provides for the procedures to be followed at a meeting. Generally meetings are held at such times and places as the Board determines. However, the Minister may also direct the presiding member to convene a meeting of the Board. Subject to the Act, the Board shall determine its meeting procedures and who may attend or participate in a meeting. However, where a Board is established for a park or reserve wholly comprising Aboriginal land, there is no meeting unless the majority of the members present are members appointed pursuant to nominations by the traditional Aboriginal owners of that land. A meeting of any Board shall not be held unless there is present at least one member who is appointed otherwise than by nomination by traditional Aboriginal owners.

A quorum of any meeting constitutes more than half of those who constitute the Board.

The presiding member shall preside at all meetings of a Board, and if absent, another member (other than a deputy) is elected by those present at the meeting to preside at the meeting.

Decisions of the Board are determined by the majority of those present and voting, and all votes are equal with the presiding member having a casting vote.

Further amendments of primarily a machinery nature are specified in the Schedule.

These amendments purport to remove the ambiguity surrounding the interpretation of section 7 of the Principal Act as it relates to the amending or varying of Proclamations by removing the distinction between original Proclamation and subsequent varying

Proclamations and the ambiguity surrounding the preparation of a plan of management.

Savings provisions protect existing plans of management from the consequences of the repeal or amendment of sub-sections 11(4), 12(6), (7) and (8), and (13)(2) as well as Proclamations, and matters in relation to those Proclamations, made before or after the commencement of these provisions.

The amendment to section 7 of the Principal Act, as specified in the Schedule, also inserts a new sub-section 7 (11A), which reflects the intent of the presently drafted ambiguous sub-section 7(11A). This sub-section provides that the public representation procedures in sub-section 7 (12) will not apply where a Proclamation concerning a park or reserve relates to land or sea within the Region (other than in those circumstances where land or sea ceases to be park or reserve by reason of that Proclamation). Further, the exemption from public representations also applies to Proclamations which change the land already park or reserve from one park or reserve to another park or reserve.

Section 12 of the Principal Act is amended to provide that the life of a plan of management is for a period (not exceeding 10 years) specified in a notice in the Gazette commencing from the date the plan of management has come into effect and to remove any doubt that the procedures which apply in relation to the preparation (under section 11 of the Principal Act) and the tabling of that plan of management (under section 12 of the Principal Act), also apply to any new plan of management.

