

"Land in the State of New South Wales was traditionally owned and occupied by Aborigines. Land is of spiritual, social, cultural and economic importance to Aborigines. It is fitting to acknowledge the importance which land has for Aborigines and the need of Aborigines for land. The Government has accepted that as a result of past Government decisions the amount of land set aside for Aborigines has been progressively reduced without compensation."

fact sheet



New South Wales
Aboriginal Land Council
www.alc.org.au

Proposed Changes to the Joint Management of National Parks (Part 4A)

This Fact Sheet provides general information about the changes being proposed by the NSW Government to the law and policies which govern the protection of Aboriginal culture and heritage.

It is one of a series of Culture and Heritage Fact Sheets which have been developed for Local Aboriginal Land Councils (LALCs) by the NSW Aboriginal Land Council (NSWALC).

Please Note: While all care has been taken in the preparation of these fact sheets, they are not a substitute for legal advice in individual cases.

The information in these fact sheets is current as of May 2009.

What is joint management?

Under the *National Parks and Wildlife Act*¹, land which is considered to be culturally significant to the Aboriginal community can be handed back to Registered Aboriginal Owners: a lease back agreement is negotiated between the Aboriginal owners and the NSW Government. Lands handed back are eventually jointly managed by the Aboriginal owners and the NSW Government and are run as a national park (or other form of reserve).

A LALC must hold the title of the land on behalf of Aboriginal owners and the land is leased back to the NSW Government for conservation purposes. A Board of Management, consisting of a majority of Registered Aboriginal Owners, with government and other local interest group representatives, is set up to manage the park.

There are five pieces of land currently under joint management in NSW, with a couple more under negotiation.

What is the NSW Government proposing to change?

The NSW Government has proposed changes to **Part 4A** of the *National Parks and Wildlife Act*, which governs how land is leased back to Aboriginal Owners and LALCs.

The Department of Environment and Climate Change (DECC), which includes the National Parks and Wildlife Service, has advised that these changes are 'minor machinery amendments' to improve the 'effectiveness' of the Act.

When can a park be handed back?

There are two ways that land can become jointly managed. The first is if the NSW Parliament recognises that land is of 'cultural significance' to Aboriginal people, and agrees to list that land on Schedule 14 of the *National Parks and Wildlife Act*. Schedule 14 lands may already be national parks or nature reserves.

A Part 4A lease can be negotiated, and the land can be handed back to be jointly managed as a national park.

The second way is for a LALC to put in a land claim over Crown Land under the *Aboriginal Land Rights Act*.

If the Crown Lands Minister is satisfied that the land would be claimable except for the fact that the lands are needed for the 'essential public purpose of nature conservation', under section 36A of the *Aboriginal Land Rights Act*, the parties can enter into Part 4A negotiations with the land council to jointly manage the land. If successful, the Crown Lands Minister can hand the land back on the condition that it is run as a jointly managed park

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or reserve. Again, the Registered Aboriginal owners own the land (through the LALC) and it is leased to the government.

The land is then managed by a Board of Management as with Schedule 14 lands.

The proposed *National Parks and Wildlife Amendment Bill 2009* (also known as the **Omnibus Bill**) will not change these general arrangements.

However, it is proposed that a reference be inserted that the Minister and the LALC are under no obligation to enter into and conduct negotiations under Part 4A.

Arguably, this removes an implied obligation on the Minister for the Environment and Climate Change to negotiate a hand-back for land listed on Schedule 14 or for land that is subject to an Aboriginal land claim.

What are the other proposed changes?

The other changes proposed include:

- A statutory indemnity for Board of Management members acting in good faith;
- The power for a Board of Management to delegate its functions to one member of the Board, a DECC staff member or any person;
- A higher reporting standard including a requirement that an annual budget be submitted to DECC;
- An increase in the period of time to develop a Plan of Management for a park from 2 years to 5 years (this change would apply to all parks);
- Increased flexibility to allow a single Plan of Management to extend to more than one Part 4A park; and
- Administrative amendments such as allowing Aboriginal Boards of Management meetings to be held by telephone or video conference.

What other ways are Aboriginal people involved in the management of parks in NSW?

Aboriginal people are involved in the management of parks in NSW in a range of other ways which do not involve formal ownership of the land by Aboriginal people.

This includes Memoranda of Understanding, native title agreements and the participation of Aboriginal people in park advisory committees.

These arrangements are often referred to as **co-management**. The proposed changes to the *National Parks and Wildlife Act* only relate to joint management under Part 4A, and not to these broader co-management arrangements.

Where can I get more information about the proposed changes?

For more information about the *National Parks and Wildlife Amendment Bill 2009* see the other Culture and Heritage Fact Sheets produced by the NSW Aboriginal Land Council at www.alc.org.au.

For more information on the changes visit the DECC website at: <http://www.environment.nsw.gov.au/legislation/NPWamendmentBill2009.htm>.

Can I have a say about the *National Parks and Wildlife Amendment Bill 2009*?

Yes. DECC has invited submissions from the community on the *Omnibus Bill* and the draft policies.

The closing date for written submissions is **Tuesday 7 July 2009**.

Comments can be emailed to consultation.npwbill2009@environment.nsw.gov.au.

Submissions should include your name, address, contact phone numbers and email address.

Local Aboriginal Land Councils wanting to discuss the changes and the NSW Aboriginal Land Council's response should contact their local Zone Office or the Land, Policy and Research Unit on 02 9689 4444.

Footnotes

- 1 A current version of the *National Parks and Wildlife Act 1974* can be accessed online at NSW Legislation: <http://www.legislation.nsw.gov.au/scanview/inforce/s/1/?TITLE=%22National%20Parks%20and%20Wildlife%20Act%201974%20No%2080%22&nohits=y>