

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

**NATIONAL PARKS AND WILDLIFE CONSERVATION
AMENDMENT BILL 1985**

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MINOR AMENDMENTS OF PRINCIPAL ACT

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 9 May 1985

(Minister for Arts, Heritage and Environment)

A BILL

FOR

An Act to amend the *National Parks and Wildlife Conservation Act 1975*

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title, &c.

5 **1.** (1) This Act may be cited as the *National Parks and Wildlife Conservation Amendment Act 1985*.

(2) The *National Parks and Wildlife Conservation Act 1975*¹ is in this Act referred to as the Principal Act.

Commencement

10 **2.** This Act shall come into operation on the day on which it receives the Royal Assent.

Interpretation

3. Section 3 of the Principal Act is amended—

(a) by inserting after the definition of “plant” in sub-section (1) the following definition:

“ ‘prescribed park or reserve’ means—

- (a) the Uluru (Ayers Rock–Mt. Olga) National Park; and
- (b) any other park or reserve declared by the regulations to be a prescribed park or reserve for the purposes of this definition;”;

(b) by omitting from sub-section (1) the definition of “Region” and substituting the following definition: 10

“ ‘Region’ means—

(a) so much of the Alligator Rivers Region, within the meaning of the definition of that Region in the *Environment Protection (Alligator Rivers Region) Act 1978*, as does not include— 15

(i) the area shown as the Arnhem Land Aboriginal Reserve on the map referred to in that definition; and

(ii) the areas (being pastoral leases) described on that map as Mount Bunday, Goodparla, Gimbat and Eva Valley; and 20

(b) the area of land described under the heading ‘Uluru’ in Schedule 1 to the *Aboriginal Land Rights (Northern Territory) Act 1976*;”;

(c) by omitting from sub-section (1) the definition of “Territory Commission” and substituting the following definition:

“ ‘Territory Commission’ means the Conservation Commission of the Northern Territory established by the *Conservation Commission Act 1980* of the Northern Territory;”;

(d) by inserting after the definition of “this Act” in sub-section (1) the following definition:

“ ‘traditional Aboriginal owners’ has the same meaning as in the *Aboriginal Land Rights (Northern Territory) Act 1976*;”.

Parks and reserves established by Governor-General

4. Section 7 of the Principal Act is amended—

(a) by inserting in sub-section (7A) “or transfer” after “surrender”; and

(b) by inserting in sub-section (10B) “or transferring” after “surrendering”.

Restriction of disposal, &c., of land in parks and reserves

5. Section 9 of the Principal Act is amended by inserting in sub-section (3) “or transfer” after “surrender”.

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Plans of management

6. Section 11 of the Principal Act is amended—

(a) by omitting from sub-section (1) “As” and substituting “Subject to sub-section (2), as”;

(b) by omitting sub-section (2) and substituting the following sub-sections:

“(2) Where a Board is established under Part IIA 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 in respect of that park or reserve unless, at the time when the Board is established, there is already a plan of management in force in respect of that park or reserve.

“(2A) Before a plan of management is prepared in respect of a park or reserve, the Director shall, by public notice—

(a) state that a plan of management is to be prepared in respect of that park or reserve;

(b) invite interested persons to make representations in connection with the proposed plan by such date, not being less than 1 month after the date of publication of the notice in the *Gazette*, as is specified in the notice; and

(c) specify an address to which such representations may be forwarded,

and, in the case of a plan of management in respect of a park or reserve wholly or partly within a prescribed area, shall serve a copy of the notice on the relevant Chairman.”;

(c) by inserting in sub-section (3) “, or the Director together with the Board, as the case requires,” after “Director” (last occurring);

(d) by omitting from sub-section (10) “the Director has prepared the plan of management, he” and substituting “the plan of management has been prepared, the Director”;

(e) by inserting in sub-section (11) “, or the Director together with the Board, as the case requires,” after “Director” (last occurring);

(f) by omitting from sub-section (11) “he thinks fit” and substituting “the Director thinks fit, or the Director and the Board think fit, as the case requires”;

(g) by inserting after sub-section (11) the following sub-sections:

“(11A) Where the Director and the Board are unable to agree on—

(a) the preparation under sub-section (2) of a plan of management in respect of that park or reserve;

(b) the alteration or alterations to be made under sub-section (11) to the plan of management in respect of that park or reserve; or

(c) the submission of the plan of management to the Minister under sub-section (12),

the Director and the Board shall advise the Minister accordingly.

“(11B) Where the Minister is advised under sub-section (11A) of a disagreement between the Director and the Board, the Minister shall take such steps as the Minister considers appropriate to resolve the disagreement.

“(11C) Where the Minister is unable to resolve the disagreement, the Minister shall appoint an arbitrator (being a person whom the Minister considers to be suitably qualified and in a position to deal with the matter impartially) to inquire into the matter. 5

“(11D) A person appointed under sub-section (11C) shall inquire into the matter and submit a report, together with the person’s recommendations, to the Minister. 10

“(11E) Where the Minister receives a report and recommendations under sub-section (11D), the Minister shall give such directions as the Minister thinks appropriate to the Director and the Board, together with a statement of the Minister’s reasons for giving the directions and a copy of the report and recommendations given to the Minister under sub-section (11D). 15

“(11F) The Director and the Board shall comply with any directions given by the Minister under sub-section (11E).”;

- (h) by inserting in sub-section (12) “, subject to sub-section (12A),” after “shall”; 20
- (j) by inserting in paragraph (12) (b) “, or the Director and the Board, as the case requires,” after “Director”;
- (k) by inserting after sub-section (12) the following sub-section:
 - “(12A) Where a Board, in conjunction with the Director, is preparing a plan of management in respect of that park or reserve, the Director shall not submit the plan of management to the Minister under sub-section (12) without the consent of the Board.”; 25
- (m) by inserting in paragraph (13) (a) “, on the one hand,” after “Chairman”; 30
- (n) by inserting in paragraph (13) (a) “, or the Director and the Board, as the case requires, on the other hand” after “Director” (first occurring);
- (o) by inserting in paragraph (13) (a) “by the Director, or by the Director together with the Board, as the case requires” after “consideration”;
- (p) by adding at the end of sub-paragraph (13) (b) (ii) “by the Director, or by the Director together with the Board, as the case requires”; 35
- (q) by inserting in sub-section (15) “, or the Director together with the Board, as the case requires,” after “Director” (second occurring);
- (r) by inserting in sub-section (15) “the Director shall, subject to sub-section (15A),” after “under sub-section (14), and”; 40
- (s) by inserting after sub-section (15) the following sub-sections:

“(15A) Where a Board, in conjunction with the Director, is preparing a plan of management in respect of that park or reserve, the

Director shall not submit the plan of management to the Minister under sub-section (15) without the consent of the Board.

5 “(15B) Where the Director and the Board are unable to agree on the submission of the plan of management to the Minister under sub-section (15), the Director and the Board shall advise the Minister accordingly and the provisions of sub-sections (11B) to (11F) (inclusive) apply to and in relation to the disagreement as if the disagreement were a disagreement of the kind referred to in sub-section (11A).”; and

10 (t) by omitting from sub-section (22) the definition of “traditional Aboriginal owners”.

Plan of management to be laid before Parliament

7. Section 12 of the Principal Act is amended—

(a) by omitting sub-section (5) and substituting the following sub-section:

15 “(5) If either House of the Parliament passes a resolution in accordance with sub-section (2) disallowing the plan of management, the Minister shall give to the Director a direction that a fresh plan of management be prepared and, where the Minister gives such a direction, a fresh plan of management shall be prepared in accordance with section 11.”; and

20 (b) by inserting in sub-section (8) “, or of the Director and the Board, as the case requires,” after “Director”.

Amendment or revocation of plan of management

25 8. Section 13 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

“(1) Subject to sub-section (2), a plan of management may be amended at any time and sub-sections 11 (2A) to (22) (inclusive) and section 12 apply in relation to any such amendment in like manner as they apply in relation to a plan of management.”.

30 9. After section 14 of the Principal Act the following section is inserted in Part II:

Disagreement between the Director and Board over implementation of plan of management

“14A. (1) Where—

35 (a) a Board has been established under Part IIA for a park or reserve; and

(b) the Director is of the opinion that—

(i) the implementation of a decision of the Board is likely to be substantially detrimental to the good management of that park or reserve; or

(ii) a decision of the Board is contrary to the plan of management in respect of that park or reserve,
the Director shall advise the Minister accordingly.

“(2) Where the Minister is advised under sub-section (1) of a disagreement between the Director and the Board, the Minister shall take such steps as the Minister considers appropriate to resolve the disagreement. 5

“(3) Where the Minister is unable to resolve the disagreement, the Minister shall appoint an arbitrator (being a person whom the Minister considers to be suitably qualified and in a position to deal with the matter impartially) to inquire into the matter. 10

“(4) A person appointed under sub-section (3) shall inquire into the matter and submit a report, together with the person’s recommendations, to the Minister.

“(5) Where the Minister receives a report and recommendations under sub-section (4), the Minister shall give such directions as the Minister thinks appropriate to the Director and the Board, together with a statement of the Minister’s reasons for giving the directions and a copy of the report and recommendations given to the Minister under sub-section (4). 15

“(6) The Director and the Board shall comply with any directions given by the Minister under sub-section (5).” 20

10. After Part II of the Principal Act the following Part is inserted:

“PART IIA—BOARDS

Interpretation

“14B. In this Part, unless the contrary intention appears—

‘relevant Land Council’, in relation to Aboriginal land, means the Aboriginal Land Council established under the *Aboriginal Land Rights (Northern Territory) Act 1976* for the area in which the land is situated; 25

‘relevant preconditions’, in relation to an office of member of a Board, means the preconditions that a person must satisfy, in accordance with the section 14C notice in relation to the Board, in order to be eligible for appointment to that office; 30

‘section 14C notice’ means a notice under sub-section 14C (1) and includes such a notice as amended or further amended under sub-section 14C (4). 35

Boards

“14C. (1) Where—

(a) an area of Aboriginal land is situated wholly or partly within a prescribed park or reserve; and

- (b) the Minister and the relevant Land Council in relation to the land—
- (i) agree that a Board should be established for that park or reserve; and
 - (ii) agree on the matters to be specified, in accordance with

5 sub-section (2), in the notice in respect of the Board, the Minister shall, by notice published in the *Gazette*, establish a Board for that park or reserve.

“(2) A notice under sub-section (1) establishing a Board shall—

- 10 (a) specify the park or reserve for which the Board is established;
- (b) specify the name by which the Board is to be known;
- (c) specify the number of persons who are to constitute the Board; and
- (d) subject to sub-section (5), specify, in relation to each office of member of the Board, the preconditions that a person must satisfy in order to be eligible for appointment to that office.

15 “(3) Subject to sub-section (6), the Minister may, by notice published in the *Gazette*, revoke a notice under sub-section (1) in relation to a Board.

“(4) Subject to sub-sections (5) and (6), the Minister may, by notice published in the *Gazette*, amend, or further amend, a notice under sub-section (1) in relation to a Board so as to—

- 20 (a) change the specification of the name by which the Board is to be known;
- (b) increase the number of persons who are to constitute the Board and specify, in relation to each additional office of member of the Board so created, the preconditions that a person must satisfy in order to be
- 25 (c) decrease the number of persons who are to constitute the Board and specify which office or offices of member of the Board is or are abolished; or
- (d) change the specification, in relation to an office of member of the Board, of the preconditions that a person must satisfy in order to be
- 30 (e) eligible for appointment to that office.

“(5) Where a Board is established for a park or reserve that consists wholly of Aboriginal land, a majority of the members of the Board shall be Aboriginals nominated by the traditional Aboriginal owners of that Aboriginal land.

35 “(6) Where a Board is established for a park or reserve, the Minister shall not revoke, amend or further amend a notice under sub-section (1) in relation to that park or reserve unless the relevant Land Council in relation to the Aboriginal land situated in that park or reserve has agreed to the revocation, amendment or further amendment, as the case requires.

40 “(7) Where the Minister, under sub-section (4), amends or further amends a notice under sub-section (1) in relation to a Board so as to alter the name of the Board or so as to alter the constitution of the Board, section 25B of the *Acts*

Interpretation Act 1901 applies in relation to that alteration as if the alteration had been made by an Act.

Functions of Boards

“14D. (1) The functions of a Board established for a park or reserve are—

- (a) to prepare, in conjunction with the Director, plans of management in respect of that park or reserve; 5
- (b) to make decisions, being decisions that are consistent with the plan of management in respect of that park or reserve, in relation to the management of that park or reserve;
- (c) to monitor, in conjunction with the Director, the management of that park or reserve; and 10
- (d) to give advice, in conjunction with the Director, to the Minister on all aspects of the future development of that park or reserve.

“(2) A Board shall, in performing its functions under this Act, comply with any directions given by the Minister to the Board under section 11, 13 or 14A. 15

Appointment of members of Boards

“14E. (1) The Minister may, by instrument in writing, appoint to an office of member of a Board a person who satisfies the relevant preconditions in relation to that office.

“(2) Where an office of member of a Board becomes vacant, the Minister shall appoint a person to that office in accordance with sub-section (1) as soon as practicable after that office becomes vacant. 20

“(3) A member of a Board holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister. 25

Tenure of office

“14F. (1) A person appointed to an office of member of a Board holds office for such period, not exceeding 5 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

“(2) Where the instrument of appointment of a member does not specify a period of appointment in accordance with sub-section (1), the instrument of appointment shall be deemed to specify that the member holds office for a period of 5 years commencing on the day of appointment. 30

“(3) Where a person is appointed to an office of member of a Board and the person ceases to satisfy the relevant preconditions in respect of the office, the person’s appointment to the office terminates at the time when the person ceases to satisfy those preconditions. 35

“(4) A member of a Board may resign office by writing signed by the member and delivered to the Minister.

“(5) The Minister may terminate the appointment of a member of a Board for misbehaviour or physical or mental incapacity.

5 “(6) If a member of a Board is absent, except on leave granted by the Board, from 3 consecutive meetings of the Board of which the member has had notice, the Minister may terminate the appointment of the member.

“(7) If a member of a Board fails, without reasonable excuse, to comply with the member’s obligations under section 14J, the Minister shall terminate the appointment of the member.

10 “(8) Where a person is appointed as a member of a Board on the nomination of a particular person, body or group of persons, the Minister shall terminate the appointment of the member if that person, body or group requests the Minister, in writing, to do so.

15 “(9) The appointment of a member of a Board is not invalidated, and shall not be called in question, by reason of a deficiency or irregularity in, or in connection with, the nomination, selection or appointment of the member.

Deputy members

20 “14G. (1) Where an appointment to an office of member of a Board established for a park or reserve may be made only in pursuance of a nomination by the traditional Aboriginal owners of Aboriginal land situated in that park or reserve, those traditional Aboriginal owners may nominate a person who satisfies the relevant preconditions in relation to that office to be the deputy of the member of the Board holding that office.

25 “(2) A member of a Board who was appointed otherwise than pursuant to a nomination by the traditional Aboriginal owners of Aboriginal land situated in the park or reserve for which the Board is established may, with the approval of the Minister, nominate a person who satisfies the relevant preconditions in relation to the member’s office to be the deputy of the member.

30 “(3) Where a person is nominated to be the deputy of a member of a Board, the person so nominated may, if the member is absent from a meeting of the Board, attend that meeting and, when so attending, shall, subject to sub-section (4), be deemed to be a member of the Board.

“(4) A person who is nominated to be the deputy of a member of a Board shall not preside at a meeting of the Board.

35 “(5) Where the traditional Aboriginal owners of Aboriginal land situated in the park or reserve for which a Board is established nominate a person, pursuant to sub-section (1), to be the deputy of a member of the Board, those traditional Aboriginal owners may revoke that nomination.

40 “(6) A member of a Board who was appointed otherwise than pursuant to a nomination by the traditional Aboriginal owners of Aboriginal land situated in the park or reserve for which the Board is established may, with the approval of the Minister, revoke a nomination made by the member under sub-section (2).

“(7) The nomination of a person as the deputy of a member of a Board is not invalidated, and shall not be called in question, by reason of a deficiency or irregularity in or in connection with the selection or nomination of the person.

Presiding members

“14H. (1) A Board may, by resolution, appoint a member of the Board to be the presiding member of the Board. 5

“(2) A member appointed to be presiding member of a Board holds office, subject to sub-section (3), for such period as is determined by the Board at the time of the member’s appointment to that office.

“(3) A member of a Board ceases to hold office as presiding member of the Board if— 10

- (a) the member resigns that office;
- (b) the Board revokes the member’s appointment to that office; or
- (c) the member ceases to be a member of the Board.

Disclosure of interests 15

“14J. (1) A member of a Board who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to the member’s knowledge, disclose the nature of that interest at a meeting of the Board.

“(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Board. 20

Meetings

“14K. (1) Meetings of a Board shall be held at such times and places as the Board, from time to time, determines.

“(2) The presiding member of a Board may at any time, and, if so directed by the Minister, shall, convene a meeting of the Board. 25

“(3) Subject to the provisions of this Act, a Board shall determine its procedures and determine which persons are to be permitted to attend or participate in meetings of the Board.

“(4) Subject to sub-sections (5) and (6), at a meeting of a Board, a number of members greater than half the number of persons who constitute the Board constitute a quorum. 30

“(5) Where a Board is established for a park or reserve that consists wholly of Aboriginal land, a meeting of the Board shall not be held, or shall not continue, unless the majority of the members of the Board present at the meeting are members appointed pursuant to nominations by the traditional Aboriginal owners of that Aboriginal land. 35

“(6) A meeting of a Board shall not be held, or shall not continue, unless at least one of the members of the Board present at the meeting is a member appointed otherwise than pursuant to a nomination by the traditional 40

Aboriginal owners of the Aboriginal land situated in the park or reserve for which the Board is established.

“(7) Subject to sub-section (8), the presiding member of a Board shall preside at all meetings of the Board.

5 “(8) If the presiding member of a Board is absent from a meeting of the Board, the members of the Board who are present shall elect one of their number to preside at the meeting.

“(9) Decisions of a Board shall be determined by a majority of the members of the Board present and voting.

10 “(10) The member of a Board who is presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.”.

Minor amendments of Principal Act

11. (1) The Principal Act is amended as set out in the Schedule to this Act.

15 **(2)** Notwithstanding the amendments of the Principal Act made by this section and the Schedule to this Act, sub-sections 11 (4), 12 (6), (7) and (8) and 13 (2) of the Principal Act continue to apply in relation to a plan of management in force immediately before the commencement of this section as if those amendments had not been made.

20 **(3)** The amendments of section 7 of the Principal Act made by this section and the Schedule to this Act apply to and in relation to Proclamations made under section 7 of the Principal Act before the commencement of this section and to and in relation to Proclamations made under section 7 of the *National Parks and Wildlife Conservation Act 1975* after the commencement of this section.
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SCHEDULE

Section 11

MINOR AMENDMENTS OF PRINCIPAL ACT

Sub-section 7 (3)—

Omit “under sub-section (2)”.

Sub-section 7 (4)—

Omit “under paragraph (2) (b) in relation to the park or reserve”, substitute “declaring the whole or a specified part of the park or reserve to be a wilderness zone”.

Sub-sections 7 (6) and (7)—

Omit “under sub-section (2)”.

Sub-section 7 (8)—

Omit “sub-section (2)”, substitute “this section”.

SCHEDULE—continued

Sub-section 7 (9)—

Omit “sub-section (8)”, substitute “this section”.

Sub-section 7 (10)—

Omit “sub-section (8)”, substitute “this section”.

Sub-section 7 (10A)—

Omit “sub-section (8)”, substitute “this section”.

After sub-section 7 (10A)—

Insert the following sub-section:

“(10AB) Sub-sections (9), (10) and (10A) do not apply in relation to a Proclamation by virtue of which any land (including any Aboriginal land and any sea-bed or subsoil) or sea ceases to be land or sea within a park or reserve or within a wilderness zone and becomes land or sea within another park or reserve or another wilderness zone, as the case requires.”.

Sub-section 7 (10B)—

Omit “made under sub-section (2)”, substitute “applying”.

Sub-section 7 (11A)—

Omit the sub-section, substitute the following sub-section:

“(11A) Sub-section (11) does not apply in relation to the making of—

- (a) a Proclamation under sub-section (2) in relation to land or sea within the Region;
- (b) a Proclamation under sub-section (8) in relation to land or sea within the Region, other than a Proclamation, not being a Proclamation to which paragraph (c) applies, by virtue of which particular land (including any Aboriginal land or sea-bed or subsoil) or sea ceases to be land or sea within a park or reserve or within a wilderness zone; or
- (c) a Proclamation by virtue of which any land (including any Aboriginal land or any sea-bed or subsoil) or sea ceases to be land or sea within a park or reserve or within a wilderness zone and becomes land or sea within another park or reserve or another wilderness zone, as the case requires.”.

Sub-section 11 (4)—

Omit the sub-section.

Sub-section 12 (6)—

Omit all the words after “operation” (last occurring), substitute “, specifying an address or addresses where copies of the plan of management may be inspected or purchased and specifying the day (being a day not later than 10 years after the day on which the plan of management came into operation) on which the plan of management is to cease to have effect”.

Sub-section 12 (7)—

Omit the sub-section, substitute the following sub-section:

“(7) The plan of management shall, unless sooner revoked, cease to have effect on the day specified by the Minister in the notice published in the *Gazette*.”.

Sub-section 12 (8)—

Omit “date”, substitute “day”.

SCHEDULE—continued

Section 12—

Add at the end the following sub-section:

“(9) Sub-sections 11 (2A) to (22) (inclusive) and sub-sections (1) to (8) (inclusive) of this section apply in relation to the new plan of management in like manner as they apply in relation to a plan of management that is not a new plan of management.”.

Sub-section 13 (2)—

- (a) Omit “date” (wherever occurring), substitute “day”.
- (b) Omit “11 (4)”, substitute “12 (6)”.

Section 31—

Repeal the section.

Schedule—

Omit “2. Convention for the Conservation of Antarctic Seals adopted on 11 February 1972 by the Conference on the Conservation of Antarctic Seals held at London.”.

NOTE

1. No. 12, 1975, as amended. For previous amendments, see No. 37, 1976; Nos. 29 and 36, 1978; Nos. 42 and 155, 1979; No. 70, 1980; No. 111, 1982; and Nos. 10, 63 and 72, 1984.

