



NATIONAL PARKS AND HERITAGE LEGISLATION AMENDMENT BILL 2024



AN INITIATIVE OF THE
SUSAN MCKINNON FOUNDATION

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WHAT IS THE BILL?

The Bill amends the *National Parks and Wildlife Act 1974* to change the reservation status of certain land, to establish the National Parks and Wildlife Conservation Operating Fund and for other purposes; and amends the *Heritage Act 1977* in relation to the Heritage Conservation Fund.

WHAT IS A SHADOW SPI?

The Shadow SPI is a new initiative of the Susan McKinnon Foundation that builds upon the work of the Evidence Based Policy Research Project. It seeks to support parliamentarians in the Legislative Council of NSW during the legislative consideration and voting process, to inform decision making and robust parliamentary debate. It is also intended to improve the quality of tabled SPIs and their usefulness, and to shine a light on the importance of transparency in policy making. Each Shadow SPI is collectively developed by a collaborative team from two ideologically differentiated think tanks (Per Capita and Blueprint Institute) and is intended to be utilised as a companion to the tabled Government Statement of Public Interest in the Legislative Council of NSW. The Shadow SPIs aim to demonstrate a comprehensively answered SPI, within the constraints of time and publicly available information.

This Shadow SPI was developed by Per Capita and reviewed by Blueprint Institute.

Need: Why is the policy needed based on factual evidence and stakeholder input?

Several issues are addressed in this Bill.

The Bill amends the *National Parks and Wildlife Act 1974 (NPW Act)* to revoke approximately 144 hectares of land from seven national parks and reserves in the NSW national park system.

The revocation proposals set out in the Bill are needed to improve boundaries with park neighbours and local councils; to ensure the most appropriate management authority owns and manages community assets; and to enable new priority public infrastructure projects to proceed.

Revocations are considered only as a last resort where there are no other practical options available. Occasionally it becomes necessary and justified to revoke land from national parks and reserves. The last revocations bill was passed in 2022, and prior to that revocation proposals were put to NSW Parliament in 2020 and 2016.ⁱ

The National Parks and Wildlife Advisory Council and regional advisory committees have been consulted on the proposed revocations, along with the relevant NSW agencies and local councils that will be receiving the revoked lands.

The Bill also recategorises the 723-hectare Serpentine Nature Reserve to an Aboriginal area under the *NPW Act*, in recognition of its Aboriginal cultural values. The intention to recategorise the reserve has previously been identified in the published *Statement of Management Intent: Serpentine Nature Reserve*,ⁱⁱ and was requested and supported by local Aboriginal community representatives.

The Bill includes several miscellaneous legislative amendments to the *NPW Act* to:

- support the activities and efficient operation of the National Parks and Wildlife Conservation Trust;
- clarify requirements for the preparation of park plans of management; and
- improve NSW National Parks and Wildlife Service ('NPWS') staff safety.

In recent years there has been an increase in aggressive and intimidating behaviour directed at NPWS staff.ⁱⁱⁱ Under the current provisions it is an offence to impersonate, assault or threaten any NPWS officer who is exercising their duties under the *NPW Act*, *Biodiversity Conservation Act 2016* or the *Wilderness Act 1987*, however, the offence does not extend to NPWS staff carrying out duties under other laws including those related to bushfire management, feral animal control and wild horse management.^{iv} Provisions in this Bill are needed to close this gap and extend protections so they apply in all circumstances where NPWS staff are exercising their duties under any Act or law.

The Bill also amends the *Heritage Act 1977 (Heritage Act)* to modify existing outdated provisions for the management of the Heritage Conservation Fund (HCF). Under the current provisions, the potential uses of money in this fund are limited, causing funds to accumulate instead of being spent on heritage outcomes that benefit the entire community.^v The proposed amendments align the fund with the objectives of the *Heritage Act*, introduce a legislated purpose, and expand the types of authorised payments into and out of the fund. These changes are needed to provide Heritage NSW and the Minister for Heritage with legal certainty and clarity around how monies in the fund may be spent, ensure the fund is fit for purpose, and provide greater flexibility. These proposed amendments are consistent with the recommendations made by the Legislative Council Standing Committee on Social Issues' 2021 *Inquiry into the Heritage Act*.^{vi}

COMMENT

The Government SPI outlines the need for this Bill, which is to enable delivery of government infrastructure projects, improve boundaries with park neighbours and local councils, and clarify and update existing provisions. It identifies stakeholder input regarding revocation and recategorisation provisions.

The Government SPI could have been improved with the inclusion of additional evidence concerning the existence of problems with current legislation addressed by other aspects of the Bill. We note that these are described in detail in the second reading speech in the Legislative Assembly, but the Government SPI would have benefited from further details and factual evidence to highlight the need for legislative amendment in the SPI.

Objective: What is the policy's objective couched in terms of the public interest?

The revocation proposals set out in the Bill will improve land management efficiencies, support delivery of priority state infrastructure, and ensure appropriate management of local infrastructure. For example, the revocation of land in the Lake Innes Nature Reserve resolves boundary issues and facilitates road upgrades by Port Macquarie Hasting Council to address increasing traffic congestion. This will enhance transportation efficiency and safety for the public.^{vii}

The proposal to recategorise Serpentine Nature Reserve to an Aboriginal area under the NPW Act will ensure cultural values are managed in accordance with the principles for Aboriginal areas under the NPW Act. Aboriginal areas under the NPW Act are managed in accordance with stated principles including: to conserve natural and culture values; to allow the use of the Aboriginal area by Aboriginal people for cultural purposes; and to promote public understanding and appreciation of the Aboriginal area's significance, and its natural and cultural value.^{viii} It is in the public interest to identify, protect and conserve Aboriginal areas and ensure that cultural values are managed in accordance with these principles under the NPW Act.

Proposed legislative amendments to the NPW Act to ensure NPWS staff can safely and effectively manage, and conserve national parks is essential for keeping staff safe while they perform their duties and functions in maintaining these public environmental assets.

Proposed amendments to park plans of management aim to ensure clear, consistent, and effective planning for the management of national parks. This facilitates better conservation practices, public consultation, and sustainable use of park resources, enhancing the preservation of natural and cultural heritage for the benefit of current and future generations.

Other proposed miscellaneous amendments to the NPW Act for the National Parks and Wildlife Conservation Trust and for dealing in vested land will provide clarity to the public and ensure the NPW Act remains robust and fit for purpose.

The proposed amendments to the *Heritage Act* will enable the Minister for Heritage to fund programs and activities that support achievement of the Government's heritage objectives. These programs and activities will enable the Government to better target financial support for owners of State-listed heritage items to make conservation, activation and adaptive reuse of heritage items easier and more viable. These changes will ensure the Government is more clearly able to allocate money from the HCF towards initiatives that celebrate, commemorate and conserve heritage, leading to better heritage outcomes across the State. This supports community engagement, tourism, and cultural identity, enhancing public appreciation, understanding and enjoyment of the State's heritage.

COMMENT

The Government SPI clearly describes the intended outcomes of the Bill and generally outlines how each benefits the public interest. The Government SPI could have been improved by describing in more detail, the specific public benefits stemming from proposed amendments. Again, we note that this was provided in greater detail during the second reading speech and the later debate, in the Legislative Assembly.

Options: What alternative policies and mechanisms were considered in advance of the bill?

Under the NPW Act, land can only be revoked from national parks and other reserves via an Act of Parliament. Land is generally revoked from parks only as a last resort and where no other practical options are available. The requirement for Parliament to approve revocation proposals is an important measure to safeguard the State's conservation assets.^x

Revocation proposals are routinely identified in consultation with local councils, government agencies, community members and other stakeholders. Options for revocations are assessed consistent with the NPWS *Revocation, Recategorisation and Road Adjustment Policy*, to ensure proposals for revocation or recategorisation are consistent with legislation and policy, and that they achieve the best conservation outcome.^x

Other amendments necessary to ensure that reserved land is managed according to the most appropriate management principles, that the plan of management process is transparent, that NPWS staff safety is supported, and that the NPW Act remains fit for purpose also require legislative amendments. As do proposed amendments to the *Heritage Act* to address existing legislative shortcomings which currently limit the effectiveness of the HCF.

COMMENT

The changes the Government is seeking require legislative amendment. This is explained in the Government SPI. The second reading speech indicated alternative options for revocation in the lead up to the making of the final proposal. For example:

“NPWS and Port Macquarie Hastings Council have worked closely to ensure that the footprint of the most critical revocation proposal at Lake Road is minimised. From the original proposal, the area to be revoked has been reduced by almost half, to 1.26 hectares, which is the minimum needed to meet relevant road upgrade standards.”^{xi}

Noting the specifics of these would not be practical in the SPI text, however, the SPI could be improved by including additional information about the process for identifying and assessing revocations leading up to the final proposal being put to Parliament.

Analysis: What were the pros/cons and benefits/costs of each option considered?

The revocations will enable the delivery of government infrastructure projects, along with some smaller-scale proposals to improve boundaries with park neighbours and councils.

Amendments to the park plan of management process will help improve public understanding of the process, stages and relevant decision-making required. This will reduce existing uncertainties and avoid confusion.

Expansion of the safety provisions in the NPW Act will help the Government meet its commitment to keeping frontline workers safe, and ensure staff are protected from assault and harassment while undertaking their duties.

Amendments to provisions dealing with the National Parks and Wildlife Conservation Trust will ensure the efficient operation of the Trust, by establishing a specific Operational Fund separate to the existing Public Fund (which was established to accept public donations).

The Bill will require appropriate compensation for some revocations, consistent with the NPWS *Revocation, Recategorisation and Road Adjustment Policy*. Compensation usually consists of the transfer of land to the Minister administering the NPW Act for addition to the national park system.

Not implementing the amendments proposed in this Bill removes the requirement for compensation, however, this will prevent essential land revocations and leave other identified legislative shortcomings in the NPW Act and the *Heritage Act* unaddressed.

COMMENT

The Government SPI clearly describes the benefits and costs of the proposed legislative amendments contained in the Bill. Our shadow SPI text is mostly identical. The Government SPI does not make mention of any alternative approach including a do-nothing option. This section of the SPI would have been improved by considering any merits and demerits of maintaining the status quo, as this is helpful in demonstrating why some action is needed and is in the public interest, as opposed to the option of taking no action.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The provisions of the Bill will commence on the date of assent.

The NSW Department of Climate Change, Energy, the Environment and Water and Heritage NSW are responsible for implementing the Bill after it commences, including transfers of revoked lands to relevant parties.

COMMENT

The Government SPI outlines a basic implementation pathway with limited detail about milestones, timelines and other steps for the policy implementation. The second reading in the Legislative Assembly refers to ongoing discussions regarding compensation requirements for some of the proposed revocations. This part of the SPI should describe the practical steps following the passage of the Bill to implement the policy including timelines for implementation, relevant milestones, whether there is any additional resourcing required, and where relevant, the plan for review and evaluation.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

Relevant statutory advisory bodies were consulted for the proposed revocations. NPWS also liaised with relevant local councils, agencies, and other relevant parties regarding the transfer of revoked lands and the requirement for compensation.

NPWS *Revocation, Recategorisation and Road Adjustment Policy* sets out which parties must, and should, be consulted with, depending on the nature of the proposal.

For the proposed recategorisation of Serpentine Nature Reserve, relevant members of the local Aboriginal community and the relevant NPWS regional advisory committee were consulted and support the proposal.

NSW Police were consulted about proposed amendments to improve staff safety; these will also apply to NSW Police officers exercising the powers of ex-officio rangers under the *NPW Act*.

Heritage NSW previously consulted peak stakeholder bodies and government agencies on the proposed amendments to the *Heritage Act*. The proposals were broadly supported. The amendments are consistent with the recommendations of the 2021 Legislative Council Standing Committee on Social Issues' Inquiry into the Heritage Act.

COMMENT

The Government SPI thoroughly details the consultations undertaken in the making of this policy, including information about the specific stakeholders involved. Our shadow SPI makes only a minor addition to the original SPI text relating to the consultation process required under the NPWS *Revocation, Recategorisation and Road Adjustment Policy*.

ASSESSMENT

PER CAPITA COMMENT:

The Government SPI generally describes the need and objectives of the Bill, however, it could have been improved by including greater detail such as linking the objectives to specific public interest outcomes and supporting the argument for this legislative change with evidence of the problem with existing legislation. As noted throughout our comments, the second reading speech in the Legislative Assembly thoroughly details the elements of the Bill, their purpose, benefits, and public interest outcomes. Whilst the Bill deals with a number of issues, and detailed discussion of each would not be practical to put into the SPI, there are areas where further detail could have improved this SPI.

BLUEPRINT INSTITUTE COMMENT:

As acknowledged by Per Capita, the Government SPI omits information which would assist Members in assessing the Bill, but not because those policymaking processes were not carried out. As illustrated in Mr Jihad Dib's second reading speech in the Legislative Assembly, the revocations to public land were thoughtfully considered and responded to needs raised by stakeholders and partners. It is not expected that an SPI should fully justify each and every change made by a Bill, but this SPI would have greatly benefited from more detailed examples of the Bill's function and how it serves the public interest.

Additionally, despite providing comprehensive justification and analysis for the chosen policy option, the Government SPI did not outline any alternate policy options considered in the drafting of the Bill. At minimum, an SPI should explicitly consider the base scenario of 'no change' in order to demonstrate the need for action as opposed to none.

Assessment of the tabled Statement of Public Interest

Exemplary	Good Practice	Inadequate	Insufficient
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- ⁱ New South Wales, Parliamentary Debates, Legislative Assembly, 15 May 2024, 2 (Jihad Dib).
- ⁱⁱ Office of Environment and Heritage, New South, [Serpentine Nature Reserve Statement of Management Intent](#), (1 May 20214)
- ⁱⁱⁱ See e.g., Adriane Reardon and Victor Petrovic, 'Horse's Head Dumped at Nsw Snowy Mountains National Parks Office Disgusts Staff', ABC News (Online, 26 May 2023); Lisa Cox, 'Police Investigate Threat to 'Firebomb' National Parks Office over Kosciuszko Horse Cull', The Guardian (Online, 30 September 2022).
- ^{iv} National Parks and Wildlife Act 1974 (NSW) s 169.
- ^v New South Wales, Parliamentary Debates, Legislative Assembly, 15 May 2024, 5 (Jihad Dib).
- ^{vi} Legislative Council Standing Committee on Social Issues, New South Wales Parliament, Review of the Heritage Act 1977 (Report No 59, October 2021).
- ^{vii} New South Wales, Parliamentary Debates, Legislative Assembly, 15 May 2024, 3 (Jihad Dib).
- ^{viii} National Parks and Wildlife Act 1974 (NSW) s 30K(2).
- ^{ix} New South Wales, Parliamentary Debates, Legislative Assembly, 15 May 2024, 2 (Jihad Dib).
- ^x NSW National Parks and Wildlife Service, [Revocation, Recategorisation and Road Adjustment Policy](#) (September 2021)
- ^{xi} New South Wales, Parliamentary Debates, Legislative Assembly, 15 May 2024, 3 (Jihad Dib).