

Protected areas & public land management



Protected Areas

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Overview

Australia and NSW are facing a serious decline in biodiversity.² It is therefore necessary to set aside sanctuaries or areas in which native species, vegetation and ecosystems can be permanently protected. Such areas are known as protected areas.

There are many different types of protected areas in NSW, ranging from World Heritage sites to nature reserves. Similarly, aquatic habitats are protected by marine parks and aquatic reserves. The level of legal protection varies for each type of protected area.

In NSW, the main legislation under which protected areas are created and managed is the *National Parks and Wildlife Act 1974* (NSW). These are managed by the NSW National Parks and Wildlife Service. In NSW, around 7.1 million hectares, or around 8.8% of the State, is in a protected area of some sort.³

Areas of land can also be protected under the main Commonwealth environmental law, the *Environment Protection and Biodiversity Conservation Act*

¹ http://www.edonsw.org.au/legal_advice

² *NSW State of the Environment Report 2012*, Chapter 5 Biodiversity.

³ *NSW State of the Environment Report 2012* Chapter 5.3 Reserves and conservation.

1999 (Cth) (EPBC Act), which protects world heritage sites, National heritage sites and Ramsar wetlands.

Aquatic areas, such as marine parks, are protected under the *Marine Parks Act 1997* (NSW), the *Fisheries Management Act 1994* (NSW), and the EPBC Act.

This Fact Sheet explains how NSW and Commonwealth law protects protected areas.

Mechanisms for establishing protected areas on private land, such as biobanking sites, Conservation Agreements and wildlife refuges, are explained in our [Fact Sheet on Private Land Conservation](#).

NSW national parks and reserves

Many different types of protected areas fall within the NSW park system, including national parks, nature reserves, wilderness areas, Aboriginal areas, and State conservation areas. The primary purpose of the NSW parks system is to provide permanent security for the State's natural and cultural heritage.

Under-represented bioregions

Although the NSW parks system⁴ should ideally contain a representation of all terrestrial ecosystems, there exist significant regional imbalances.

For example, the bioregion with the highest proportion of land reserved within the NSW park system is the Australian Alps, which has 82% of its area protected in Kosciuszko National Park. In contrast, the NSW bioregions of the Riverina, NSW South-western Slopes, Broken Hill Complex, Cobar Peneplain, Nandewar, and the Darling Riverine Plains have less than 4% of their area protected within the NSW reserve system.⁵

NSW National Parks and Wildlife Service

The NPWS is part of the Office of Environment and Heritage (OEH). The Environment Minister is responsible for OEH and the NPWS.

The NPWS is responsible for managing [protected areas](#) in NSW such as parks and reserves.⁶

National Parks and Wildlife Advisory Council

The [National Parks and Wildlife Advisory Council](#) advises the Environment Minister and Chief Executive on the operation and management of parks and

⁴ Detailed in [Management of the NSW park system](#). Available at: <http://www.environment.nsw.gov.au/sop/index.htm>

⁵ NSW State of the Environment Report 2012, Chapter 5.3, Reserves and conservation: http://www.epa.nsw.gov.au/soe/soe2012/chapter5/chp_5.3.htm#5.3.47

⁶ See: *National Parks and Wildlife Act 1974* (NSW), Part 2, Div. 1.

reserves. It has a particular role in considering comments received on draft plans of management.⁷

National parks

The most well-known type of protected area in NSW is probably the national park. Contrary to what its name suggests, national parks are established and managed by the NSW State Government, not by the Commonwealth.

National parks generally cover large areas. Their purpose is to conserve ecosystems, natural and cultural features and landscapes, while allowing for public appreciation and sustainable visitor use and enjoyment.⁸

There are 203 national parks in NSW.⁹

How are national parks created?

A national park can only be created over Crown land or land which has been acquired by, or given to, the Environment Minister for that purpose.¹⁰

To create a national park, the Governor of NSW must publish a notice in the NSW Government Gazette formally reserving the land as a national park.¹¹ The notice is then given to both houses of Parliament.¹² Once the notice is tabled in Parliament, the area becomes a national park unless the Parliament votes against it.¹³

Funding is a major obstacle to reserving more national parks, and most are created from existing Crown land reserves. There is no formal process for members of the public to suggest additions to national parks, but it is possible to do so by making a submission to the Chief Executive, the Environment Minister, or a State Member of Parliament.

If you want to have an area reserved as a national park, you could also approach the [National Parks Association of NSW](#) (NPA), a non-government conservation group that lobbies for the interests of national parks, or the [Nature Conservation Council of NSW](#) (NCC), which is an umbrella organisation representing conservation groups across NSW.

Both the NPA and NCC are represented on the [National Parks and Wildlife Advisory Council](#), which can discuss proposals for new park reservations with the Chief Executive.

⁷ *National Parks and Wildlife Act 1974* (NSW), s. 23.

⁸ *National Parks and Wildlife Act 1974* (NSW), s. 30E(1).

⁹ See: [OEH website](#).

¹⁰ *National Parks and Wildlife Act 1974* (NSW), ss. 30B, 145, 148.

¹¹ *National Parks and Wildlife Act 1974* (NSW), s. 30A.

¹² *National Parks and Wildlife Act 1974* (NSW), s. 35.

¹³ *National Parks and Wildlife Act 1974* (NSW), s. 35.

Case studies: Nominating an area for inclusion in a national park

Yanga National Park

Yanga Station, located on the Sturt Highway near Balranald on the Murrumbidgee River, was officially listed as a national park on 28 February 2007 due to its geographic location, unique wildlife and cultural history.

The former owners, the Black family, had a strong interest in preserving the natural and cultural heritage of the area for future generations. Despite their family association with Yanga since 1919, they decided to offer the property for sale to the NSW Government.

Yanga contains what is believed to be the largest privately owned Red Gum forest in Australia, comprising 17,000 hectares and has approximately 150 kilometres of Murrumbidgee River frontage. Threatened species recorded on the property include the Southern Bell Frog, Blue-billed Duck, Freckled Duck, Australasian Bittern, Major Mitchell's Cockatoo and Regent Parrot as well as various threatened plants.

Yanga also has a rich Aboriginal heritage including associations with creation stories. Sites on the property listed on the Aboriginal sites register include mounds, scarred trees, historic sites, burials and middens.¹⁴

Dharawal National Park

Dharawal, located south of Sydney between the Cataract and Woronia water catchments, is an important network of creeks and upland swamps, significant in protecting the headwaters of the Georges River and the biodiversity of the southern Sydney region. Dharawal is home to a number of threatened species, including the Giant Burrowing Frog, Broad Headed Snake and Pygmy Possum.

Dharawal was a State conservation area before being reserved as a national park in 2012 after decades of campaigning by conservation groups and the community.¹⁵

What sort of protection does a national park provide?

[National parks](#) provide some of the best protection of all protected areas in NSW. They are difficult to revoke as they can only be revoked by an Act of Parliament.¹⁶

However, national parks are not areas which are completely locked away from use. National parks are also meant to provide opportunities for public appreciation and inspiration. They are required to be managed in a way that allows

¹⁴ National Parks Association of NSW, 'Yanga National Park' *National Parks Journal* (2005).

¹⁵ Sheppard, J, National Parks Association of NSW, '[Dharawal: Achieving NSW's Newest National Park](#)' *Journal of National Parks Association of NSW* 56(1) Autumn 2012, pp. 20-21.

¹⁶ *National Parks and Wildlife Act 1974* (NSW), s. 37(1).

for sustainable visitor use and enjoyment that is compatible with the conservation of the national park's natural and cultural values.¹⁷

Each national park must have a plan of management.¹⁸ The plan must set out not only how biodiversity will be protected in the park, but the extent to which the public is allowed to use the park (sustainable visitor use), and how lessees, licencees and occupiers can use the park.¹⁹ Draft plans of management are placed on public exhibition before they are finalised, and the public can [submit comments to OEH through the website](#).

Forestry is not permitted in a national park.²⁰

It is an offence to harm any animal or to discharge a prohibited weapon in a national park without a licence.²¹ Aboriginal people are permitted to harm animals for domestic, ceremonial or cultural purposes.²²

A broad range of activities are prohibited in national parks, including:²³

- driving vehicles off-road;
- using camels, horses and machines;
- trespassing;
- taking animals into the park;
- camping (unless the area is set aside for camping);
- littering;
- trapping and poisoning animals;
- engaging in offensive conduct;
- lighting fires (except in a designated place);
- erecting structures without consent;
- damaging vegetation;
- carrying or discharging a weapon without consent (including a spear gun); and

¹⁷ *National Parks and Wildlife Act 1974* (NSW), ss. 30E(1) and 30E(2)(d)-(e).

¹⁸ *National Parks and Wildlife Act 1974* (NSW), s. 72.

¹⁹ *National Parks and Wildlife Act 1974* (NSW), s. 72AA sets out the objectives and content of plans of management.

²⁰ *National Parks and Wildlife Act 1974* (NSW), s. 42.

²¹ *National Parks and Wildlife Act 1974* (NSW), s. 45.

²² *National Parks and Wildlife Act 1974* (NSW), s. 45(6). For more information, read our booklet [Caring for Country: A Guide to Environmental Law for Aboriginal Communities](#).

²³ *National Parks and Wildlife Regulation 2009* (NSW), cl. 6-26.

- engaging in commercial activities.

Mining in national parks

Generally, mining or exploring for minerals such as coal or gold, or for exploring for or producing coal seam gas is not permitted in a national park unless there is an Act of Parliament which authorises the activities.²⁴ However, the Environment Minister can approve exploration activities in a national park on behalf of the government.²⁵ Notice of such an intention must be given to both houses of Parliament, which can vote against the approval.²⁶

Leases, licences and easements

The Environment Minister can grant leases within a national park for things such as the building and use of accommodation, hotels, tourist facilities and surf life-saving clubs.²⁷ A lease may also allow the adaptive reuse of an existing building, and authorise the exclusive use of land and buildings within a national park.²⁸

The Minister may also grant someone a licence to occupy or use lands within a national park.²⁹ This can be for things like the protection of land from fire, surf lifesaving clubs, sporting activities, research facilities, or any other purpose that is listed in the plan of management and is consistent with the principles of the plan of management. The Chief Executive may also grant someone a business licence to operate a trade or business within a national park.³⁰

The Environment Minister must not grant a lease or licence unless it is in accordance with the relevant plan of management, and must have regard to the conservation values and cultural significance of the park.³¹ Before granting the licence or lease, the Minister must publish a notice in a State-wide newspaper and on the OEH website, and may choose to hold a public hearing to get the views of the public.³²

The Minister may grant easements (such as for telecommunications) or rights of way through a national park.³³ However, a lease, licence or easement cannot be granted over a wilderness area.³⁴

²⁴ *National Parks and Wildlife Act 1974* (NSW), ss. 41(1) and (3).

²⁵ *National Parks and Wildlife Act 1974* (NSW), s. 41(4).

²⁶ *National Parks and Wildlife Act 1974* (NSW), s. 41(5).

²⁷ *National Parks and Wildlife Act 1974* (NSW), ss. 151, 151A and Part 12 generally.

²⁸ *National Parks and Wildlife Act 1974* (NSW), s. 151A (1)(c)

²⁹ *National Parks and Wildlife Act 1974* (NSW), s. 151(2).

³⁰ *National Parks and Wildlife Act 1974* (NSW), s. 152.

³¹ *National Parks and Wildlife Act 1974* (NSW), s. 151B.

³² *National Parks and Wildlife Act 1974* (NSW), s. 151F.

³³ *National Parks and Wildlife Act 1974* (NSW), ss.153, 153C (landlocked areas), 153D (telecommunications facilities).

³⁴ *National Parks and Wildlife Act 1974* (NSW), s. 153A, but note the exceptions in s. 153C (landlocked areas), and s. 153D (telecommunications facilities).

All leases, licences for occupation or use, and easements must be on a public register and placed on the [OEH website](#).³⁵

Hunting

Game animals can be legally hunted in some national parks.³⁶ Game animals do not include native animals or threatened species.³⁷

Holders of a game hunting licence who hunt on declared public hunting land do not commit an offence that involves an activity associated with hunting or an activity necessary for the purpose of hunting the game animal. Such activities include carrying a firearm or other hunting devices.³⁸ However, it is still unlawful to bring a dog into a national park and use a dog for hunting purposes.³⁹ A hunter who holds a licence is permitted to possess the carcass, skin or other part of game animal that they have killed.⁴⁰

Some national parks and all world heritage and wilderness areas are off limits to hunting.⁴¹

State conservation areas

[State conservation areas](#) (formerly State recreation areas) are similar to national parks in that they are relatively large areas which contain significant or representative ecosystems, landforms, or natural phenomena or places of cultural significance, while providing opportunities for sustainable visitor use and enjoyment.⁴²

However, the principal difference between a national park and a State conservation area is that mineral and petroleum exploration and mining may be permitted in State conservation areas.⁴³

The classification of land as a State conservation area must be reviewed every 5 years to consider why it should not become a national park or nature reserve.⁴⁴ The latest [Review of State Conservation Areas](#) is dated November 2008. A twelve month [review of State conservation areas created in 2010](#) was also undertaken in 2011.

There are [127 State conservation areas in NSW](#).

³⁵ *National Parks and Wildlife Act 1974* (NSW), s. 151J.

³⁶ Game animals are defined in the *Game and Feral Animal Control Act 2002* (NSW), Sch. 3.

³⁷ As listed under the *Threatened Species Conservation Act 1995* (NSW).

³⁸ *Game and Feral Animal Control Act 2002* (NSW), s. 6A(2).

³⁹ *Game and Feral Animal Control Act 2002* (NSW), s. 6A(3).

⁴⁰ *Game and Feral Animal Control Act 2002* (NSW), s. 15(2A)

⁴¹ National parks in which hunting is not permitted are listed in the *Game and Feral Animal Control Act 2002* (NSW), Sch. 3A.

⁴² *National Parks and Wildlife Act 1974* (NSW), s. 30G.

⁴³ *National Parks and Wildlife Act 1974* (NSW), s. 30G(1)(c) and s. 47J.

⁴⁴ *National Parks and Wildlife Act 1974* (NSW), s. 47M.

A State conservation area cannot be revoked except by an Act of Parliament,⁴⁵ or to make it a national park or nature reserve.⁴⁶

Historic sites

The purpose of reserving land as a [historic site](#) is to identify, protect and conserve areas associated with a person, event or historical theme, or containing a building, place or feature of cultural significance.⁴⁷

The process for declaring and managing historic sites is generally the same as for a national park.⁴⁸

There are 15 historic sites in NSW, including places such as Hill End, Cadman's Cottage, and Wiseman's Ferry.

Nature reserves

[Nature reserves](#) are generally smaller than national parks. They are areas which are largely untouched, with high conservation value.⁴⁹ Their purpose is to protect special or unique ecosystems.⁵⁰ While scientific research is regularly permitted in nature reserves, there are often few visitor facilities (picnic areas, lookouts, walking tracks) in an attempt to minimise disturbance. A nature reserve cannot be revoked except by an Act of Parliament.⁵¹ The limitations on mining that apply in respect of a national park (see above) also apply in a nature reserve.⁵²

It is an offence to harm any animal, use or possess any weapons or traps, or be accompanied by a dog in a nature reserve.⁵³ It is also an offence to pick or possess native plants in a nature reserve without a licence.⁵⁴

There are 416 nature reserves in NSW.

Karst conservation reserves

[Karst conservation reserves](#) are areas of limestone or dolomite characterised by landforms such as caves. The purpose of reserving these areas is to protect the caves and hydrological processes which form them, while allowing for public appreciation and sustainable visitor use.⁵⁵

⁴⁵ *National Parks and Wildlife Act 1974* (NSW), s. 47L.

⁴⁶ *National Parks and Wildlife Act 1974* (NSW), s. 47MA.

⁴⁷ *National Parks and Wildlife Act 1974* (NSW), s. 30F.

⁴⁸ *National Parks and Wildlife Act 1974* (NSW), Part 4 Division 3, ss. 31-46.

⁴⁹ *National Parks and Wildlife Act 1974* (NSW), Division 6, ss. 48 – 58.

⁵⁰ *National Parks and Wildlife Act 1974* (NSW), s. 30J.

⁵¹ *National Parks and Wildlife Act 1974* (NSW), s. 52.

⁵² *National Parks and Wildlife Act 1974* (NSW), s. 54.

⁵³ *National Parks and Wildlife Act 1974* (NSW), s. 56.

⁵⁴ *National Parks and Wildlife Act 1974* (NSW), s. 57.

⁵⁵ *National Parks and Wildlife Act 1974* (NSW), s. 30I, and Part 4 Division 7, ss.58K-58S.

There are 4 karst conservation reserves in NSW: Jenolan, Wombeyan, Abercrombie and Borenore caves.

Regional parks

[Regional Parks](#) are areas which have a natural or modified landscape but are suitable for recreational use and enjoyment. Regional parks are intended to provide opportunities, in an outdoor setting, for public use.⁵⁶

There are 20 regional parks in NSW, including Bomaderry Creek, Parramatta River, and Penrith Lakes.

Aboriginal areas

The purpose of reserving land as an [Aboriginal area](#) is to identify, protect and conserve areas associated with a person, event or historical theme, or containing a building or place, which is of natural or cultural significance to Aboriginal people.⁵⁷ Aboriginal areas can be used by Aboriginal people for cultural purposes.

There are 18 Aboriginal areas in NSW.

Enforcement

Stop Work Orders

The Chief Executive of OEHL (through an authorised officer)⁵⁸ may issue a stop work order if he or she thinks that an activity is, or is about to be, carried out that is likely to significantly affect protected (native) fauna, native plants or their environment, an Aboriginal object or place or other items of cultural heritage.⁵⁹ A stop work order may not be issued if the activity is already authorised under another law, such as by a development consent or licence to kill threatened species.⁶⁰

The order takes effect as soon as it is affixed in the area, or the person undertaking the activity is notified. A stop work order may be extended for periods of 40 days or for such period as the Chief Executive thinks fit.⁶¹ The Chief Executive does not need to notify anybody before an order is issued.⁶²

The person against whom an order is made can appeal against the order to the Environment Minister.⁶³ There is no further merits appeal to the Land and

⁵⁶ *National Parks and Wildlife Act 1974* (NSW), s. 30H, and Division 5, s. 47O

⁵⁷ *National Parks and Wildlife Act 1974* (NSW), s 30K, and Division 10, ss. 62 – 64.

⁵⁸ *National Parks and Wildlife Act 1974* (NSW), s. 156B.

⁵⁹ *National Parks and Wildlife Act 1974* (NSW), s. 91AA.

⁶⁰ *National Parks and Wildlife Act 1974* (NSW), s. 91AA(3) – (4).

⁶¹ *National Parks and Wildlife Act 1974* (NSW), s. 91DD.

⁶² *National Parks and Wildlife Act 1974* (NSW), s. 91BB.

⁶³ *National Parks and Wildlife Act 1974* (NSW), s. 91CC.

Environment Court, but the validity of the order could be challenged in the Land and Environment Court.⁶⁴

After making a stop work order, the Chief Executive must immediately consult with the person proposing to take the action to determine whether the activity can be modified. If satisfactory arrangements cannot be made to protect the environment of any protected fauna or native plants, the Chief Executive must recommend that the Environment Minister make an interim protection order.⁶⁵

Interim protection orders

The Environment Minister can make an interim protection order over land which has natural, scientific or cultural significance, but only after receiving a recommendation to do so from the Chief Executive.⁶⁶ An interim protection order can prohibit someone from doing things, such as demolishing or damaging any building, structure or work on the land, damaging the land, damaging or removing a tree or vegetation, or harming threatened species or their habitat.⁶⁷

The Minister does not have to give anyone who may be affected by the order notice of the intention to make the order.⁶⁸ The order takes effect when it is published in the Government Gazette or on a later date if specified in the order.⁶⁹

An interim protection will last for a period specified in the order, but no longer than 2 years, unless revoked beforehand.⁷⁰ The Chief Executive must keep a public register of all current interim protection orders.⁷¹

An owner or occupier of land subject to an interim protection order may appeal against the order to the Land and Environment Court within 60 days of receiving the order.⁷²

It is an offence not to comply with an interim protection order. The maximum penalty for a corporation is \$1.1 million and for an individual it is \$110,000.⁷³

Civil and criminal enforcement

In addition to stop work orders and interim protection orders, the NPW Act may also be enforced through criminal or civil proceedings in the courts.

⁶⁴ *National Parks and Wildlife Act 1974* (NSW), s. 193, and *Land and Environment Court Act 1979*, s. 20(1)(cg).

⁶⁵ *National Parks and Wildlife Act 1974* (NSW), s. 91EE.

⁶⁶ *National Parks and Wildlife Act 1974* (NSW), s. 91A.

⁶⁷ *National Parks and Wildlife Regulation 2009*, cl. 103.

⁶⁸ *National Parks and Wildlife Act 1974* (NSW), s. 91C.

⁶⁹ *National Parks and Wildlife Act 1974* (NSW), s. 91B(2).

⁷⁰ *National Parks and Wildlife Act 1974* (NSW), s. 91D and 91E.

⁷¹ *National Parks and Wildlife Act 1974* (NSW), s. 91I.

⁷² *National Parks and Wildlife Act 1974* (NSW), s. 91H, *Land and Environment Court Act 1979*, s. 20(1)(cf), and *Land and Environment Court Rules 2007*, Rule 6.1 (Time for appeal).

⁷³ *National Parks and Wildlife Act 1974* s. 91G.

Usually, only the OEH brings criminal proceedings for an offence committed under the NPW Act. It is possible for an individual to bring criminal proceedings, but they must have the written permission of the Chief Executive.⁷⁴ Proceedings for criminal offences may be dealt with by either a Local Court or the Land and Environment Court, usually through a fine or imprisonment.⁷⁵

However, civil proceedings to enforce breaches of the NPW Act can be brought by any person in the Land and Environment Court.⁷⁶ Civil proceedings involve asking the court to grant an injunction or declaration to enforce the law. [See our Fact Sheet for more information about the Land and Environment Court.](#)

Wilderness areas

[Wilderness areas](#) are usually large, remote and undisturbed areas, generally unchanged by humans and their works or areas that are capable of being restored to such a state.⁷⁷ One of their functions is to provide opportunities for solitude and appropriate self-reliant recreation.⁷⁸ They must be managed so as to preserve the capacity of the area to evolve in the absence of significant human interference.⁷⁹

There are 45 wilderness areas in NSW, representing about 2% of the total land area in NSW. These include places such as the Barrington Tops National Park (Hunter area), Mungo National Park (in outback NSW), Kosciuszko National Park (alpine area), and the Blue Mountains National Park.

Wilderness areas are protected under a special law, the *Wilderness Act 1987* (NSW) as opposed to the *National Parks and Wildlife Act 1974* (NSW).

How are wilderness areas created?

The Environment Minister may declare an area as wilderness by publishing a notice in the Government Gazette.⁸⁰ Any person can submit a proposal to the Chief Executive of the OEH that land be declared as, or added to, a wilderness area.⁸¹ The Chief Executive must advise the Environment Minister regarding the proposal within 2 years of receiving it.⁸²

Wilderness areas can be protected by a wilderness protection agreement or a Conservation Agreement.⁸³

⁷⁴ *National Parks and Wildlife Act 1974* (NSW), s. 191.

⁷⁵ *National Parks and Wildlife Act 1974* (NSW), s. 189.

⁷⁶ *National Parks and Wildlife Act 1974* (NSW), s. 193, and *Land and Environment Court Act 1979* (NSW), s. 20(1)(cg).

⁷⁷ *Wilderness Act 1987* (NSW), s. 6.

⁷⁸ *Wilderness Act 1987* (NSW), s. 6(1)(c), and s. 9(c).

⁷⁹ *Wilderness Act 1987* (NSW), s. 9.

⁸⁰ *Wilderness Act 1987* (NSW), s. 8.

⁸¹ *Wilderness Act 1987* (NSW), s. 7.

⁸² *Wilderness Act 1987* (NSW), s. 7(4).

⁸³ *Wilderness Act 1987* (NSW), s. 8 and s. 16.

The Environment Minister may vary, but not revoke, a wilderness area, unless the revocation is authorised by an Act of Parliament.⁸⁴ If the wilderness area is covered by a Conservation Agreement, the Environment Minister may vary or revoke the wilderness declaration, but must table a copy of the variation or revocation before both houses of Parliament.⁸⁵

Unlike a national park, a lease, licence or easement cannot be granted over a wilderness area.⁸⁶ However, a declaration of an area as a wilderness area does not affect any pre-existing interest, such as a permit, lease or licence.⁸⁷

Wilderness Protection Agreements

The Environment Minister may enter into a Wilderness Protection Agreement if land identified as wilderness is owned or controlled by the Crown.⁸⁸ A Wilderness Protection Agreement may restrict the area's use, require a statutory authority (or the Crown) to allow certain activities in the area, or require certain management actions to be taken.⁸⁹

Before entering into a Wilderness Protection Agreement, the Minister must prepare a draft, and invite and consider public submissions.⁹⁰ The Minister must also invite and consider comments from the National Parks and Wildlife Advisory Council.⁹¹ Areas covered by a Wilderness Protection Agreement must also have a management plan, unless one has already been prepared for the area.⁹² The management plan must be consistent with the principles for the management of wilderness areas.⁹³

A Wilderness Protection Agreement remains in force until the declaration of the area as wilderness is revoked.⁹⁴ All Wilderness Protection Agreements must be kept on a [public register](#).⁹⁵

The Environment Minister may vary, but not revoke, the declaration of a wilderness area which is protected by a Wilderness Protection Agreement, unless the revocation is authorised by an Act of Parliament.⁹⁶

A statutory authority may not carry out development in an area subject to a Wilderness Protection Agreement or a Conservation Agreement without the

⁸⁴ *Wilderness Act 1987* (NSW), s. 8(4A).

⁸⁵ *Wilderness Act 1987* (NSW), s. 8(4).

⁸⁶ *National Parks and Wildlife Act 1974* (NSW), s. 153A. But note the exceptions in s. 153C (landlocked areas), and s. 153D (telecommunications facilities).

⁸⁷ *Wilderness Act 1987* (NSW), s. 8(5).

⁸⁸ *Wilderness Act 1987* (NSW), s. 10.

⁸⁹ *Wilderness Act 1987* (NSW), s. 12.

⁹⁰ *Wilderness Act 1987* (NSW), s. 11.

⁹¹ *Wilderness Act 1987* (NSW), ss. 11(2) – (4).

⁹² *Wilderness Act 1987* (NSW), s. 17.

⁹³ *Wilderness Act 1987* (NSW), ss. 9 and 19.

⁹⁴ *Wilderness Act 1987* (NSW), s. 13.

⁹⁵ *Wilderness Act 1987* (NSW), s. 14: <http://www.environment.nsw.gov.au/publicregister/>

⁹⁶ *Wilderness Act 1987* (NSW), s. 8(3).

Environment Minister's consent.⁹⁷ The Minister may only give consent if the development will not adversely affect the area.⁹⁸

Any person may take legal action (civil proceedings) to enforce the *Wilderness Act 1987* (NSW) in the Land and Environment Court.⁹⁹

Case study: Wilderness is sacrosanct¹⁰⁰

In May 2004, the Blue Mountains Conservation Society Inc. successfully prevented the filming of a movie in the Grose Wilderness Area of the Blue Mountains National Park.

A film company proposed to film some scenes for a movie "Stealth" in the Grose Wilderness Area. The Director-General of the then Department of Environment and Conservation granted the company an approval to carry out filming activity, and the NPWS issued a consent. These approvals would have permitted the construction of raised platforms and walkways, temporary generators, film and lighting equipment and the use of micro explosives.

The Blue Mountains Conservation Society objected to the filming because the Grose Wilderness Area was a sensitive environment, being a hanging swamp and a transitional open forest, and the larvae of the endangered giant dragonfly may have been killed.

The Court held that the proposed filming activities were not consistent with the management objectives for a wilderness area.¹⁰¹ The approvals granted exclusive use of part of the wilderness area which could not legally be granted in a wilderness area.

The Court declared the approvals to be invalid, and granted an injunction restraining filming from taking place in the Grose Wilderness Area.

In his judgment, the judge stated that "the governing consideration in the present case is this: declared wilderness areas are sacrosanct."

Aquatic protected areas

In NSW, marine areas can be protected as:

- marine parks, or
- aquatic reserves.

⁹⁷ *Wilderness Act 1987* (NSW), s. 15.

⁹⁸ *Wilderness Act 1987* (NSW), s. 15(2).

⁹⁹ *Wilderness Act 1987* (NSW), s 27, and *Land and Environment Court Act 1979*, s 20(1)(ch).

¹⁰⁰ [Blue Mountains Conservation Society Inc v Director-General National Parks and Wildlife; the Minister for the Environment and AFG Talons Pty Ltd \[2004\] NSWLEC 196.](#)

¹⁰¹ Set out in s. 9 of the *Wilderness Act 1987* (NSW).

The boundaries of some national parks also extend into aquatic areas.

The [NSW State of the Environment Report 2012](#) states that about 46% of the NSW mainland and island ocean coastline is contained in protected areas (i.e. both NSW and Commonwealth areas, including marine areas within national parks), and the system of marine parks covers approximately 34% of NSW State waters.

Relatively pristine rivers can be protected as 'wild rivers',¹⁰² and the Commonwealth also protects some marine areas which fall within its jurisdiction.

Marine parks in NSW

Marine parks are managed by the Marine Parks Authority.¹⁰³ They aim to conserve marine biodiversity and marine habitats by creating a comprehensive system of marine parks. The Minister for Primary Industries is jointly responsible for marine parks together with the Environment Minister.

Once created, a marine park cannot be revoked except by an Act of Parliament.¹⁰⁴ A declaration of a marine park revokes any declaration of the area as an aquatic reserve.¹⁰⁵

As at July 2008, there were six [marine parks](#) covering 34% of NSW coastal waters. These were:

- Solitary Islands;
- Jervis Bay;
- Lord Howe Island;
- Cape Byron;
- Port Stephens – Great Lakes; and
- Batemans Marine Park.

Zoning plans

Each marine park has its own zoning plan which sets out what can be done in each zone.¹⁰⁶ The zones are: sanctuary zones,¹⁰⁷ habitat protection zones,¹⁰⁸ general use zones¹⁰⁹ and special purpose zones.¹¹⁰ Sanctuary zones provide the

¹⁰² Under the *National Parks and Wildlife Act 1974* (NSW), Part 4, Div. 9.

¹⁰³ *Marine Parks Act 1997* (NSW), Part 5

¹⁰⁴ *Marine Parks Act 1997* (NSW), s. 8.

¹⁰⁵ *Marine Parks Act 1997* (NSW), s. 10.

¹⁰⁶ *Marine Parks (Zoning Plans) Regulation 1999* (NSW), cl. 1.6 – 1.24.

¹⁰⁷ *Marine Parks (Zoning Plans) Regulation 1999* (NSW), cl. 1.11 – 1.15

¹⁰⁸ *Marine Parks (Zoning Plans) Regulation 1999* (NSW), cl. 1.16 – 1.18.

¹⁰⁹ *Marine Parks (Zoning Plans) Regulation 1999* (NSW), cl. 1.19 – 1.21.

highest level of protection and do not permit fishing, collecting, dredging, aquaculture or mooring on designated sites. Habitat protection zones also provide a high level of protection, but allow for some recreational and fishing activities which do not harm habitat or affect fish populations. Aquaculture is permitted in habitat protection and special purpose zones with consent.¹¹¹ Aquaculture is also permitted within a general use zone.¹¹²

Development in and near marine parks

Before a development can be approved¹¹³ in the locality of a marine park or which is likely to have an effect on the plants and animals within the park, the decision-maker must consult with the Marine Parks Authority¹¹⁴ If a decision-maker is considering a development application for development within a marine park, they must consider the objects of the *Marine Parks Act 1997* (NSW), any relevant zoning plan, and in some cases, obtain the agreement of the Minister for Primary Industries and the Environment Minister.¹¹⁵

Mining is prohibited in marine parks unless authorized by an Act of Parliament.¹¹⁶

All marine parks are required to have zoning plans and these must be put on public notice within 12 months the marine park is declared.¹¹⁷ Zoning plans can include no take (sanctuary) zones, as well as special purpose, habitat protection and general zones. The level and extent of activity permitted varies across the zones. Zoning plans are subject to review requirements.¹¹⁸

Zoning plans vary across NSW marine parks depending on the ecological fragility or the area, the presence of protected species and the location of productive areas and breeding grounds. [Read more about zones and their restrictions.](#)

Sanctuary zones (no take zones)

A no take zone (NTZ) (or sanctuary zone) is a marine area that has been temporarily or permanently closed to fishing and other resource extracting activities. NTZs are a natural resource management tool that aim to ensure the long-term sustainability of marine areas, to enhance species diversity and ecosystem recovery and increase biomass. In addition to providing biological benefits, well selected no take zones and coordinated restrictions in adjoining

¹¹⁰ *Marine Parks (Zoning Plans) Regulation 1999* (NSW), cl. 1.22 – 1.24.

¹¹¹ *Marine Parks (Zoning Plans) Regulation 1999* (NSW), cl. 1.18, 1.24.

¹¹² *Marine Parks (Zoning Plans) Regulation 1999* (NSW), cl. 1.21.

¹¹³ Under the *Environmental Planning and Assessment Act 1979* (NSW).

¹¹⁴ *Marine Parks Act 1997* (NSW), ss. 20(2) and (3).

¹¹⁵ *Marine Parks Act 1997* (NSW), s. 19.

¹¹⁶ *Marine Parks Act 1997* (NSW), s. 18.

¹¹⁷ *Marine Parks Act 1997* (NSW), s. 17C.

¹¹⁸ *Marine Parks Act 1997* (NSW), s. 17C.

areas can help ensure juvenile stock reach maturity and provide significant commercial benefits to fisheries, tourism and recreational anglers.¹¹⁹

Generally, all fishing (including recreational activities) and any other taking of plant or animal life is prohibited in designated 'no take' or 'sanctuary' zones in NSW. The prohibitions include:¹²⁰

- all forms of fishing, including the collection of bait fish and shellfish;
- anchoring of vessels in reef or sea grass zones;
- collecting seashells or minerals such as sand;
- removing seaweed;
- capturing fish for home aquariums;
- gutting fish and cleaning fishing equipment; and
- excessive vessel speeds.

The above list is a general guide only. The Marine Parks Authority produces guides for each NSW marine park, including no take restrictions that are specific to particular localities and general restrictions on activities.

Marine park rangers can issue penalty notices to people found to be breaching no take regulations, and more serious offences can be dealt with in the Land and Environment Court or the Local Court.¹²¹ In January 2009, a commercial fisherman was fined \$10,000 in the Local Court for fishing in a no take zone within the Batemans Marine Park. Several of the Maori Wrasse and Red Rock Cod that were caught were still alive and were returned to the water.

No Take Zones in Federal Waters

The Australian Government is responsible for marine areas beyond 3 nautical miles from shore. A [significant network of marine protected areas](#) have been declared in Commonwealth waters.¹²² Activities within Commonwealth marine protected areas are regulated by management plans. These plans can include the zoning of no take or sanctuary areas. Commonwealth marine protected areas and their zones are allocated an IUCN category which sets out the management principles to be applied in the reserve and the level of fishing and other activity allowed within the zone. For example, the former Lord Howe Island Marine Park covers over 300,000ha, of which 96,000ha is declared sanctuary zones. Within

¹¹⁹ Marine Parks Authority (NSW Government) (2008) 'A Review of Benefits of Marine Protected Areas and Related Zoning Considerations'. Available at: <http://www.mpa.nsw.gov.au/pdf/A-review-of-benefits-MPAs.pdf>

¹²⁰ *Marine Parks (Zoning Plans) Regulation 1999* (NSW), cl. 1.11.

¹²¹ *Marine Parks Act 1997* (NSW), Part 7.

¹²² Under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

the sanctuary zone, no commercial or recreational collecting or fishing is allowed. This Park is now part of the new Lord Howe Commonwealth Marine Reserve. However, until management plans are in place on the new Marine Reserve, [the old restrictions still apply](#).

Aquatic reserves

[Aquatic reserves](#) are managed by Trade and Investment NSW. Responsibility for aquatic reserves is shared between the Minister for Primary Industries and the Environment Minister. Aquatic reserves are designed to protect fish habitat; provide for species management and to facilitate educational activities and research.¹²³

The Minister for Primary Industries can declare an area to be an aquatic reserve by publishing a notice in the Government Gazette.¹²⁴ A marine park declaration revokes any declaration of an aquatic reserve.¹²⁵

The types of fishing and other activities which are allowed in each aquatic reserve are specified in the management plan.¹²⁶ There are 12 [aquatic reserves](#) in NSW, including Barrenjoey Head, Towra Point and Shiprock Aquatic Reserve.

Development in aquatic reserves

Development *within* an aquatic reserve cannot go ahead unless the decision-maker considers any relevant management plan and obtains the agreement of the Minister for Primary Industries.¹²⁷ Developments outside an aquatic reserve, but which might affect plants or animals within an aquatic reserve, may require prior consultation with the Minister for Primary Industries.¹²⁸

Aquatic reserve notifications

The Minister for Primary Industries can prohibit activities (such as fishing) in an aquatic reserve by issuing an aquatic reserve notification.¹²⁹ The notification is published in the NSW Government Gazette, in a local newspaper, and exhibited near the reserve.¹³⁰

It is an offence to carry out an activity, or to possess an animal, plant, rock, sand or other thing, in contravention of an aquatic reserve notification.¹³¹

¹²³ *Fisheries Management Act 1994* (NSW), s. 194(2).

¹²⁴ *Fisheries Management Act 1994* (NSW), s. 194: <http://legislation.nsw.gov.au/maintop/epub>

¹²⁵ *Marine Parks Act 1997* (NSW), s. 10.

¹²⁶ *Fisheries Management Act 1994* (NSW), s. 197A. The *Fisheries Management (Aquatic Reserves) Regulation 2002* (NSW) also contains detailed provisions relating to Long Reef, Shiprock, Towra, North Harbour and Bushranger's Bay.

¹²⁷ *Fisheries Management Act 1994* (NSW), s. 197C.

¹²⁸ *Fisheries Management Act 1994* (NSW), s. 197D.

¹²⁹ *Fisheries Management Act 1994* (NSW), s. 197E.

¹³⁰ *Fisheries Management Act 1994* (NSW), s. 197F.

¹³¹ *Fisheries Management Act 1994* (NSW), s. 197K.

Wild rivers

The Chief Executive can declare any river or part of a river to be a [wild river](#) (if it flows over a protected area).¹³²

The purpose of declaring a wild river is to protect and conserve water courses which exhibit substantially natural flows in a condition largely undisturbed since European occupation.¹³³

The effect of a wild river declaration is very limited: it requires a statutory authority to consult with, and consider the advice of, the Environment Minister before carrying out development in relation to a wild river.¹³⁴ In addition, plans of management should provide for the protection and management of wild rivers.¹³⁵

The first wild river was declared in NSW in 2005. The declared wild rivers in NSW are:

- Washpool Creek, where it flows through Washpool National Park;
- a stretch of the Upper Brogo River, in Wadbilliga National Park;
- Grose River in the Blue Mountains National Park
- the Kowmung River, where it flows through Kanangra-Boyd National Park;
- Colo River in the Greater Blue Mountains World Heritage Area; and
- the upper Hastings and Forbes rivers, flowing through Werrikimbe National Park.

Commonwealth marine protected areas

Marine reserves and parks

Commonwealth marine reserves and parks are located in Commonwealth waters.¹³⁶

There are about 14 Commonwealth [marine protected areas](#) throughout Australia, three of which are in NSW:

- Solitary Islands Marine Reserve;

¹³² That is, land reserved under the *National Parks and Wildlife Act 1974* (NSW). See s. s. 61(1).

¹³³ *National Parks and Wildlife Act* (NSW), s. 61(4).

¹³⁴ *National Parks and Wildlife Act* (NSW), s. 61A(2).

¹³⁵ *National Parks and Wildlife Act* (NSW), s. 72AA(1)(v).

¹³⁶ They are reserved and managed under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

- Cod Grounds, off Laurieton (which protects habitat for the Grey Nurse Shark); and
- Elizabeth and Middleton Reefs Marine National Park.

National Representative System of Marine Protected Areas (NRSMPA)

The goal of a [NRSMPA](#) is to protect Australia's diverse marine life through the management of human activity, to ensure long-term survival of ecological systems.

As of August 2012 the Federal Government has finalised the details of its proposed national marine reserve network. This network will cover 5 regions, South-west, North-west, North, Coral Sea and Temperate east and form the Commonwealth waters component of the National Representative System of Marine Protected Areas (NRSMPA).

Commonwealth protected areas

The Commonwealth Government can create and manage several types of protected areas:¹³⁷

- World heritage areas;
- National heritage places;
- Commonwealth heritage places;
- Commonwealth reserves (including conservation zones);
- Wetlands of international significance (called Ramsar wetlands); and
- Biosphere reserves.

World heritage areas

How are world heritage properties listed?

Places of “outstanding, universal, natural or cultural heritage value” can be listed on the World Heritage List and protected as world heritage sites.¹³⁸

Only the Australian Government can nominate places in Australia for entry onto the World Heritage List.¹³⁹ The World Heritage Committee assesses each

¹³⁷ *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*, Part 15 (Protected areas).

¹³⁸ See: The Convention for the Protection of the World Cultural and Natural Heritage 1972. Available at: <http://whc.unesco.org/en/conventiontext/>

nomination and decides whether to enter a place on the World Heritage List.¹⁴⁰ A property cannot be included on the World Heritage List without the consent of the State where the site is located.¹⁴¹

Declared world heritage properties are protected

World heritage properties are protected under Federal law.¹⁴²

There are six [declared world heritage sites in NSW](#):

- Gondwana Rainforests of Australia;
- Lord Howe Island;
- Willandra Lakes;
- Greater Blue Mountains;
- Australian Convict Sites; and
- Sydney Opera House.

Management plans must be prepared and implemented for world heritage properties to preserve the values for which they have been listed.¹⁴³

Activities which may have a significant impact on the values of a world heritage site must be referred to the Commonwealth Environment Minister, who then determines whether environmental assessment is required and, if so, the type of environmental assessment that should be carried out.¹⁴⁴

For more information on how world heritage is protected, see our [EPBC Act](#) Fact Sheet and our [Commonwealth Heritage Protection](#) Fact Sheet.

National Heritage places

Places which are thought to be of outstanding heritage value to the nation can be listed, managed and protected as national heritage.¹⁴⁵ Natural, historic and Indigenous sites within Australia can be listed as national heritage.¹⁴⁶

¹³⁹ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 314(2). This requires the Commonwealth to use its best endeavours to reach agreement with the relevant State or person before submitting the listing.

¹⁴⁰ *World Heritage Convention*, Article 11(2).

¹⁴¹ *World Heritage Convention*, Article 11(3).

¹⁴² *Environment Protection and Biodiversity Conservation Act 1999* (Cth), ss. 13 and 14.

¹⁴³ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), ss. 316, 318 and 323.

¹⁴⁴ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 15B.

¹⁴⁵ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), Part 15, Division 1A, ss. 324 A – 324 ZC.

¹⁴⁶ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 324 D, and *Environment Protection and Biodiversity Conservation Regulations 2000*, cl. 10.01A.

National heritage sites and their heritage values are recorded on the National Heritage List.¹⁴⁷

The Federal Environment Minister ultimately decides whether to include a place on the National Heritage List, but the Australian Heritage Council prepares a shortlist after consulting with the public.¹⁴⁸

National heritage places are protected through two mechanisms: requiring environmental assessment by the Federal Environment Minister for actions which might significantly affect the place, and requiring the Federal Environment Minister to make management plans for all places on the National Heritage List that are entirely within a Commonwealth area.¹⁴⁹

For more information on National Heritage places, see our [Commonwealth Heritage Protection](#) Fact Sheet.

Commonwealth Heritage places

Heritage places on Commonwealth land can be listed, managed and protected as Commonwealth heritage.¹⁵⁰ This type of listing gives the Commonwealth Government greater control over heritage places which are located in areas that the Commonwealth owns or controls.

Commonwealth heritage sites and their heritage values are recorded on the Commonwealth Heritage List.¹⁵¹

Commonwealth heritage listing does not offer as much protection as national heritage listing because, unlike national heritage, activities that may impact on Commonwealth heritage do not need to be referred for assessment and approval by the Federal Environment Minister.

For more information on how Commonwealth heritage places are listed and protected, see our [Commonwealth Heritage Protection](#) Fact Sheet.

Commonwealth reserves and conservation zones

[Commonwealth reserves](#) can be declared over areas of land or sea that:¹⁵²

- the Commonwealth owns or leases;
- are in a Commonwealth marine area; or

¹⁴⁷ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 324 C.

¹⁴⁸ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), ss. 324 JH and JJ.

¹⁴⁹ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 324S.

¹⁵⁰ See: *Environment and Heritage Legislation Amendment Act (No 1) 2006* (Cth), Sch. 1; and *Environment Protection and Biodiversity Conservation Act 1999* (Cth), ss. 341 A - 341 ZH.

¹⁵¹ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 341 C(1).

¹⁵² *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 344.

- are outside Australia that the Commonwealth has international obligations to protect.

Commonwealth reserves must be assigned a category

When a new Commonwealth reserve is created, it must be assigned to one of the following categories (based on IUCN categories):¹⁵³

- strict nature reserve;
- wilderness area;
- national park;
- natural monument;
- habitat / species management area;
- protected landscape / seascape; or
- managed resource protected area.

Examples of Commonwealth reserves are Kakadu National Park, Uluru-Kata Tjuta National Park and Booderee National Park at Jervis Bay.

Conservation zones pending reserve declaration

An area can be declared as a conservation zone while it is being assessed for inclusion as a Commonwealth reserve.¹⁵⁴

Conservation zones can prohibit a wide range of activities from being undertaken in the zone, such as building, damaging the area, taking plants or animals, lighting fires and fishing.¹⁵⁵

Management plans

A management plan must be developed for each Commonwealth reserve.¹⁵⁶ The management plan must not be inconsistent with the Australian IUCN reserve

¹⁵³ *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*, s. 346 and *Environment Protection and Biodiversity Conservation Regulations 2000*, cl. 10.03H, 10.04.

¹⁵⁴ *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*, s. 390C – D.

¹⁵⁵ *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*, s. 390E and *EPBC Regulations 2000*, cl 13.01 – 13.02.

¹⁵⁶ *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*, s. 366.

management principles,¹⁵⁷ and must set out whether mining is permitted.¹⁵⁸ Management plans expire after 10 years.¹⁵⁹

Use of Commonwealth reserves

Many works (such as building and excavating) and activities (such as killing or taking native species) cannot be carried out in a Commonwealth reserve unless permitted by a management plan.¹⁶⁰ There are a broad range of general offences, such as carrying out scientific research, dumping waste, taking animals into a reserve, climbing, abseiling, walking off marked tracks, camping and lighting fires.¹⁶¹

In the absence of a management plan, prohibited activities must be approved,¹⁶² and the reserve must be managed in a way which is appropriate for its assigned IUCN category.¹⁶³ There are exceptions for Indigenous persons who engage in traditional use of an area declared as a Commonwealth reserve.¹⁶⁴

Mining and prospecting is permitted in a Commonwealth reserve if it is in accordance with the management plan.¹⁶⁵

Ramsar wetlands

Wetlands in Australia may be listed by the Commonwealth Government as a 'Wetland of International Importance'.¹⁶⁶ Listing a wetland under the Ramsar Convention provides international recognition of the importance of that wetland.

Ramsar wetlands can be listed over public or private land

The Commonwealth Government can nominate wetlands on Commonwealth or State land, or public or private land (see case study below) for inclusion on the list of wetlands of international importance.¹⁶⁷ It is not necessary that the State or Territory, or the landholder ultimately agree to the proposal to list the wetland.

¹⁵⁷ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 367(3). The principles are set out in cl. 10.04 and Sch. 8 of the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth).

¹⁵⁸ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 367(1)(f).

¹⁵⁹ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 373.

¹⁶⁰ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 354, and s. 354A (Offences).

¹⁶¹ *EPBC Regulations 2000*, cl. 12.10 – 12.66.

¹⁶² *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 354(3A) and s. 359A.

¹⁶³ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 357.

¹⁶⁴ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 359A.

¹⁶⁵ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 355 and s. 355A (Offences).

¹⁶⁶ Under the *Convention on Wetlands of International Importance 1971* (known as the Ramsar Convention). See: <http://www.environment.gov.au/water/topics/wetlands/ramsar-convention/index.html>

¹⁶⁷ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 326.

In July 2010, there were 12 [Ramsar wetlands in NSW](#), with only three of these being over private land (Gwydir Wetlands, a small part of the Hunter Estuary – Shortland Wetlands, and the Wilgara Wetlands in the Macquarie Marshes).¹⁶⁸ All other Ramsar wetlands relate to land which is held as Crown land or a national park or reserve.

How are Ramsar wetlands protected?

[Ramsar wetlands](#) are protected through two mechanisms: Federal environmental assessment and approval is required for actions which might significantly affect a declared Ramsar wetland,¹⁶⁹ and management plans must be prepared.

Management plans must be prepared for all Ramsar wetlands on Commonwealth lands, and the Commonwealth Government must use its best endeavours to prepare management plans for wetlands on non-Commonwealth land.¹⁷⁰

Management plans must be consistent with the Ramsar Convention or the Australian Ramsar management principles.¹⁷¹ Commonwealth agencies must take all reasonable steps to perform their functions in line with these management plans and Ramsar management principles.¹⁷²

Nominating a wetland for Ramsar listing

There are criteria to assess whether a nominated wetland is one of international importance and should be included on the List of Wetlands of International Importance. The criteria include whether the wetland supports endangered species, whether the wetland regularly supports 20,000 or more water birds, or whether the wetland regularly supports fish stocks.¹⁷³

Only the Commonwealth Government can nominate a wetland for listing. If you wish to see a particular wetland protected, you can write to the Federal Environment Minister asking the Minister to consider a Ramsar listing for that particular site. Make sure that you address the requirements for nomination and the criteria that must be met under the Ramsar Convention. If the site is owned or controlled by the State Government or a private individual, it will be extremely helpful if the State Government or landowner supports the wetland being listed.

¹⁶⁸ *NSW State of the Environment Report 2006*, Table 6.4 Types of NSW terrestrial protected areas.

¹⁶⁹ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), ss. 16 – 17B.

¹⁷⁰ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), ss. 328 – 334.

¹⁷¹ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 328(3). Section 335 allows regulations to set out principles for the management of Australian Ramsar wetlands. The Australian Ramsar management principles can be found in the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth), cl. 10.02.

¹⁷² *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 334 and s. 335.

¹⁷³ As adopted by the 4th, 5th, 6th and 7th Meetings of the Conference of the Parties to the Ramsar Convention to guide the implementation of Article 2.1 on the designation of Ramsar wetlands.

Some conservation groups which focus on wetland protection, such as the World Wide Fund for Nature or the National Parks Association of NSW may be able to help you prepare your submission to the Commonwealth Government.

For more information on how Ramsar wetlands are listed and protected in Australia, see our [EPBC Act](#) Fact Sheet.

Case study: How private land in the Gwydir Wetlands was declared as a Ramsar site

The Gwydir Wetlands are in the heart of one of Australia's largest cotton growing areas, at the end of the Gwydir River in northern NSW. The wetlands provide breeding and feeding grounds for large numbers of water birds, such as jabiru, magpie geese, brolga and freckled ducks, and habitat for endangered species.

For the past thirty years water flow to the wetlands has been reduced due to water extraction for irrigation. As a result of the change in flow patterns, large areas of the wetland are failing to receive regular flooding.

Large parts of the wetland are held as private property by a number of different owners.

In 1997, the World Wide Fund for Nature (WWF) and the National Parks Association of NSW (NPA) began working with these landowners to establish a Ramsar listing over the wetlands. To begin with, WWF and NPA established an 'in principle' process for making Ramsar nominations over private land with the NSW National Parks and Wildlife Service (NPWS) and Environment Australia.

An informal consultative group was then established, which included interested landholders, an independent wetlands ecologist, regional and head office staff from NPWS and Environment Australia, and staff from NPA and WWF.

Properties with important wetland areas were identified with the assistance of a wetlands ecologist, and this included the Gwydir wetlands. Landholders on the Gwydir were sent a discussion paper and invited to a series of meetings to discuss the implications of a Ramsar listing.

In February 1999, after numerous meetings and discussions, all parties supported the land being nominated as a Ramsar wetland. In May 1999, the Gwydir wetlands were formally announced by the Commonwealth Government as Australia's 50th Ramsar site.

Biosphere reserves

[Biosphere reserves](#) are areas that have been designated under the UNESCO Biosphere Program.¹⁷⁴ They are areas in which people are an integral component, and are managed to support sustainable relationships between

¹⁷⁴ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 337.

people and their environment. They are not a major component of the Commonwealth's strategy to protect biodiversity.

The Commonwealth Government and each Commonwealth agency must exercise its powers and functions in relation to a biosphere reserve in a way that is not inconsistent with the Australian Biosphere reserve management principles or a management plan.¹⁷⁵

These are 16 biosphere reserves in Australia, three of which are in NSW: Barkinkji Biosphere Reserve, Kosciuszko National Park and Yathong Nature Reserve.

Glossary

Key to terms used in this Fact Sheet

Australian Environment Department means the Australian Department of the Environment

OEH means the NSW Office of Environment and Heritage

Chief Executive means the Chief Executive of the NSW Office of Environment and Heritage

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)

Environment Minister means the NSW Minister for the Environment

IUCN means the International Union for the Conservation of Nature

NPW Act means the *National Parks and Wildlife Act 1974* (NSW)

NPW Council means the National Parks and Wildlife Advisory Council established under the *National Parks and Wildlife Act 1974*

NPW Regulation means the *National Parks and Wildlife Regulation 2009* (NSW)

NPWS means the NSW National Parks and Wildlife Service.

Useful websites

- [NSW State of the Environment Report 2012](#) (see Chapter 5 'Biodiversity', which contains statistics on terrestrial and aquatic protected areas in NSW)

¹⁷⁵ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), ss. 338 – 340. The Australian Biosphere reserve management principles are set out in the *EPBC Regulations 2000* (Cth), cl. 10.03 and Sch 7.

- [Australian State of the Environment Report 2011](#) (see Chapter 8 'Biodiversity' which contains statistics on the state and trends of biodiversity in Australia)
- [Australian Environment Department](#)

Useful legal texts

- *Environmental & Planning Law in New South Wales*, by Lyster, Lipman, Franklin, Wiffen and Pearson, The Federation Press (2012), Chapter 11 *Protected areas*, pp. 446 – 487.