

TASMANIA

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**NATURE CONSERVATION BILL 2002**

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# **NATURE CONSERVATION BILL 2002**

*(Brought in by the Minister for Primary Industries, Water and Environment, the Honourable Bryan Alexander Green)*

## **A BILL FOR**

**An Act to make provision with respect to the conservation and protection of the fauna, flora and geological diversity of the State, to provide for the declaration of national parks and other reserved land and for related purposes**

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

## **PART 1 – PRELIMINARY**

### **Short title**

**1.** This Act may be cited as the *Nature Conservation Act 2002*.

### **Commencement**

**2.** This Act commences on the day on which the *National Parks and Reserves Management Act 2002* commences.

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**THIS BILL IS COGNATE WITH THE *NATIONAL PARKS AND RESERVES MANAGEMENT BILL 2002***

**Interpretation**

**3. (1)** In this Act, unless the contrary intention appears –

**“authorised officer”** means –

- (a) a police officer within the meaning of the *Police Regulation Act 1898*; and
- (b) a ranger;

**“biological diversity”** means the variety of –

- (a) plants, animals and micro-organisms; and
- (b) the genes contained in plants, animals and micro-organisms; and
- (c) the ecosystems of which plants, animals and micro-organisms form part;

**“cat”** means a member of the species *Felis catus*;

**“class”**, in relation to reserved land, means the class referred to in section 16 that the reserved land is declared to be under section 11, 12, 13, 14 or 15;

**“Commission”** means the Resource Planning and Development Commission established under section 4 of the *Resource Planning and Development Commission Act 1997*;

**“conservation area”** means –

- (a) any land declared under this Act to be reserved land in the class of conservation area; and
- (b) any land taken to have been so declared;

**“conservation purpose”** means –

- (a) any purpose specified in Column 3 of Schedule 1; or
- (b) any purpose that, in the opinion of the Governor, would promote the better management or more effective use of any reserved land;

**“container”** includes any wrapping;

**“conveyance”** means any vehicle, vessel or aircraft, or any other contrivance intended for the carriage of persons or goods over land or water or in the air;

**“Crown land”** means any land vested in the Crown (whether or not subject to any private right) other than land vested in the Crown that is contracted to be granted in fee simple;

**“dingo”** means a member of the subspecies *Canis familiaris dingo*;

**“Director”** means the Director of National Parks and Wildlife appointed under the *National Parks and Reserves Management Act 2002*;

**“dog”** means a member of the species *Canis familiaris*;

**“domestic stock”** means the animals, or the species of animals, prescribed by the regulations to be domestic stock;

**“ferret”** means a member of the species *Mustela putorius*;

**“fox”** means a member of the genus *Vulpes*;

**“game”** means the forms of wildlife that are specified as partly protected wildlife in the wildlife regulations and whose taking is subject to licensing under those regulations;

**“game reserve”** means –

- (a) any land declared under this Act to be reserved land in the class of game reserve; and
- (b) any land taken to have been so declared;

**“geological diversity”** means the natural range of geological, geomorphological and soil features, assemblages, systems and processes;

**“historic site”** means –

- (a) any land declared under this Act to be reserved land in the class of historic site; and
- (b) any land taken to have been so declared;

**“hunting equipment”** means any weapon, implement, apparatus or material which –

- (a) is capable of being used for the taking of any wildlife or a product of any wildlife; or
- (b) is incapable of being so used only by reason of –
  - (i) the absence of, or a defect in, a part; or
  - (ii) the presence of an obstruction;

**“land”** includes –



- (a) land covered by the sea or other waters; and
- (b) the part of the sea or those waters covering that land;

**“leased reserve”** means an area of land held on lease under section 15;

**“management agreement”**, in relation to any private land, means an agreement entered into under section 25;

**“management objectives”**, in relation to any class of reserved land, has the same meaning as in the *National Parks and Reserves Management Act 2002*;

**“managing authority”**, when used in relation to any reserved land, has the same meaning as in the *National Parks and Reserves Management Act 2002*;

**“Minister for Crown Lands”** means the Minister for the time being administering the *Crown Lands Act 1976*;

**“mink”** means a member of the species *Mustela vison* or *Mustela lutreola*;

**“national park”** means –

- (a) any land declared under this Act to be reserved land in the class of national park; and
- (b) any land taken to have been so declared;

**“nature recreation area”** means –

- (a) any land declared under this Act to be reserved land in the class of nature recreation area; and
- (b) any land taken to have been so declared;

**“nature reserve”** means –

- (a) any land declared under this Act to be reserved land in the class of nature reserve; and
- (b) any land taken to have been so declared;

**“Nomenclature Board”** means the Nomenclature Board established by the *Survey Co-ordination Act 1944*;

**“owner”** means –

- (a) in the case of land vested in the Crown which is contracted to be granted in fee simple, the person to whom it is so contracted; and
- (b) in any other case, the person who, under the *Land Acquisition Act 1993* or otherwise, is entitled to sell, convey or surrender a freehold estate in that land to the Crown;

**“partly protected wildlife”** means the species of wildlife prescribed by the regulations as partly protected wildlife;

**“plant”** means –

- (a) a form of vegetation; and
- (b) an organism belonging to the vegetable kingdom; and

- (c) a fruit; and
- (d) a seed; and
- (e) a product of a plant; and
- (f) a part of a plant –

whether that plant is alive or dead or whether or not capable of growth;

**“prescribed body”**, in relation to the management of reserved land, has the same meaning as in the *National Parks and Reserves Management Act 2002*;

**“private land”** means land other than Crown land or land vested in a public authority;

**“private nature reserve”** means –

- (a) any land declared under this Act to be reserved land in the class of private nature reserve; and
- (b) any land taken to have been so declared;

**“private right”**, in relation to Crown land, means any estate, interest or right (not being an interest arising under a contract for the grant of an estate in fee simple) pursuant to which its holder has one or more of the following rights:

- (a) the right to occupy or use that land;
- (b) the right to carry out any operations on that land;
- (c) the right to take any products of, or materials in or on, that land, including

materials beneath the surface of that land;

**“private sanctuary”** means –

- (a) any land declared under this Act to be reserved land in the class of private sanctuary; and
- (b) any land taken to have been so declared;

**“products”**, in relation to wildlife, has the meaning given by subsection (2);

**“protected plant”** means a plant prescribed as a protected plant under section 27;

**“public authority”** means –

- (a) a council within the meaning of the *Local Government Act 1993*; and
- (b) another body corporate established by an enactment having jurisdiction limited to a district, locality or part of the State; and
- (c) a statutory authority;

**“public reserve”** has the same meaning as in the *Crown Lands Act 1976*;

**“purposes of reservation”** in relation –

- (a) to any reserved land, means the purposes for which that land was reserved; or
- (b) to any class of reserved land, means the purposes of reservation specified in Schedule 1 in relation to that class;

**“ranger”** means a person appointed as a ranger, or authorised to perform the functions and exercise the powers of a ranger, under section 8;

**“Recorder”** means the Recorder of Titles;

**“regional reserve”** means –

- (a) any land declared under this Act to be reserved land in the class of regional reserve; and
- (b) any land taken to have been so declared;

**“regulations”** means regulations made and in force under section 76;

**“reserved”** means set aside or acquired for a conservation purpose;

**“reserved land”** means –

- (a) any land declared under this Act to be reserved land; and
- (b) any land taken to have been so declared;

**“resource management and planning system objectives”** means the objectives of the resource management and planning system of Tasmania as set out in Schedule 2;

**“statutory authority”** means an incorporated or unincorporated body which is established, constituted or continued by or under an Act or under the royal prerogative, being a body which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister of the Crown or another statutory authority;

**“Secretary”** means the Secretary of the Department;

**“special advisory committee”** means a special advisory committee established under section 9;

**“State reserve”** means –

- (a) any land declared under this Act to be reserved land in the class of State reserve; and
- (b) any land taken to have been so declared;

**“statutory power”** means –

- (a) a power under an enactment, other than this Act, for –
  - (i) the reservation or dedication of Crown land for any purpose; or
  - (ii) the alienation of, or the grant of private rights in or over, any such land; or
  - (iii) the carrying out of any works or other operations on any such land; and
- (b) a power that, under an enactment other than this Act, may be exercised by a public authority in relation to land vested in it;

**“trust land”** means Crown land subject to a trust under section 23;

**“wildlife”** means any living creature other than –

- (a) a dog or cat; and

- (b) domestic stock; and
- (c) fish, within the meaning of the *Living Marine Resources Management Act 1995*; and
- (d) an animal that –
  - (i) is being farmed under and in accordance with the *Animal Farming (Registration) Act 1994*; or
  - (ii) has been so farmed and is legally in the possession of any person;

**“wildlife regulations”** means regulations made for the purposes of Part 4 in respect of the matters referred to in sections 26, 27 and 28;

**“wolf”** means a member of the genus *Canis*, other than *Canis familiaris*.

**(2)** A reference in this Act to the products of any form of wildlife includes a reference to –

- (a) the dead bodies, and parts of the dead bodies, of that form of wildlife; and
- (b) any material or thing obtained from the bodies or dead bodies of that form of wildlife; and
- (c) any eggs of that form of wildlife; and
- (d) any nests of that form of wildlife.

**(3)** For the purposes of this Act, a form of wildlife may be described by reference to any one or more of the following matters:

- (a) the species, type or other classification by which it may be described or identified;

- (b) its sex, age or condition;
- (c) any of its attributes or characteristics.

**(4)** For the purposes of this Act, a plant may be described by reference to any one or more of the following matters:

- (a) the species, type or other classification by which it may be described or identified;
- (b) any of its attributes or characteristics.

**(5)** A reference in this Act to the taking of any wildlife or to the taking of a form of wildlife that is game includes a reference to the killing, destroying, hunting, pursuing, catching, shooting, netting, snaring or injuring that wildlife or that form of wildlife.

**(6)** A reference in this Act to the taking of a product of any wildlife includes a reference to the carrying out of any operation –

- (a) for the purpose of obtaining that product; or
- (b) that has the effect of destroying or damaging that product.

**(7)** A reference in this Act to the taking of any plant includes a reference –

- (a) to the destroying or damaging of that plant; and
- (b) to the taking, destroying or damaging of any fruit, seeds, product or part of the plant.

**(8)** A reference in this Act to the taking of any thing includes a reference to attempting to take, or assisting in the taking of, that thing.



**(9)** A reference in this Act to selling includes a reference to any disposal by way of trade.

**(10)** A reference in this Act to buying includes a reference –

- (a) to receiving or accepting under a contract to sell; and
- (b) to offering to receive or accept under a contract to sell; and
- (c) to causing or suffering to be received or accepted under a contract to sell.

**(11)** For the purposes of this Act, a person is taken to have a thing in his or her possession –

- (a) if it is in his or her possession, or under his or her control, in any place or conveyance, whether for the use or benefit of the person or another person; or
- (b) if it is –
  - (i) in or on any place or conveyance occupied, controlled or used by him or her; or
  - (ii) used or controlled by him or her in or on any place or conveyance –

even though another person has the actual possession or custody of the thing, unless the person proves that he or she had no knowledge of that thing.

**(12)** Unless the contrary intention appears, a reference in this Act to a thing includes a reference to a living thing.

**Act binds Crown**

**4. (1)** This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

**(2)** Nothing in this Act renders the Crown in right of Tasmania liable to be prosecuted for an offence against this Act.

**Compliance with resource management and planning system objectives**

**5.** In exercising any powers or performing any functions under this Act, a person is to have regard to the resource management and planning system objectives.

## PART 2 – ADMINISTRATION

### Functions of the Secretary

**6. (1)** Subject to this Act, the Secretary has the following functions:

- (a) keeping the setting aside of land for conservation purposes under review;
- (b) promoting conservation purposes in relation to the use or development of land generally;
- (c) carrying out, or arranging for the carrying out of, research and other activities that appear to the Secretary to be desirable in connection with the administration of this Act or the conservation of the fauna, flora or geological diversity of the State;
- (d) carrying out, or promoting the carrying out of, educational activities, and providing and disseminating information, related to the conservation of the fauna, flora or geological diversity of the State or other matters arising in connection with the administration of this Act;
- (e) giving advice and assistance to managing authorities for reserved lands;
- (f) contributing to the preparation of management plans for reserved lands under the *National Parks and Reserves Management Act 2002*;
- (g) providing effective means for the enforcement of the regulations;

- (h) negotiating conservation covenants and carrying out functions, as agreed by the Secretary, in relation to land which is, or becomes, the subject of a conservation covenant.

(2) The Minister may give directions to the Secretary with respect to the carrying out of his or her functions under this Act and, in carrying out those functions, the Secretary is to comply with any such directions.

(3) The Minister must not give a direction under subsection (2) with respect to the making by the Secretary of any recommendation required under any provision of this Act.

### **Arrangements in respect of *National Parks and Reserves Management Act 2002***

7. (1) The Secretary may enter into arrangements with the Director for the purpose of furthering the objectives of the *National Parks and Reserves Management Act 2002*.

(2) An arrangement may be made with respect to one or more of the following matters:

- (a) the provision of staff and other resources;
- (b) any other matter.

### **Rangers**

8. (1) The Secretary may appoint a State Service officer or State Service employee employed in the Department to be a ranger and that officer or employee may hold that office in conjunction with State Service employment.

(2) The Secretary, with the consent of another Head of a State Service Agency, may appoint a State Service officer or State Service employee employed in that Agency to be a ranger and that officer or employee may hold that office in conjunction with State Service employment.

(3) The Secretary may authorise a person who is not a State Service officer or State Service employee to perform the functions and exercise the powers of a ranger.

(4) An appointment as a ranger under subsection (1) or (2), or an authorisation under subsection (3), may be limited to the land, or the part of the State, specified in the appointment or authorisation.

(5) A ranger appointed under subsection (1) or (2), or authorised under subsection (3), in respect of particular land or a particular part of the State is not to perform the functions or exercise the powers of a ranger under this Act in respect of any other land or part of the State.

### **Special advisory committees**

**9. (1)** The Minister, by order, may establish special advisory committees for the purpose of –

- (a) advising the Minister on such matters in relation to the administration of this Act as are specified in the order; or
- (b) advising the Secretary on such matters arising in relation to the performance of his or her functions under this Act as are specified in the order.

(2) An order –

- (a) may specify the number of members of the special advisory committee to which it relates; and
- (b) subject to this section, may contain provisions –
  - (i) regulating the appointment of members of the committee; and
  - (ii) regulating the proceedings of that committee; and
  - (iii) giving the Secretary, or a person nominated by the Secretary, the right to attend meetings of that committee.

**(3)** The members of a special advisory committee are appointed by the Minister and the Minister may appoint a member of the committee as its chairperson.

**(4)** At a meeting of a special advisory committee, the chairperson or, if the chairperson is absent or there is no chairperson, another member present and chosen by the members present is to preside.

**(5)** The chairperson or other member presiding at a meeting of a special advisory committee has a deliberative vote only and, in the event of an equality of votes on any matter before a meeting of the committee, the matter stands adjourned to the next meeting of the committee.

**(6)** At any meeting of a special advisory committee, a quorum is constituted if at least half the total number of members of the committee is present.

**(7)** Subject to this Act, the Minister may make arrangements to make available to a special advisory committee such accommodation and assistance as it may require.

**(8)** The members of a special advisory committee are to be paid such travelling and other allowances as the Governor determines.

### **PART 3 – RESERVATION AND ACQUISITION OF LAND**

#### **Secretary to consult with Director**

**10.** Before making a recommendation to the Minister in relation to the acquisition or lease of land for a conservation purpose, or for the declaration, naming or revocation of any reserved land, the Secretary is to consult with the Director.

#### **Declaration of Crown land as reserved land**

**11. (1)** In this section, “**Crown land**” does not include Crown land that is also –

- (a) State forest within the meaning of the *Forestry Act 1920*; or
- (b) a public reserve.

**(2)** If the Governor is of the opinion that any Crown land should be set aside for a conservation purpose, the Governor, by proclamation, may –

- (a) declare that land to be reserved land in one of the following classes:
  - (i) national park;
  - (ii) State reserve;
  - (iii) nature reserve;
  - (iv) game reserve;
  - (v) conservation area;
  - (vi) nature recreation area;



- (vii) regional reserve;
- (viii) historic site; and
- (b) give a name to that reserved land.

**(3)** Any name given to reserved land under subsection (2) is to –

- (a) include the name of the class of that reserved land; and
- (b) be given on the recommendation of the Minister after consultation with the Nomenclature Board.

**(4)** A proclamation under subsection (2) may only be made declaring land to be reserved land in a class if the land satisfies the criteria relating to that class set out in section 16.

**(5)** Subject to any proclamation made under section 21, any area of reserved land in a class referred to in subsection (2)(a) remains reserved land of that class despite any subsequent disposition of the land or any other dealing in that land.

### **Declaration of private land as reserved land**

**12. (1)** If the Governor is of the opinion that any private land should be set aside for a conservation purpose, the Governor, by proclamation, may –

- (a) declare that land to be reserved land in the one of the following classes:
  - (i) private sanctuary;
  - (ii) private nature reserve; and

(b) give a name to that reserved land.

(2) Any name given to reserved land under subsection (1) is to –

(a) include the name of the class of that reserved land; and

(b) be given on the recommendation of the Minister after consultation with the Nomenclature Board.

(3) A proclamation under subsection (1) may only be made declaring land to be reserved land in a class if the land satisfies the criteria relating to that class set out in section 16.

(4) A proclamation may only be made under subsection (1) if the owner of the land has consented.

(5) Subject to any proclamation made under section 21, any area of reserved land in the class of private sanctuary or private nature reserve remains reserved land of that class despite any subsequent disposition of the land or any other dealing in the land.

(6) A proclamation made under subsection (1) does not have effect until it is registered in accordance with section 22.

### **Declaration of land vested in public authority as reserved land**

**13. (1)** In this section, “**land vested in a public authority**” does not include Crown land that is also –

(a) State forest within the meaning of the *Forestry Act 1920*; or

(b) a public reserve.

(2) If the Governor is of the opinion that any land vested in a public authority should be set aside for a conservation purpose, the Governor, by proclamation, may –

- (a) declare that land to be reserved land in the class of conservation area; and
- (b) give a name to that reserved land.

(3) Any name given to reserved land under subsection (2) is to –

- (a) include the name of the class of that reserved land; and
- (b) be given on the recommendation of the Minister after consultation with the Nomenclature Board.

(4) A proclamation under subsection (2) may only be made declaring land to be reserved land in the class of conservation area if the land satisfies the criteria relating to that class set out in section 16(5).

(5) A proclamation may only be made under subsection (1) if the public authority in which the land is vested consents.

(6) Subject to any proclamation made under section 21, any area of reserved land that is vested in a public authority remains reserved land in the class of conservation area despite any subsequent disposition of the land or any other dealing in that land.

### **Land acquired by Governor as reserved land**

**14. (1)** The Governor may acquire any area of land that, in the opinion of the Governor, should be acquired for a conservation purpose.

**(2)** From the day on which an area of land acquired under subsection (1) is registered in the name of the Crown, the land –

- (a) is taken to have been set aside for a conservation purpose; and
- (b) is declared to be reserved land in the class of conservation area.

### **Lease of reserved land**

**15. (1)** If the Minister, on the recommendation of the Secretary, is satisfied that any land should be set aside for a conservation purpose for a specified period, the Minister may, in the name and on behalf of the Crown, take a lease of that land for the term, and on the covenants and conditions, approved by the Minister.

**(2)** For the term of the lease of an area of land under subsection (1), that land –

- (a) is taken to have been set aside for a conservation purpose; and
- (b) is declared to be reserved land in –
  - (i) the class of national park if the land satisfies the criteria relating to that class set out in section 16(1); or
  - (ii) the class of State reserve if the land satisfies the criteria relating to that class set out in section 16(2); or
  - (iii) the class of nature reserve if the land satisfies the criteria relating to that class set out in section 16(3); or

- (iv) the class of game reserve if the land satisfies the criteria relating to that class set out in section 16(4); or
- (v) the class of historic site if the land satisfies the criteria relating to that class set out in section 16(8).

### **Classes of reserved land**

**16. (1)** Land may be declared to be reserved land in the class of national park if –

- (a) the land –
  - (i) possesses the values specified in Column 2 for item 1 of Schedule 1; or
  - (ii) adjoins an area of reserved land in the class of national park possessing those values; and
- (b) the land was reserved for –
  - (i) the purpose specified in Column 3 for item 1 of that Schedule; or
  - (ii) any purpose that, in the opinion of the Governor, would promote the better management or more effective use of that land or the adjoining reserved land referred to in paragraph (a)(ii).

**(2)** Land may be declared to be reserved land in the class of State reserve if –

- (a) the land –
  - (i) possesses the values specified in Column 2 for item 2 of Schedule 1; or

- (ii) adjoins an area of reserved land in the class of State reserve possessing those values; and
- (b) the land was reserved for –
  - (i) any one or more of the purposes specified in Column 3 for item 2 of that Schedule; or
  - (ii) any purpose that, in the opinion of the Governor, would promote the better management or more effective use of that land or the adjoining reserved land referred to in paragraph (a)(ii).

**(3)** Land may be declared to be reserved land in the class of nature reserve if –

- (a) the land –
  - (i) possesses the values specified in Column 2 for item 3 of Schedule 1; or
  - (ii) adjoins an area of reserved land in the class of nature reserve possessing those values; and
- (b) the land was reserved for –
  - (i) the purposes specified in Column 3 for item 3 of that Schedule; or
  - (ii) any purpose that, in the opinion of the Governor, would promote the better management or more effective use of that land or the adjoining reserved land referred to in paragraph (a)(ii).

**(4)** Land may be declared to be reserved land in the class of game reserve if –

- (a) the land –
  - (i) possesses the values specified in Column 2 for item 4 of Schedule 1; or
  - (ii) adjoins an area of reserved land in the class of game reserve possessing those values; and
- (b) the land was reserved for –
  - (i) the purposes specified in Column 3 for item 4 of that Schedule; or
  - (ii) any purpose that, in the opinion of the Governor, would promote the better management or more effective use of that land or the adjoining reserved land referred to in paragraph (a)(ii).

**(5)** Land may be declared to be reserved land in the class of conservation area if –

- (a) the land –
  - (i) possesses the values specified in Column 2 for item 5 of Schedule 1; or
  - (ii) adjoins an area of reserved land in the class of conservation area possessing those values; and
- (b) the land was reserved for –
  - (i) the purposes specified in Column 3 for item 5 of that Schedule; or
  - (ii) any purpose that, in the opinion of the Governor, would promote the better management or more effective use of that land or the adjoining reserved land referred to in paragraph (a)(ii).

**(6)** Land may be declared to be reserved land in the class of nature recreation area if –

- (a) the land –
  - (i) possesses the values specified in Column 2 for item 6 of Schedule 1; or
  - (ii) adjoins an area of reserved land in the class of nature recreation area possessing those values; and
- (b) the land was reserved for –
  - (i) the purpose specified in Column 3 for item 6 of that Schedule; or
  - (ii) any purpose that, in the opinion of the Governor, would promote the better management or more effective use of that land or the adjoining reserved land referred to in paragraph (a)(ii).

**(7)** Land may be declared to be reserved land in the class of regional reserve if –

- (a) the land –
  - (i) possesses the values specified in Column 2 for item 7 of Schedule 1; or
  - (ii) adjoins an area of reserved land in the class of regional reserve possessing those values; and
- (b) the land was reserved for –
  - (i) the purposes specified in Column 3 for item 7 of that Schedule; or
  - (ii) any purpose that, in the opinion of the Governor, would promote the better



management or more effective use of that land or the adjoining reserved land referred to in paragraph (a)(ii).

**(8)** Land may be declared to be reserved land in the class of historic site if –

- (a) the land –
  - (i) possesses the values specified in Column 2 for item 8 of Schedule 1; or
  - (ii) adjoins an area of reserved land in the class of historic site possessing those values; and
- (b) the land was reserved for –
  - (i) the purposes specified in Column 3 for item 8 of that Schedule; or
  - (ii) any purpose that, in the opinion of the Governor, would promote the better management or more effective use of that land or the adjoining reserved land referred to in paragraph (a)(ii).

**(9)** Land may be declared to be reserved land in the class of private sanctuary if –

- (a) the land –
  - (i) possesses the values specified in Column 2 for item 9 of Schedule 1; or
  - (ii) adjoins an area of reserved land in the class of private sanctuary possessing those values; and
- (b) the land was reserved for –

- (i) the purpose specified in Column 3 for item 9 of that Schedule; or
- (ii) any purpose that, in the opinion of the Governor, would promote the better management or more effective use of that land or the adjoining reserved land referred to in paragraph (a)(ii).

**(10)** Land may be declared to be reserved land in the class of private nature reserve if –

- (a) the owner of the land has given up any right to require that the reservation of that land be revoked; and
- (b) the land –
  - (i) possesses the values specified in Column 2 for item 10 of Schedule 1; or
  - (ii) adjoins an area of reserved land in the class of private nature reserve possessing those values; and
- (c) the land was reserved for –
  - (i) the purposes specified in Column 3 for item 10 of that Schedule; or
  - (ii) any purpose that, in the opinion of the Governor, would promote the better management or more effective use of that land or the adjoining reserved land referred to in paragraph (b)(ii).

### **Alteration of class of reserved land**

**17. (1)** The Governor, by proclamation, may –

- (a) declare any reserved land, or part of any reserved land, that has been declared to be in one of the classes referred to in section 11(2) to be reserved land in another of the classes specified in that section; and
- (b) give a name to that reserved land.

(2) Any name given to any reserved land under subsection (1) is to –

- (a) include the name of the class of that reserved land, as specified in section 11(2); and
- (b) be given on the recommendation of the Minister after consultation with the Nomenclature Board.

(3) A proclamation under subsection (1) may only be made declaring land to be reserved land in another class if the land satisfies the criteria relating to that other class as set out in section 16.

### **Parliamentary approval required for certain draft proclamations**

**18. (1)** A proclamation is not to be made under section 11(2) or section 17(1) declaring land to be reserved land in the class of national park, State reserve, nature reserve or historic site unless a draft of the proclamation has been first approved by each House of Parliament.

(2) A proclamation is not to be made under section 17(1) declaring any reserved land, or part of any reserved land, in the class of national park, State reserve, nature reserve, game reserve or historic site to be in any other class unless a draft of the proclamation has been first approved by each House of Parliament.

**(3)** For the purposes of subsection (1), a House of Parliament is to be taken to have approved a draft of a proclamation if a copy of it has been laid on the table of the House and –

- (a) it is approved by the House; or
- (b) at the expiration of 5 sitting days after it was laid on the table of the House, no notice has been given of a motion to disallow it or, if such notice has been given, the notice has been withdrawn or the motion has been negatived; or
- (c) if any notice of a motion to disallow it is given during that period of 5 sitting days, the notice is, after the expiration of that period, withdrawn or the motion is negatived.

### **Naming of reserved land**

**19. (1)** The Governor, by proclamation, may give a name to any reserved land –

- (a) that has not been given a name under this Act; or
- (b) whose name does not include the name of a class of reserved land specified in section 11(2) or section 12(1).

**(2)** The Governor, by proclamation, may give another name to any reserved land, or part of any reserved land, that has been given a name under this Act.

**(3)** Any name given to any reserved land under subsection (1) or (2) is to –

- (a) include the name of the class of that reserved land as specified in section 11(2) or section 12(1); and
- (b) be given on the recommendation of the Minister after consultation with the Nomenclature Board.

**(4)** A proclamation is not to be made under subsection (1) or (2) if that proclamation would have the effect of altering the class of any reserved land.

**(5)** A proclamation made under subsection (1) or (2) in relation to reserved land in the class of private sanctuary or private nature reserve does not have effect until it is registered in accordance with section 22.

### **Prohibition of certain names except in reference to reserved land**

**20.** A person must not use, or cause or permit to be used, alone or in combination with other words, the name of any class of reserved land specified in section 11(2) or section 12(1) in reference to any land –

- (a) that is not reserved land; or
- (b) that is not reserved land of that class.

Penalty: Fine not exceeding 20 penalty units.

### **Revocation of reservations**

**21. (1)** Subject to this section, the Governor by proclamation may declare that any area of land ceases to be, or to form part of, reserved land.

**(2)** If an area of land is declared under subsection (1) to cease to be, or to form part of, reserved land, that area of land ceases to be, or to form part of, reserved land –

- (a) in the case of reserved land in the class of private sanctuary or private nature reserve, on the day the proclamation is registered under section 22; or
- (b) in any other case –
  - (i) on the day specified in the proclamation; or
  - (ii) if a day is not specified in the proclamation, on the day the proclamation is notified in the *Gazette*.

**(3)** A proclamation may not be made under subsection (1) in respect of a leased reserve.

**(4)** Subject to subsection (5), a proclamation may not be made under subsection (1) unless a draft of the proclamation has been first approved by each House of Parliament.

**(5)** Subsection (4) does not apply to a proclamation relating to reserved land in the class of private sanctuary.

**(6)** A proclamation may not be made under this section in relation to reserved land in the class of private nature reserve for which money has been paid under section 25 for the purpose of securing that reserve unless the Minister tables with the draft proclamation a certificate to the effect that –

- (a) the owner has refunded –
  - (i) any money paid for the purpose of securing that reserve; or

- (ii) an appropriate proportion of that money;  
or
- (b) the owner has refunded –
  - (i) any money paid for the purpose of ensuring that the management objectives for the class of private nature reserve are met; or
  - (ii) an appropriate proportion of that money;  
or
- (c) the owner has refunded –
  - (i) any money paid for the purpose of ensuring that the provisions of any management plan for that private nature reserve are complied with; or
  - (ii) an appropriate proportion of that money;  
or
- (d) special circumstances exist, as specified in the certificate, that obviate the need for the refund of any money.

(7) For the purposes of this section, a House of Parliament is to be taken to have approved a draft of a proclamation that relates to reserved land in the class of conservation area, nature recreation area or regional reserve if a copy of it has been laid on the table of the House and –

- (a) it is approved by the House; or
- (b) at the expiration of 5 sitting days after it was laid on the table of the House, no notice has been given of a motion to disallow it or, if such notice has been given, the notice has been

withdrawn or the motion has been negatived;  
or

- (c) if any notice of a motion to disallow it is given during that period of 5 sitting days, the notice is, after the expiration of that period, withdrawn or the motion is negatived.

**Registration of proclamation relating to private sanctuary or private nature reserve**

**22. (1)** If a proclamation is made under section 12 declaring any land to be in the class of private sanctuary or private nature reserve, the Minister, as soon as practicable, is to cause the proclamation to be registered in respect of that land.

**(2)** If a proclamation is made under section 19 relating to any reserved land in the class of private sanctuary or private nature reserve, the Minister, as soon as practicable, is to cause the proclamation to be registered in respect of the land to which it relates.

**(3)** If a proclamation is made under section 21(1) by which the whole or any part of reserved land in the class of private sanctuary or private nature reserve ceases to be, or form part of, reserved land, the Minister, as soon as practicable, is to cause the proclamation to be registered in respect of the land to which it relates.

**(4)** The provisions of Schedule 3 have effect in relation to the registration of proclamations referred to in this section.

**(5)** Nothing in section 40 of the *Land Titles Act 1980* is to be construed as affecting the validity of, or as prejudicing or affecting the operation of, any proclamation referred to in this section.



**Lands subject to trusts**

**23. (1)** Land that may be acquired under section 14 may be so acquired subject to a trust for its use for a conservation purpose.

**(2)** For the purposes of subsection (1), if land is held by trustees on trust for its use for a conservation purpose those trustees may, unless the instrument under which the land is held otherwise provides, surrender that land subject to its continuing to be held on that trust.

**Supplementary provisions as to acquisition of land, &c.**

**24. (1)** Land that may be acquired under section 14 may be acquired under and in accordance with the *Land Acquisition Act 1993*, or by any means by which land may be surrendered to, or may revert to and revest in, the Crown.

**(2)** If any land that may be acquired under section 14 is held under a single title with other land, the Governor may acquire the whole or any part of that other land.

**(3)** If the Governor is authorised under this Act to acquire any land, that land may be acquired by the exchange for it of any Crown land, other than reserved land.

**(4)** An exchange of land under this section may be made on the terms and conditions agreed, including terms and conditions with respect to the payment, giving or receipt of any sums or other consideration by way of equality of exchange.

(5) For the purpose of effecting an exchange of land under this section, the Governor may grant any Crown land for an estate in fee simple.

(6) If any land has been acquired under this Part but does not by that acquisition become reserved land, that land, without prejudice to the exercise of any other powers of this Act, may be disposed of or dealt with in accordance with the *Crown Lands Act 1976*, or otherwise, as if it were Crown land within the meaning of that Act.

### **Management agreement for private land**

**25. (1)** The Minister may enter into any agreement relating to the use and management of any private land if to do so would, in the opinion of the Minister, tend to promote –

- (a) conservation purposes in relation to that land; or
- (b) the purposes for which a private nature reserve or private sanctuary has been set aside under this Act.

(2) An agreement entered into under this section in respect of a private nature reserve or private sanctuary may involve the payment of money (whether by way of grant, loan or otherwise) by the Minister to the owner for the purpose of ensuring that –

- (a) the provisions of any management plan for that reserved land are complied with; and
- (b) if there is not a management plan for that reserved land, the management objectives for that class of reserved land are met.

**(3)** Money is to be paid under this section on the terms and conditions the Minister, on the recommendation of the Secretary, agrees to.

**(4)** Any terms and conditions referred to in subsection (3) may give the Secretary rights in respect of a private nature reserve or private sanctuary.

**(5)** An agreement under this section may include provision for a conservation covenant under Part 5.

**PART 4 – CONSERVATION OF FAUNA AND FLORA****Wildlife regulations as to fauna**

**26. (1)** Without limiting the matters in respect of which the regulations may be made, the regulations, in relation to wildlife or any form of wildlife, may make provision for the prohibition or control of –

- (a) the taking of wildlife or any products of wildlife; and
- (b) the use or having in possession of any hunting equipment intended to be, or capable of being, used for the purpose of taking wildlife or any products of wildlife; and
- (c) the use of any living thing for the purpose of taking wildlife or any products of wildlife; and
- (d) the keeping or having in possession of wildlife or any products of wildlife; and
- (e) the buying or selling of, or other dealings in, wildlife or any products of wildlife; and
- (f) the exportation or disposal of wildlife or the products of wildlife.

**(2)** The wildlife regulations –

- (a) may require the payment of royalties in respect of the taking of any form of wildlife; and
- (b) may make provision for the collection of those royalties.

**(3)** The wildlife regulations may contain –

- (a) provisions for the preservation of good order among persons engaged in taking wildlife or any form of wildlife; and
- (b) for the purposes of protecting any crops or property, provisions –
  - (i) for authorising or regulating the taking of any form of wildlife; and
  - (ii) regulating the disposal of the carcass, or any part of the carcass, of any wildlife so taken and the application of the proceeds of that disposal; and
- (c) for the purposes of protecting fish farming and other fishing activity, provisions prohibiting or controlling the use of devices designed to deter seals from interfering with fish farming and other fishing activities.

### **Wildlife regulations as to flora**

**27. (1)** Without limiting the matters in respect of which the regulations may be made, the regulations may prescribe the plants that are to be protected plants for the purposes of this Act.

- (2)** The wildlife regulations may prohibit or control –
- (a) the taking or having in possession of a protected plant; and
  - (b) the buying or selling of, or other dealings in, a protected plant; and
  - (c) the exportation or disposal of any protected plant.

**Supplementary provisions as to wildlife regulations**

**28. (1)** The wildlife regulations may make differing provisions with respect to different places or parts of the State and with respect to different times, places and circumstances.

**(2)** The wildlife regulations may prohibit the doing of any act –

- (a) during periods, or otherwise than during periods, specified in the wildlife regulations; and
- (b) in places or parts of the State, or otherwise than in places or parts of the State, specified in the wildlife regulations.

**(3)** The wildlife regulations may confer powers or discretions on the Secretary, rangers, persons employed in the Department and other persons.

**(4)** The power to make provision in the wildlife regulations for the prohibition or control of the doing of any act includes power to make provision for the prohibition of the doing of that act otherwise than under the authority of a licence or permit.

**(5)** For the purposes of subsection (4), the wildlife regulations may provide for –

- (a) the terms of a licence or permit referred to in that subsection; and
- (b) the authority granted by that licence or permit; and
- (c) the issue, duration, renewal, suspension, cancellation or surrender of that licence or permit; and

- (d) the circumstances in which, or the conditions under which, that licence or permit may, or may not, be issued or renewed, or refused to be issued or renewed, or suspended, cancelled or surrendered.

**(6)** The wildlife regulations, in relation to any matter that may be made the subject of prohibition or control under the regulations, may provide for –

- (a) the production, inspection, marking or identification of any wildlife, products of wildlife or protected plant; and
- (b) the giving of notifications and other information to the Secretary, rangers, persons employed in the Department and other persons; and
- (c) the keeping and production of records.

**(7)** The wildlife regulations –

- (a) may require the payment of fees or charges in respect of –
  - (i) the issue or renewal of licences or permits issued under the regulations; and
  - (ii) applications for the issue or renewal of those licences or permits; and
  - (iii) any inspection, marking or identification carried out under the regulations; and
- (b) may provide for the collection of any such fees or charges.

**(8)** The wildlife regulations may impose penalties for contraventions of any provision of the wildlife regulations and –

- (a) different penalties may be imposed for successive contraventions of those provisions or any of them; and
- (b) a daily penalty, not exceeding 1 penalty unit, may be imposed in respect of each day for which the contravention continues; and
- (c) additional penalties, in addition to any penalty otherwise prescribed, not exceeding 5 penalty units, may be imposed in respect of –
  - (i) each individual creature, the products of each individual creature or each plant; or
  - (ii) each piece of hunting equipment –with respect to which the contravention was committed.

**(9)** Any penalty imposed pursuant to this section in respect of any individual contravention, and the aggregate of all the penalties so imposed, may not exceed 100 penalty units.

**(10)** A reference in this section to the doing of an act includes a reference to the keeping of any thing, the having of any thing in possession and the engaging in any activity or course of conduct.

**(11)** Nothing in the wildlife regulations prejudices or affects the exercise of any authority given by a permit granted under section 29.

### **Special permits to take wildlife**

**29. (1)** In this section, “**specified**” means specified in a permit granted under subsection (2).



**(2)** The Secretary may grant a permit authorising, subject to compliance with any specified conditions and restrictions, one or more of the following:

- (a) the taking on specified lands of specified wildlife, specified products of specified wildlife or specified protected plants;
- (b) the keeping or having in possession by a person of specified wildlife, specified products of specified wildlife or specified protected plants.

**(3)** A permit may not be granted under this section in respect of any reserved land for which a management plan is in force if to do so would be, or would authorise an activity that is, contrary to the management plan.

**(4)** A permit may not be granted under this section –

- (a) in respect of any reserved land vested in a public authority or any private land, except on the application of, or with the consent of, the public authority in whom the land is vested or the owner of that land; and
- (b) in respect of any reserved land of which a prescribed body is the managing authority, except on the application of, or with the consent of, that body; and
- (c) in respect of any reserved land of which a Conservation Management Trust within the meaning of the *National Parks and Reserves Management Act 2002* is the managing authority, except on the application of, or with the consent of, that Conservation Management Trust; and

- (d) in respect of any other reserved land, except on the application of, or with or conditional upon the consent of, the managing authority.

(5) A permit granted under subsection (2)(a) is to specify the period (being a period not exceeding 12 months in length) for which it remains in force and, at the end of that period, the permit ceases to be of further effect.

(6) A permit granted under subsection (2)(b) may specify the period for which it remains in force and –

- (a) if the permit does specify such a period, it ceases to be of further effect at the end of that period; and
- (b) if the permit does not specify such a period, it continues to have effect until revoked.

(7) At any time, the Secretary may revoke a permit granted under this section but, if the managing authority was required to be consulted regarding the grant of the permit, it may not be revoked without that managing authority being advised of the intention to revoke it.

(8) The wildlife regulations may make provision for the payment of fees on the making of an application for, or the grant of, a permit under this section.

### **Open seasons for partly protected wildlife**

**30. (1)** The Minister, by order, may determine the seasons, dates and places on or at which the taking of any form of partly protected wildlife may –

- (a) start and stop; or
- (b) be prohibited; or
- (c) be permitted.

(2) The order may impose conditions and have differential application.

(3) A person must not contravene an order.

Penalty: Fine not exceeding 50 penalty units.

### **Saving for rights of landowners, &c.**

**31.** The issue of a licence or the granting of a permit under this Part or the wildlife regulations does not render lawful the entering on any land that would have been unlawful if that licence had not been issued or that permit had not been granted.

### **Prohibition on introduction, &c., of certain animals**

**32. (1)** In this section –

**“controlled animal”** means –

- (a) a mammal, bird, amphibian and reptile; and
- (b) any other animal prescribed by the regulations to be a controlled animal –

but does not include any restricted animal, dog, cat or domestic stock;

**“restricted animal”** means –

- (a) a fox, wolf, dingo and mink; and
- (b) any other animal prescribed by the regulations to be a restricted animal; and

- (c) a hybrid of an animal referred to in paragraph (a) or (b).

(2) A person must not bring into the State, or cause or allow to be brought into the State, a restricted animal or a controlled animal unless the importation is in accordance with –

- (a) the prior written permission of the Secretary; and
- (b) an authority under Part 4 of the *Animal Health Act 1995*.

Penalty: In the case of –

- (a) a restricted animal, a fine of not less than 200 penalty units and not more than 500 penalty units or imprisonment for a term not less than 2 years and not more than 5 years, or both, for each animal in respect of which the offence was committed; or
- (b) a controlled animal, a fine not exceeding 10 penalty units in respect of each animal in respect of which the offence was committed.

(3) A person must not, except in accordance with the prior written permission of the Secretary –

- (a) be in possession of a restricted animal; or
- (b) cause or allow a restricted animal, a ferret or a controlled animal to go at large in the State.

Penalty: In the case of –

- (a) a restricted animal or ferret, a fine of not less than 200 penalty units and not more than 500 penalty units or

imprisonment for a term not less than 2 years and not more than 5 years, or both, for each animal in respect of which the offence was committed; or

- (b) a controlled animal, a fine not exceeding 10 penalty units in respect of each animal in respect of which the offence was committed.

(4) A person must not be in possession of a controlled animal that has been brought into the State in contravention of subsection (2).

Penalty: Fine not exceeding 10 penalty units in respect of each animal in respect of which the offence was committed.

(5) The Secretary may –

- (a) grant permission under subsection (2) or (3) subject to any conditions he or she thinks fit; or
- (b) refuse to grant the permission.

(6) The Secretary may only grant permission under subsection (2) or (3) in respect of a restricted animal if the importation, possession or going at large of the restricted animal is required as part of a program to manage feral populations of animals of the same species as that restricted animal.

(7) A person who fails to comply with a condition to which a permission is subject is guilty of an offence.

Penalty: In the case of –

- (a) a restricted animal or ferret, a fine of not less than 200 penalty units and not more than 500 penalty units or

imprisonment for a term not less than 2 years and not more than 5 years, or both, for each animal in respect of which the offence was committed; or

- (b) a controlled animal, a fine not exceeding 10 penalty units in respect of each animal in respect of which the offence was committed.

**(8)** If a person is in possession of a restricted animal or a controlled animal, that animal is presumed, until the contrary is proved, to have been brought into the State without the prior written permission of the Secretary.

**(9)** If the Secretary, or a person authorised by the Secretary, finds or reasonably suspects that a restricted animal or a controlled animal has been brought into the State by, or is in the possession of, a person contrary to the provisions of this section, the Secretary or authorised person may seize it, destroy it, dispose of it or cause it to be destroyed or disposed of.

**(10)** Without limiting the ways in which an animal may be disposed of under subsection (9), the animal may be disposed of by giving it, together with a permission under subsection (3) in the case of a restricted animal, to an educational or research institution.

**(11)** Despite subsection (4), if a controlled animal is disposed of under subsection (9) by giving it to an educational or research institution, the institution may possess that animal subject to any conditions determined by the Director.

**(12)** The Secretary may charge any person with any costs incurred in respect of any seizure, destruction or disposal of an animal carried out under subsection (9).

**(13)** A person must not, without the prior written permission of the Secretary or a person authorised by the

Secretary, remove or take away an animal seized under subsection (9).

Penalty: In the case of –

- (a) a restricted animal, a fine of not less than 200 penalty units and not more than 500 penalty units or imprisonment for a term not less than 2 years and not more than 5 years, or both, for each animal in respect of which the offence was committed; or
- (b) a controlled animal, a fine not exceeding 10 penalty units in respect of each animal in respect of which the offence was committed.

**PART 5 – CONSERVATION COVENANTS*****Division 1 – Interpretation of Part*****Interpretation of Part**

**33.** In this Part –

**“affected owner”** means an owner of land in respect of which, under section 18(1)(b) of the *Forest Practices Act 1985*, an application to the Forest Practices Board for the certification of a forest practices plan –

- (a) has been approved subject to amendments, which have been agreed to by the applicant, made for the purpose of protecting a rare or endangered species of flora or fauna; or
- (b) has been approved subject to amendments made for the purpose of protecting a rare or endangered species of flora or fauna, and where an appeal to the Forest Practices Tribunal under section 25(1) of that Act in respect of those amendments has been wholly or partially dismissed; or
- (c) has been refused wholly or partially on the ground that implementation of the forest practices plan would threaten a rare or endangered species of flora or fauna, and where an appeal to the Forest Practices Tribunal under section 25(1) of that Act in respect of that refusal has been wholly or partially dismissed;



**“arbitrator”** means a person nominated by the Forest Practices Tribunal, as constituted under section 34(7A) of the *Forest Practices Act 1985*, for the purpose of arbitrating disputes under this Part;

**“authorised person”** means a person authorised by the Minister under section 45(1);

**“conservation compensation committee”** means a special advisory committee established by the Minister under section 9 for the purpose of assessing the amount of compensation that is to be paid to landowners under Division 4;

**“conservation covenant”** means –

- (a) a conservation covenant entered into under this Part; and
- (b) a variation of a conservation covenant;

**“Forest Practices Board”** means the Forest Practices Board established under the *Forest Practices Act 1985*;

**“Forest Practices Code, 1987”** means the Forest Practices Code of March 1987 issued under section 30 of the *Forest Practices Act 1985*;

**“forest practices plan”** has the same meaning as in the *Forest Practices Act 1985*;

**“Forest Practices Tribunal”** means the Forest Practices Tribunal established under section 34 of the *Forest Practices Act 1985*;

**“landowner”** or **“owner of land”** means any one or more of the following:

- (a) in the case of a fee simple estate in land, the person in whom that estate vested;
- (b) in the case of land that is not registered under the *Land Titles Act 1980* and is subject to a mortgage, the person having the equity of redemption in that mortgage, for the time being;
- (c) in the case of land held under a tenancy for life, the person who is the life tenant;
- (d) in the case of land held under a lease for a term of not less than 99 years or for a term of not less than any other prescribed period, the person who is the lessee of the land;
- (e) in the case of land held under any other prescribed interest, the person who is the holder of the land under that interest;

**“registered”** means registered under the *Land Titles Act 1980*;

**“servient land”**, in relation to a conservation covenant entered into between the Minister and a landowner, means the land of the landowner that is subject to the covenant;

**“taxon”** means a taxonomic group of any rank into which organisms are categorised;

**“threatened species”** means a taxon of flora or fauna that is listed in Schedule 3, 4 or 5 to the *Threatened Species Protection Act 1995*.

***Division 2 – Conservation covenants generally*****Minister may enter into conservation covenants**

**34. (1)** The Minister on behalf of the Crown may enter into a conservation covenant with a landowner if the Minister considers it necessary or desirable to do so for a conservation purpose.

**(2)** A conservation covenant may contain such covenants and other provisions as the Minister and the landowner agree.

**(3)** Without limiting the generality of subsection (2), a conservation covenant may contain –

- (a) provisions relating to the payment of compensation or the provision of financial or other assistance to the landowner; and
- (b) provisions relating to the repayment of money or, if applicable, the waiver of entitlements to statutory compensation.

**(4)** A conservation covenant in respect of reserved land in the class of private sanctuary or private nature reserve may not contain a provision which is –

- (a) inconsistent with the management objectives for that class of reserved land; or
- (b) contrary to, or inconsistent with, a management plan in force in respect of that reserved land.

**(5)** A conservation covenant may be a restrictive covenant or a positive covenant.

**(6)** A conservation covenant –

- (a) runs with the servient land as if it were a covenant to which section 102(2) of the *Land Titles Act 1980* applies; and
- (b) is enforceable between the parties to it, and any person deriving title under any such party, as if the covenant were entered into by a fee simple owner of land for the benefit of adjacent land held by the Crown in fee simple that was capable of being benefited by the covenant and as if that adjacent land continued to be so held by the Crown.

### **Variation and discharge of conservation covenants**

**35. (1)** Subject to this section, the Minister on behalf of the Crown may vary or discharge a conservation covenant at any time by agreement with the owner of the land that is subject to the covenant.

**(2)** If a conservation covenant so provides, it is not capable of being varied or discharged without the prior consent of the Crown in the right of the Commonwealth.

**(3)** If the land subject to a conservation covenant is a private nature reserve, the covenant is not capable of being varied in a way that might threaten the natural or cultural values of the land, or of being discharged, until the land ceases to be or form part of a private nature reserve.

**(4)** If the landowner has received compensation or financial payments from the Crown under this Part or any other enactment in connection with a conservation covenant, it is not capable of being varied or discharged unless the Minister, by means of a notice published in the *Gazette*, has given at least 30 days' notice of his or her intention to vary or discharge the covenant.

**Form of conservation covenants**

**36.** Despite the provisions of the *Land Titles Act 1980* and *Registration of Deeds Act 1935*, a conservation covenant, and any variation or discharge of a conservation covenant, may be in a form approved by the Recorder.

**Registration of conservation covenants**

**37. (1)** As soon as practicable after entering into a conservation covenant or executing a variation of a conservation covenant, the Minister must lodge with the Recorder –

- (a) an executed copy of the covenant or variation; and
- (b) a copy of any management plan in force in relation to the servient land or any part of the servient land; and
- (c) particulars of title to the servient land.

**(2)** As soon as practicable after executing a discharge of a conservation covenant, the Minister must lodge an executed copy of the discharge with the Recorder.

**(3)** Subject to the provisions of the *Land Titles Act 1980*, the Recorder must register on the folio of the Register constituting the title to the servient land the following:

- (a) each conservation covenant, and each variation or discharge of a conservation covenant, lodged under subsection (1) or (2);
- (b) any management plan lodged under subsection (1).

(4) If the whole or any part of the servient land is not under the *Land Titles Act 1980*, the relevant conservation covenant may be dealt with by the Recorder in the same manner as if it were a conveyance on sale within the meaning of section 17(1)(a) of that Act.

(5) The Recorder may, for the purposes of subsection (4) –

- (a) require the Minister to deposit with the Recorder a plan of any land or part of any land that is subject to a conservation covenant or to which a management plan relates; and
- (b) further require that the plan be made from actual survey and certified as correct by a surveyor who is registered and certificated under the *Land Surveyors Act 1909*.

### **Covenants come into force on registration**

**38. (1)** A conservation covenant or a variation of a conservation covenant comes into force on the day on which the covenant or variation is registered by the Recorder.

(2) A conservation covenant ceases to be enforceable on the day on which a discharge of the covenant is registered by the Recorder.

### ***Division 3 – Covenants arising from refused private timber reserve applications***

### **Covenants for protection of natural or cultural values**

**39. (1)** The Minister on behalf of the Crown may enter into a conservation covenant with a landowner under and

for the purposes of section 16(3) of the *Forest Practices Act 1985*.

(2) Divisions 2 and 5 have the same application to a conservation covenant entered into under this Division, and any variation or discharge of such a covenant, as they have to any other conservation covenant entered into under this Part.

***Division 4 – Covenants arising from forest practices plan applications***

**Covenants with affected owners**

**40.** (1) The Minister on behalf of the Crown may enter into a conservation covenant with an affected owner who applies for compensation under this Division.

(2) Divisions 2 and 5 have the same application to a conservation covenant entered into under this Division, and any variation or discharge of such a covenant, as they have to any other conservation covenant entered into under this Part.

(3) If the Minister and an affected owner fail to agree on the provisions of a conservation covenant within 6 months of commencing negotiations on the covenant, the provisions are to be determined by an arbitrator in accordance with the *Commercial Arbitration Act 1986*.

(4) The determination of an arbitrator under subsection (3) is final and binding on the Minister and the affected owner.

**Affected owner entitled to apply for compensation**

**41. (1)** A landowner may apply to the Minister for compensation for any financial loss suffered by that landowner as a result of becoming an affected owner.

**(2)** An application for compensation is to be made in writing to the Minister within 180 days of the day on which the landowner became an affected owner.

**(3)** As soon as practicable after receiving an application for compensation, the Minister must notify the affected owner that the application is –

- (a) accepted; or
- (b) refused.

**Assessment of compensation**

**42. (1)** Any compensation to be paid to a landowner under this Division is to be assessed, as soon as practicable, by a conservation compensation committee.

**(2)** In assessing the amount of compensation that is to be paid to a landowner under this Division, the conservation compensation committee –

- (a) must give the Minister and the landowner a reasonable opportunity to make submissions to the committee; and
- (b) may have regard to any matters the committee considers relevant; and
- (c) must have regard to the following matters:
  - (i) the value of any standing timber on the relevant land;



- (ii) any timber-growing potential of the relevant land unable to be realised;
- (iii) the value of any agricultural activities being carried out on the relevant land;
- (iv) any agricultural potential of the relevant land unable to be realised;
- (v) any government restrictions relating to threatened species of flora or fauna, including restrictions under the Forest Practices Code, 1987 existing as at the date of commencement of the *Public Land (Administration and Forests) Act 1991*;
- (vi) the amount of any land tax or municipal rates payable in respect of the relevant land, and whether the landowner is entitled to receive any remission of such charges;
- (vii) the likely impact of a conservation covenant on the use of other land of the landowner;
- (viii) any reasonable costs incurred, or likely to be incurred, by the landowner as a result of the landowner entering into a conservation covenant in respect of the relevant land, other than the costs of any arbitration or legal proceedings.

**(3) If –**

- (a) the Minister or the landowner disputes the amount of compensation assessed by the conservation compensation committee; and

- (b) the Minister and the landowner cannot otherwise agree as to the amount of compensation –

the amount of compensation may be determined by an arbitrator in accordance with the *Commercial Arbitration Act 1986*.

(4) An affected owner who does not accept the amount of compensation assessed by the conservation compensation committee and who –

- (a) refuses to have the amount of compensation determined by an arbitrator pursuant to subsection (3); or
- (b) does not accept the determination of an arbitrator made pursuant to subsection (3) –

is to be taken to have withdrawn his or her application for compensation.

### **Payment of compensation**

**43. (1)** Any compensation paid by the Minister to a landowner pursuant to a conservation covenant under this Division is –

- (a) payable from funds made available for the purpose by Parliament; and
- (b) payable in such manner and over such period of time as the Minister and the landowner agree or, failing such agreement, as determined by an arbitrator in accordance with the *Commercial Arbitration Act 1986*.

(2) Despite subsection (1)(b), a conservation covenant under this Division that provides for the payment of compensation to a landowner is to provide for

an initial payment of part of that compensation to be made to the landowner at the time the covenant comes into force.

**(3)** If there is more than one owner of land that is subject to a conservation covenant under this Division, any payment of compensation made by the Minister under this Part is to be divided between those landowners according to their respective interests.

### **Effect of failure to pay compensation**

**44. (1)** This section applies to –

- (a) an affected owner whose application to the Minister for compensation has been refused by the Minister pursuant to section 41(3)(b); and
- (b) an affected owner in respect of whom the Minister has not accepted the determination of an arbitrator made pursuant to section 42(3); and
- (c) an affected owner or other landowner who has entered into a conservation covenant under this Division but has not, within the period of 180 days immediately after the day on which he or she notified the Minister that he or she would accept an offer of compensation under this Part, received –
  - (i) any compensation; or
  - (ii) the full amount of the initial instalment of compensation provided for in the covenant.

**(2)** The 180 day period referred to in subsection (1)(c) is exclusive of any period of time during which the affected owner has been a party to any

arbitration or legal proceedings in respect of a matter under this Part.

**(3)** A landowner to whom subsection (1)(c) applies may notify the Minister in writing that he or she requires the conservation covenant referred to in that subsection to be discharged.

**(4)** If the Minister receives a notification from a landowner under subsection (3), the Minister must –

- (a) if satisfied that there has been a failure to pay compensation to that landowner; and
- (b) if any compensation paid to that landowner has been repaid to the Minister –

lodge an executed discharge of the relevant conservation covenant with the Recorder without undue delay.

**(5)** A landowner is not required to pay interest in respect of any compensation that is repaid to the Minister under this section.

**(6)** If a conservation covenant is discharged at the request of a landowner in accordance with this section, an action does not lie against the Crown in respect of any failure to pay compensation to the landowner under this Part.

**(7)** A landowner to whom this section applies may reapply to the Forest Practices Board under section 18(1)(b) of the *Forest Practices Act 1985* for the certification of the relevant forest practices plan.

**(8)** Subject to subsection (9), if a forest practices plan is submitted to the Forest Practices Board under subsection (7), the Forest Practices Board has no power –

- (a) to refuse to certify the plan on the grounds that implementation of the plan would

adversely affect a threatened species of flora or fauna which has previously been considered by that Board in respect of that plan; or

- (b) to amend the plan for the purpose of protecting a threatened species of flora or fauna which has previously been considered by that Board in respect of that plan –

and, if that plan is otherwise certified, the Forest Practices Board has no power –

- (c) to amend the plan under section 22 of the *Forest Practices Act 1985* for the purpose of protecting a threatened species of flora or fauna which has previously been considered by that Board in respect of that plan; or
- (d) to refuse an application to vary the plan under section 23 of the *Forest Practices Act 1985* on the ground that implementation of the variation of the plan would adversely affect a threatened species of flora or fauna which has previously been considered by that Board in respect of that plan.

**(9)** Nothing in subsection (8) prohibits the Forest Practices Board from enforcing a restriction contained in the Forest Practices Code, 1987.

**(10)** Subsections (7) and (8) have effect despite any other enactment.

***Division 5 – Provisions of general application*****Power to inspect land subject to conservation covenant**

**45. (1)** Subject to this section, a person who is authorised by the Minister to do so may, at any reasonable time and without any interference from the owner of the land or any other person –

- (a) enter on and inspect land that is subject to a conservation covenant; or
- (b) enter on and inspect land in respect of which an affected owner has made an application for compensation under section 41.

**(2)** For the purpose of subsection (1), the authorised person must give reasonable notice of the proposed entry to the owner of the land.

**(3)** The Minister and the owner of any land that is subject to a conservation covenant may enter into an agreement in relation to the method of access to that land by an authorised person.

**(4)** If an agreement is in force under subsection (3) in relation to any land, the method of access to that land is to be in accordance with the agreement except –

- (a) in the case of an emergency; or
- (b) if, in the circumstances, the Minister considers that method of access would be unreasonable.

**(5)** The Minister is to keep the owner of any land that is subject to a conservation covenant indemnified against any loss, damage or legal liability arising from entry to that land and attributable to any act or omission of the Minister or an authorised person in respect of –

- (a) personal injury to, or the death of, any person;  
or
- (b) any damage to property on that land.

**Offence to contravene conservation covenant**

**46. (1)** A person against whom a conservation covenant is enforceable must not contravene that covenant.

Penalty: Fine not exceeding 100 penalty units.

**(2)** A court that convicts a person of an offence under subsection (1), in addition to any penalty it imposes under that subsection –

- (a) must order that person to pay to the Crown the amount the court considers appropriate having regard to any compensation that has been paid to that person, or to any previous owner of the land that is subject to the covenant, by virtue of the covenant; and
- (b) may order that person to pay to the Crown the amount the court considers appropriate having regard to any loss, or costs, incurred by the Crown as a result of the breach of the covenant; and
- (c) must order that person to pay to the Crown the amount the court considers appropriate of any financial gain made by that person as a result of or in connection with the breach of the covenant.

**Service of applications, &c.**

**47.** An application, notification or other document required to be served on a person under this Part may be sent by post or delivered personally.



## **PART 6 – PROVISIONS RELATING TO ENFORCEMENT**

### **Interpretation of “found offending”**

**48.** Section 55(5) of the *Police Offences Act 1935* applies in respect of this Part as it applies in respect of that section as if the reference in that subsection to that Act were a reference to this Act.

### **Power to require offenders to disclose identity and leave land**

**49. (1)** If an authorised officer has reasonable grounds for believing that a person has committed, or is committing, an offence against this Act, he or she may require that person to state his or her name and residential address.

**(2)** If a person is found offending within any reserved land against any provision of this Act, an authorised officer may require the person to leave the reserved land.

**(3)** The owner or occupier, or an employee or agent of an owner or occupier, of any land may require any person trespassing on that land whom he or she has reasonable grounds for believing has committed, or is committing, an offence against this Act –

- (a) to state his name and residential address; and
- (b) to leave that land.

**(4)** A person who, when required under this section to state his or her name and residential address, fails or refuses to do so, or gives a name or residential address that is false, is guilty of an offence.

(5) A person who, when required under this section to leave any land, refuses to do so, or does not do so with reasonable expedition, is guilty of an offence.

### **Production of licences, &c.**

**50.** An authorised officer may require any person to produce any licence, permit or other document issued to the person under this Act or the *National Parks and Reserves Management Act 2002* and any person who fails or refuses to comply with such a requirement is guilty of an offence.

### **Powers and functions of seizure**

**51. (1)** If an authorised officer has reasonable grounds for believing that an offence has been committed under this Act with respect to any wildlife, the products of any wildlife or any plant, the authorised officer may seize one or more of the following:

- (a) that wildlife, those products or that plant;
- (b) any products of that wildlife.

(2) An authorised officer is to seize any hunting equipment that the officer has reasonable grounds for believing has been or is being used in, or in connection with, the commission of an offence under this Act.

(3) An authorised officer may seize any thing that the officer has reasonable grounds for believing has been taken by, or is in the possession of, a person contrary to the provisions of this Act.

(4) An authorised officer may seize a licence, permit or other document issued under this Act if the officer has reasonable grounds for believing that the holder of the

licence, permit or other document has committed an offence under this Act.

**(5)** An authorised officer may seize any record or document –

- (a) relating to trade in wildlife or other wildlife matters; or
- (b) that appears to indicate that an offence under this Act has been, or is being, committed.

**(6)** An authorised officer may seize any living thing that he or she has reasonable grounds for believing has been used for the purpose of taking wildlife contrary to the provisions of this Act.

**(7)** If any hunting equipment, licence, permit, record or other document or any other animate or inanimate thing is seized under this Act, the person by whom it was seized may, subject to the directions of the Secretary or some person authorised by the Secretary, retain it until the determination of any proceedings that may be instituted in respect of an offence against this Act against the person from whom it was seized.

**(8)** If any hunting equipment, licence, permit, record or other document or any other animate or inanimate thing has been seized from any person under this Act and no proceedings have been instituted against that person for an offence on conviction for which it may be forfeited to the Crown, a court of petty sessions, on the application of that person, may direct it to be returned to that person and, on the making of that direction, the authority under subsection (7) to retain it ceases.

**(9)** A person who, when required to do so by an authorised officer, refuses to deliver to that officer any hunting equipment, licence, permit, record or other document, or any other animate or inanimate thing, that

the officer is entitled to seize under this Act is guilty of an offence.

### **Powers of entry and search**

**52. (1)** If an authorised officer has reason to believe that any thing which he or she is entitled to seize under this Act is in or on any premises, conveyance or container, the officer may search those premises, that conveyance or that container.

**(2)** An authorised officer may inspect and search any premises or conveyance where –

- (a) any wildlife, any products of wildlife or any plants are kept for sale, or offered or exposed for sale; or
- (b) the authorised officer has reasonable grounds for believing that any wildlife, any products of wildlife or any plants are kept for sale, or offered or exposed for sale.

**(3)** An authorised officer may inspect and search any premises at which any person, under any licence or permit issued or granted under the wildlife regulations or section 29, is authorised to keep or have in possession any wildlife.

**(4)** For the purposes of conducting a search under this section in a conveyance, an authorised officer may require that conveyance to be stopped and, if it is on reserved land or on any water, the authorised officer may bring it, or cause or require it to be brought, to some convenient place for the search to be carried out.

**(5)** In exercising the powers conferred, or in performing the functions imposed, by section 51 or this

section, an authorised officer may do any or all of the following things at all reasonable times, without warrant:

- (a) enter any premises, conveyance or container;
- (b) in any premises, conveyance or container lawfully entered, search for, examine, make copies of or take extracts from any record or other document –
  - (i) relating to trade in wildlife or other wildlife matters; or
  - (ii) that appears to indicate that an offence under this Act has been, or is being, committed;
- (c) in any premises, conveyance or container lawfully entered, open any container.

**(6)** For the purpose of facilitating the exercise of his or her powers under this section in respect of any premises, conveyance or container, an authorised officer may require the person apparently in charge of those premises, that conveyance or that container, or any of the person's employees or agents, to afford the authorised officer such assistance as he or she may require.

**(7)** A person who, without reasonable excuse (the proof of which lies on that person) refuses or fails to comply with any requirements made to him or her by an authorised officer under this section is guilty of an offence.

**(8)** In exercising the powers conferred, or in performing the functions imposed, by section 51 or this section, an authorised officer must not enter any premises, or any part of any premises, used as a principal residence except where the officer has obtained a warrant under subsection (9) or the permission of the occupier to enter the residence.

**(9)** If a magistrate or justice is satisfied, on the application of an authorised officer, that there is reasonable cause to permit entry to any premises, or any part of any premises, used as a principal residence, the magistrate or justice may issue a warrant authorising an authorised officer to enter the premises or the part of premises specified in the warrant for the purposes of exercising the powers conferred, and the functions imposed, by section 51 or this section in those premises or that part.

**(10)** A warrant issued under subsection (9) –

- (a) is valid for a period of 30 days; and
- (b) authorises all persons acting in aid of an authorised officer to enter the premises, or the part of premises, specified in the warrant.

### **Powers of arrest**

**53.** An authorised officer may arrest, without warrant, any person found offending who –

- (a) fails or refuses, on demand, to give his or her full name and residential address; or
- (b) gives any name or residential address that the officer has reasonable grounds for believing is false; or
- (c) does not deliver up to that officer, on demand, any thing in his or her possession or under his or her control, that the officer is entitled to seize under this Act.

**Commencing proceedings**

**54.** Despite section 26 of the *Justices Act 1959*, proceedings for a summary offence against this Act may be commenced within 5 years after the act or omission giving rise to the proceedings occurred.

**Penalty**

**55.** A person who is guilty of an offence against this Part is liable to a fine not exceeding 10 penalty units or imprisonment for a term not exceeding 6 months, or both.

**Production and cancellation of licences, &c., in offence proceedings**

**56. (1)** The holder of a licence, permit or other document issued under this Act who is charged with an offence under this Act must produce the licence, permit or other document to the court which is hearing the charge except where the holder has a reasonable excuse for not doing so.

Penalty: Fine not exceeding 2 penalty units.

**(2)** If a person fails to comply with subsection (1) in respect of any charge, the court before which he or she is charged may immediately, and on its own knowledge of the offence, convict him or her of the offence and impose a penalty on that conviction.

**(3)** If a person is convicted of an offence under this Act, the court may make an order doing any one or more of the following in addition to, or instead of, imposing any other penalty:

- (a) cancelling any licence, permit or other document issued to the person under this Act;

- (b) prohibiting the person from applying for, or being granted or issued, a licence, permit or other document under this Act for the period specified in the order;
- (c) prohibiting the person from being in possession or control of any hunting equipment for the period specified in the order.

(4) The cancellation of a licence, permit or other document under subsection (3) takes effect on the day on which the order is made.

(5) If a licence, permit or other document is ordered to be cancelled under subsection (3), the clerk of the court is to, if that licence, permit or other document is available to the clerk –

- (a) endorse on that licence, permit or other document a statement that the licence, permit or other document has been cancelled; and
- (b) cause that licence, permit or other document to be delivered to the Secretary.

### **Cancellation of firearms licence**

**57. (1)** In this section, “**firearms licence**” has the same meaning as in the *Firearms Act 1996*.

(2) If a person is convicted of an offence against this Act and the behaviour constituting the offence involved the use of a firearm, the court may, in addition to imposing any other penalty, make an order doing any one or more of the following:

- (a) cancelling or suspending a firearms licence held by that person;



- (b) prohibiting the person from applying for, or being granted or issued, a firearms licence during the period specified in the order.

(3) The clerk of the court which made an order under subsection (2) must provide the Commissioner of Police with a copy of the order.

(4) On receipt of a copy of an order provided under subsection (3), the Commissioner of Police must, by notice in writing served on the person to whom the order relates, notify that person of the terms of the order and require that person to surrender to the Commissioner of Police any firearms licence and any firearm held by the person.

(5) The cancellation or suspension of a firearms licence under this section takes effect when the notice referred to in subsection (4) is served on the holder of the licence.

(6) A notice referred to in subsection (4) is effectively served on a person if it is –

- (a) given to the person; or
- (b) left at, or sent by post to, the person's postal or residential address or the place or address of business or employment last known to the server of the notice.

### **Contravention of order under section 56(3)**

**58. (1)** A person who contravenes or fails to comply with an order made under section 56(3)(c) is guilty of an offence.

(2) If an authorised officer has reasonable grounds for believing that a person has committed an offence under subsection (1), the authorised officer may, without warrant –

- (a) arrest that person; and
- (b) for the purpose of arresting that person –
  - (i) enter, by force if necessary, any premises on which the authorised officer has reasonable grounds for believing that person is present; and
  - (ii) search those premises.

### **Forfeiture of articles, &c., on conviction**

**59. (1)** Any wildlife, products of wildlife or plants taken, had in possession, bought, sold, dealt with, exported or disposed of in contravention of this Act are forfeited to the Crown, and the conviction of any person for any such contravention has effect as a condemnation of that wildlife, those products or those plants without the necessity of a complaint being laid for that condemnation.

**(2)** On the conviction of a person of an offence under this Act, hunting equipment is forfeited to the Crown –

- (a) if it was used in, or in connection with, the commission of that offence; or
- (b) if the offence was committed in relation to it.

**(3)** On convicting a person of an offence under this Act, the court may order hunting equipment referred to in subsection (2) to be returned to another person if the court is satisfied that –

- (a) the other person owns or has an interest in the equipment; and
- (b) the equipment was used in or in connection with the commission of the offence, or the offence was committed in relation to the

equipment, without the consent of the other person; and

- (c) it would be unjust to the other person for the equipment to be forfeited to the Crown.

(4) On conviction for an offence under this Act, the court may declare forfeited to the Crown anything seized under section 51(3).

(5) Any wildlife, products of wildlife, plants, hunting equipment or other things forfeited under this section are to be disposed of in the prescribed manner or, if no manner is prescribed, as the Secretary determines.

### **Compensation on conviction for offences**

**60. (1)** In this section, “**appropriate authority**” means the owner (if any) of the property or creature in respect of which the sum was ordered to be paid.

(2) If a person is convicted of an offence under this Act and, in or as a result of the commission of that offence, damage or injury was caused to any property or any wildlife was taken, the court by which the person is convicted may, in addition to, or instead of, imposing any penalty or making any other order on that conviction, order that person to pay to the appropriate authority such sum as it thinks reasonable by way of compensation for the damage or injury or the taking of the wildlife.

### **Protection of authorised officers**

**61.** No action lies in respect of the giving of advice, or the failure to give advice, by any authorised officer while he or she is acting in good faith in the administration of this Act.

## PART 7 – INFRINGEMENT NOTICES

### Interpretation

**62. (1)** In this Part –

**“approved”** means approved by the Secretary;

**“infringement notice”** means an infringement notice served under section 63(1);

**“specified penalty”** means the penalty specified in an infringement notice;

**“withdrawal notice”** means a withdrawal notice served under section 64(2).

**(2)** A reference in this Part to the withdrawal of an infringement notice is a reference to the withdrawal of the notice under section 64.

### Service and acceptance of infringement notices

**63. (1)** An authorised officer may serve an infringement notice on a person if of the opinion that the person has committed a prescribed offence.

**(2)** An infringement notice is to –

- (a) be in an approved form; and
- (b) specify –
  - (i) the offence to which it relates; and
  - (ii) the penalty for that offence; and
  - (iii) that payment of the penalty is to be to a court of petty sessions; and

(iv) any other prescribed details.

(3) An infringement notice is to state that the person on whom it is served may disregard the notice but that on doing so he or she may be prosecuted for the offence to which the notice relates.

(4) Subject to subsection (5), a person may accept an infringement notice, unless it has been withdrawn, by –

- (a) paying within 21 days of being served with the notice the specified penalty to a clerk of petty sessions; or
- (b) lodging with a clerk of petty sessions within 21 days of being served with the notice a written undertaking to pay the specified penalty by any instalments or within any time that clerk may direct.

(5) If an infringement notice served on a person has not been accepted by the person in either of the ways prescribed in subsection (4) at the expiry of the appropriate period prescribed in that subsection, the clerk of petty sessions, by written notification to that person, may allow that person an additional period of 14 days commencing on the expiry of the first-mentioned period in which to accept the infringement notice.

(6) A clerk of petty sessions may, at any time before a complaint and summons is issued for the relevant offence, accept payment of the prescribed penalty or a written undertaking to pay the penalty either wholly or by instalments within such time as the clerk may direct.

(7) If an infringement notice in respect of a prescribed offence has been served on a person, proceedings are not to be brought against that person for that offence if the notice has been accepted and has not been withdrawn.

**(8)** Whether or not an infringement notice is accepted, proceedings are not to be brought within the period of –

- (a) 28 days following the service of the notice, if the person has not been allowed an additional period under subsection (5); or
- (b) 42 days following the service of the notice, if the person has been allowed such an additional period –

unless the notice has been withdrawn.

**(9)** If an infringement notice in respect of an offence has been accepted by a person and has not been withdrawn, that acceptance, in relation to proceedings for any other offence, is to be treated as a conviction for the offence in respect of which the notice was served unless the court before which those proceedings are taken is satisfied that it is unjust that it should be so treated.

**(10)** Acceptance of an infringement notice is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil claim, action or proceeding.

### **Withdrawal of infringement notices**

**64. (1)** An infringement notice that has been served on any person may, whether or not it has been accepted, be withdrawn as provided in subsection (2) at any time within the period of –

- (a) 28 days following the service of the notice, if the person has not been allowed an additional period under section 63(5); or

- (b) 42 days following the service of the notice, if the person has been allowed such an additional period.

(2) For the purposes of subsection (1), an infringement notice served on a person is withdrawn by the service on that person of a withdrawal notice signed by an authorised officer and stating that the infringement notice has been withdrawn.

(3) If an infringement notice has been withdrawn under this section and any sums have been paid to a clerk of petty sessions by way of penalty in pursuance of that notice, that clerk is to repay the sums so paid to the person on whom the notice was served.

(4) If an infringement notice has been served in respect of an offence and has been withdrawn, evidence of the service, acceptance or withdrawal of the notice is not admissible in any proceedings for that offence.

### **Effect of undertaking to pay a prescribed penalty**

**65. (1)** If an undertaking referred to in section 63(4)(b) is lodged with a clerk of petty sessions, the clerk is to give directions to the person by whom the undertaking is given requiring the person to pay the penalty to which the undertaking relates in such instalments or within such time as may be specified in the directions.

(2) Before giving a direction under subsection (1) with respect to any person, the clerk is to consider any representations made to the clerk by or on behalf of that person, whether at the time the undertaking is lodged or otherwise, with respect to the person's financial circumstances.

(3) In giving directions under subsection (1), the clerk is to give such directions as, having regard to any

representations referred to in subsection (2) made to the clerk and all the circumstances of the case, the clerk considers just and reasonable.

(4) If a person fails to comply with any direction given under subsection (1), the like proceedings may be had in respect of so much of the penalty to which the directions relate as remains unpaid as if the penalty were a penalty imposed on the person on summary conviction for an offence.

### **Service of notices**

**66. (1)** An infringement notice is to be served on a person by an authorised officer delivering it to the person.

(2) A withdrawal notice is to be served on a person by delivering it to the person or by post.

(3) A notification under section 63(5) by a clerk of petty sessions is to be served on a person by sending it by post addressed to the person at the place shown as his or her address in the relevant infringement notice.

### **Penalty to be paid into Consolidated Fund**

**67.** Any sum paid to a clerk of petty sessions under this Part by way of penalty is to be paid into the Consolidated Fund.

### **Regulations for this Part**

**68.** Without limiting the matters in respect of which the regulations may be made, the regulations may make provision for the purposes of this Part, including but not limited to, the following matters:



- (a) providing that a contravention of any of the regulations is a prescribed offence for the purposes of this Part;
- (b) providing, in respect of such an offence, for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

## PART 8 – MISCELLANEOUS

### Capacity, &c., to consent

**69. (1)** A body corporate may give any consent for the purposes of this Act, notwithstanding that, apart from this subsection, it would have no power or capacity to give that consent.

**(2)** Nothing in this Act entitles the owner of any land to give any consent for the doing of anything in relation to that land in derogation of the estate of any other person in occupation of that land without the consent of that other person.

### Assistance to officers

**70. (1)** In this section, “**officer**” means the Secretary, a person employed in the Department or a ranger.

**(2)** If a person has been requested to assist an officer carrying out his or her functions under this Act and is willing to do so, another person must not, either directly or indirectly, prevent, dissuade, hinder, impede or obstruct that person from assisting that officer or from proceeding to a place for the purpose of assisting that officer.

### Compensation for injury or death occurring in the course of official duty, &c.

**71. (1)** In this section –

“**dependants**” has the same meaning as it has in the *Workers Rehabilitation and Compensation Act 1988*;

**“officer”** means the Secretary, a person employed in the Department or a ranger.

**(2)** If –

- (a) a ranger is killed or suffers personal injury in the course of carrying out official functions or dies as a result of personal injury so suffered; or
- (b) a person (not being an officer) is killed or suffers personal injury in the course of assisting an officer carrying out official functions under the supervision of that officer, or dies as a result of personal injury so suffered –

and that ranger or other person is not, or as the case may be, his or her dependants are not, entitled to compensation under the *Workers Rehabilitation and Compensation Act 1988* in respect of the injury or death, that ranger or other person is, or in the case of his or her death, his or her dependants are, entitled to compensation as provided in this section.

**(3)** A ranger or other person is taken to be carrying out official functions –

- (a) when he or she is carrying out any functions or exercising any powers conferred on him or her by this Act; or
- (b) while he or she is travelling in either direction between his place of residence or place of employment and the place at which those functions are being, are to be or have been carried out.

**(4)** A person is taken to be assisting an officer carrying out official functions while he or she is travelling in either direction between his or her place of residence or

place of employment and the place at which those functions are being, are to be or have been carried out.

(5) Subject to subsection (6), the compensation payable to a ranger or other person under this section is to be such amount as the Governor, on the recommendation of the Secretary, determines.

(6) Compensation under this section is to be calculated in accordance with the *Workers Rehabilitation and Compensation Act 1988*.

(7) A ranger or other person by whom, or on whose behalf, compensation under this section is claimed is to, if so required by the Secretary, submit to the Secretary such evidence in support of his or her claim, and such medical certificates, as the Secretary requires, and such other information, if any, as may be prescribed.

(8) The compensation payable to a ranger or other person under this section is to be defrayed out of moneys to be provided by Parliament for the purpose.

### **Gifts for conservation purposes**

**72. (1)** If any money or other property is given, devised or bequeathed for any conservation purpose under this Act, that money, or the proceeds of the realisation of that property, may be paid into a special deposit account or trust account established under Part III of the *Public Account Act 1986*, and the moneys for the time being standing to the credit of that account are not to be applied otherwise than for that purpose.

(2) Any interest arising from the investment of moneys paid into a special deposit account or trust account established pursuant to this section is to be paid into that account.

(3) Nothing in this section prejudices or affects the operation of any trust to which any money or other property is subject.

### **Aboriginal cultural activities on Aboriginal land**

73. (1) In this section –

**“Aboriginal cultural activity”** means the activity of hunting, fishing or gathering undertaken by an Aboriginal person for his or her personal use based on Aboriginal custom of Tasmania as passed down to that Aboriginal person;

**“Aboriginal land”** has the same meaning as in the *Aboriginal Lands Act 1995*;

**“Aboriginal person”** has the same meaning as in the *Aboriginal Lands Act 1995*.

(2) Nothing in this Act precludes an Aboriginal cultural activity by an Aboriginal person on Aboriginal land, so long as that activity is not likely, in the opinion of the Minister, to have a detrimental effect on fauna and flora and is consistent with this Act.

### **Expenses of Act**

74. (1) In this section, **“special account”** means a trust account established under subsection (3).

(2) Except as otherwise expressly provided by this Act, all moneys received by, or on behalf of, the Minister, the Minister for Crown Lands or the Secretary under this Act are to be paid into the Consolidated Fund, and the expenses incurred in the administration of this Act are to be defrayed out of moneys provided by Parliament for the purpose.

(3) In accordance with Part III of the *Public Account Act 1986*, trust accounts may be established with respect to any matter for which the Secretary has responsibility under this Act.

(4) Except as the Treasurer otherwise directs, all moneys received by, or on behalf of, the Secretary for the purposes of a special account are to be paid into that account.

(5) Except as the Treasurer otherwise directs, the moneys for the time being standing to the credit of a special account are to be applied, as the Secretary determines, in meeting expenses incurred in connection with the matter for which the account was established.

### **Delegation by Minister**

**75.** The Minister may delegate any of his or her functions or powers under this Act other than this power of delegation.

### **Regulations**

**76. (1)** The Governor may make regulations for the purposes of this Act.

(2) Nothing in the regulations prohibits the doing of anything required to be done for the purposes of complying with any other Act.

(3) Without limiting the generality of subsection (1) regulations made under this subsection may make provision for or with respect to –

- (a) the payment and collection of fees by any person in relation to any act, matter or thing done or arising under this Act; and

- (b) the remission of, or exemption from liability for, any such fees.

(4) The regulations may –

- (a) be of general or specially limited application; and
- (b) apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations; and
- (c) authorise any matter to be from time to time determined, applied or regulated by the Minister, the Secretary or another person performing functions under this Act as specified in the regulations.

(5) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or the *National Parks and Reserves Management Act 2002*.

(6) A provision referred to in subsection (5) may take effect on and from the day on which this Act commences or a later day.

(7) The regulations may rescind regulations or other subordinate legislation made under the *National Parks and Wildlife Act 1970*.

### **Savings and transitional provisions**

**77.** The savings and transitional provisions set out in Schedule 4 have effect.

**Administration of Act**

**78.** Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Primary Industries, Water and Environment; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Primary Industries, Water and Environment.



**SCHEDULE 1 – DETERMINATION OF CLASS OF  
RESERVED LAND**

Sections 3 and 16

	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Class of reserved land</b>	<b>Values of land</b>	<b>Purposes of reservation</b>
1.	National park	A large natural area of land containing a representative or outstanding sample of major natural regions, features or scenery.	The protection and maintenance of the natural and cultural values of the area of land while providing for ecologically sustainable recreation consistent with conserving those values.
2.	State reserve	<p>An area of land containing any of the following:</p> <p>(a) significant natural landscapes;</p> <p>(b) natural features;</p> <p>(c) sites, objects or places of significance to Aboriginal people.</p>	<p>The protection and maintenance of any one or more of the following:</p> <p>(a) the natural and cultural values of the area of land;</p> <p>(b) sites, objects or places of significance to Aboriginal people contained in that area of land;</p> <p>(c) use of the area of land by Aboriginal people –</p>

	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Class of reserved land</b>	<b>Values of land</b>	<b>Purposes of reservation</b>
3.	Nature reserve	<p>An area of land that contains natural values that –</p> <p>(a) contribute to the natural biological diversity or geological diversity of the area of land, or both; and</p> <p>(b) are unique, important or have representative value.</p>	<p>while providing for ecologically sustainable recreation consistent with conserving any of the things referred to in paragraphs (a), (b) and (c), as applicable.</p> <p>The conservation of the natural biological diversity or geological diversity of the area of land, or both, and the conservation of the natural values of that area of land that are unique, important or have representative value.</p>

	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Class of reserved land</b>	<b>Values of land</b>	<b>Purposes of reservation</b>
4.	Game reserve	An area of land containing natural values that are unique, important or have representative value particularly with respect to game species.	The conservation of the natural values of the area of land that are unique, important or have representative value, the conservation of the natural biological diversity or geological diversity of that area of land, or both, and the ecologically sustainable hunting of game species in that area of land.
5.	Conservation area	An area of land predominantly in a natural state.	The protection and maintenance of the natural and cultural values of the area of land and the sustainable use of the natural resources of that area of land.
6.	Nature recreation area	An area of land –  (a) predominantly in a natural state; or	Public recreation and education consistent with conserving the natural and cultural values of the area of land.

	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Class of reserved land</b>	<b>Values of land</b>	<b>Purposes of reservation</b>
7.	Regional reserve	<p>(b) containing sensitive natural sites of significance for recreation.</p> <p>An area of land –</p>	Mineral exploration and the development of mineral deposits in the area of land, and the controlled use of other natural resources of that area of land, while protecting and maintaining the natural and cultural values of that area of land.
8.	Historic site	<p>(a) with high mineral potential or prospectivity; and</p> <p>(b) predominantly in a natural state.</p> <p>An area of land of significance for historic cultural heritage.</p>	The conservation of the historic features of the area of land and the presentation of those features for public appreciation and education.

	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Class of reserved land</b>	<b>Values of land</b>	<b>Purposes of reservation</b>
9.	Private sanctuary	An area of land that has significant natural or cultural values, or both.	The protection and maintenance of the natural or cultural values of the area of land, or both, while permitting the carrying out of agricultural or other activities on that land consistent with conserving those values.
10.	Private nature reserve	<p>An area of land that contains natural values that –</p> <p>(a) contribute to the natural biological diversity or geological diversity of the area of land, or both; and</p> <p>(b) are unique, important or have representative value.</p>	The conservation of the natural biological diversity or geological diversity of the area of land, or both, and the conservation of the natural values of that area of land that are unique, important or have representative value.

**SCHEDULE 2 – OBJECTIVES OF THE RESOURCE  
MANAGEMENT AND PLANNING SYSTEM OF  
TASMANIA**

Section 3(1)

**1.** The objectives of the resource management and planning system of Tasmania are –

- (a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and
- (b) to provide for the fair, orderly and sustainable use and development of air, land and water; and
- (c) to encourage public involvement in resource management and planning; and
- (d) to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c); and
- (e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.

**2.** In item 1(a), “**sustainable development**” means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety while –

- (a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and

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- (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
- (c) avoiding, remedying or mitigating any adverse effects of activities on the environment.

**SCHEDULE 3 – REGISTRATION OF  
PROCLAMATIONS REFERRED TO IN SECTION 22**

Section 22

**Interpretation**

**1.** In this Schedule, “**Register**” has the same meaning as it has in the *Land Titles Act 1980*.

**Registering proclamations under section 22(1)**

**2. (1)** A proclamation required to be registered under section 22(1) is to be registered by lodging with the Recorder –

- (a) a copy of the proclamation; and
- (b) particulars of the title to the land to which the proclamation relates that is not Crown land or land vested in a public authority.

**(2)** If a proclamation has been lodged under subclause (1), the Recorder is to record the proclamation on the folio of the Register constituting the title to the land to which the proclamation relates that is not Crown land or land vested in a public authority.

**Procedure where land not under *Land Titles Act 1980***

**3. (1)** If the whole or any part of the land referred to in clause 1(1)(b) is not under the *Land Titles Act 1980*, the Recorder is to bring under that Act so much of the land that is not under that Act by registering a qualified title to it in accordance with section 21 of that Act.



(2) If part only of the land referred to in clause 1(1)(b) to which a proclamation relates is required to be brought under the *Land Titles Act 1980* by this clause, the Recorder is to issue a consolidated title to the whole of the land and for that purpose may call in and cancel in accordance with section 163 of that Act the certificates of title to the parts of the land.

(3) The Recorder is not bound, for the purposes of subclause (1), to investigate the title to any land.

**Registering proclamations under section 22(2) and (3)**

**4. (1)** A proclamation required to be registered under subsection (2) or (3) of section 22 –

- (a) is to contain particulars of the title to the area of the private sanctuary or private nature reserve –
  - (i) to which it relates, in the case of a proclamation required to be registered under subsection (2) of that section; or
  - (ii) ceasing to be, or to form part of, reserved land in the class of private sanctuary or private nature reserve by virtue of the proclamation, in any other case; and
- (b) is to be registered by lodging with the Recorder a copy of the proclamation.

(2) If a proclamation has been lodged under subclause (1), the Recorder is to record on the folio of the Register constituting the title to the area of the private sanctuary or private nature reserve to which the proclamation relates –

- (a) particulars of the alteration or name contained in the proclamation, in the case of a proclamation required to be registered under section 22(2); or
- (b) a statement that that area of land has ceased to be, or to form part of, reserved land in the class of private sanctuary or private nature reserve declared by the proclamation previously registered in respect of that land, in any other case.

**Registration fee not payable**

**5.** A fee is not payable in respect of the registration of a proclamation in accordance with this Schedule.

## **SCHEDULE 4 – SAVINGS AND TRANSITIONAL PROVISIONS**

Section 77

### **Interpretation**

**1.** In this Schedule –

**“commencement day”** means the day on which the *National Parks and Reserves Management Act 2002* and this Act commence;

**“repealed Act”** means the *National Parks and Wildlife Act 1970* and any subordinate legislation made and in force under that Act immediately before the commencement day.

### **Reserved land**

**2.** An area of land that immediately before the commencement day was reserved land, within the meaning of the repealed Act, in a class referred to in section 15 of the repealed Act is taken to be reserved land in the corresponding class under this Act with the same name as it had under the repealed Act.

### **Licences, permits and other authorities**

**3.** A licence, permit or other authority issued and in force, immediately before the commencement day, under a provision of the repealed Act in respect of which there is a corresponding provision in this Act is taken to have been issued and to be in force under that corresponding provision of this Act.

**Conservation covenants**

**4. (1)** A conservation covenant, within the meaning of the repealed Act, that was made and in force, immediately before the commencement day, under the repealed Act is taken to have been made and to be in force as a conservation covenant under this Act.

**(2)** Subject to subclause (4), a reference in a conservation covenant referred to in subclause (1) to the Director is taken to be a reference to the Secretary.

**(3)** At any time on or after the commencement day and with the consent of the Director, the Secretary may determine, by notice provided to the owner of the land subject to the conservation covenant affected by the determination, the Director and the Recorder, that a reference in a conservation covenant referred to in subclause (1) to the Director that is taken, by reason of subclause (2), to be a reference to the Secretary is to be taken to be a reference to the Director.

**(4)** On and after the day on which the notice of a determination under subclause (3) is provided to the last of the persons required to be provided with that notice under that subsection, the reference to which the determination relates is taken to be a reference to the Director.

**Management agreements and other documents related to conservation covenants**

**5. (1)** A management agreement, within the meaning of the repealed Act, that was made and in force immediately before the commencement day under the repealed Act is taken to have been made and to be in force as a management agreement under this Act.

**(2)** A document in force immediately before the commencement day relating to a conservation covenant

referred to in clause 4(1), or management agreement, referred to in subclause (1), is taken to have been made and to be in force under this Act.

(3) Subject to subclause (5), a reference in a management agreement or document referred to in subclause (1) or (2) to the Director is taken to be a reference to the Secretary.

(4) At any time on or after the commencement day and with the consent of the Director, the Secretary may determine, by notice provided to the owner of the land subject to the conservation covenant affected by the determination and the Director, that a reference in a management agreement or document referred to in subclause (1) or (2) to the Director that is taken, by reason of subclause (3), to be a reference to the Secretary is to be taken to be a reference to the Director.

(5) On and after the day on which the notice of a determination under subclause (4) is provided to the last of the persons required to be provided with that notice under that subsection, the reference to which the determination relates is taken to be a reference to the Director.

### **Rangers**

6. The appointment of a ranger under the repealed Act continues and is taken to be an appointment as a ranger under this Act.

### **Wildlife regulations and other subordinate legislation**

7. The *Wildlife Regulations 1999*, and any orders in force immediately before the commencement day under

section 35A of the repealed Act, are taken to have been made under this Act.