

**NATIONAL PARKS AND WILDLIFE (CONSERVATION
AGREEMENTS) AMENDMENT ACT 1987 No. 158**

NEW SOUTH WALES



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**NATIONAL PARKS AND WILDLIFE (CONSERVATION
AGREEMENTS) AMENDMENT ACT 1987 No. 158**

NEW SOUTH WALES



Act No. 158, 1987

An Act to amend the National Parks and Wildlife Act 1974 with respect to conservation agreements and conservation areas. [Assented to 18 November 1987]

See also Miscellaneous Acts (National Parks and Wildlife) Amendment Act 1987.

*National Parks and Wildlife (Conservation Agreements) Amendment 1987***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the National Parks and Wildlife (Conservation Agreements) Amendment Act 1987.

Amendment of Act No. 80, 1974

2. The National Parks and Wildlife Act 1974 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS RELATING TO CONSERVATION AGREEMENTS

(Sec. 2)

(1) Section 5 (Interpretation)—

Section 5 (1)—

After the definition of “community service”, insert:

“conservation agreement” means an agreement entered into under Division 7 of Part IV;

“conservation area” means land subject to a conservation agreement;

(2) Section 8 (Miscellaneous powers and functions of Director)—

Section 8 (6A)—

After section 8 (6), insert:

(6A) The Director may—

- (a) consider and investigate proposals in relation to existing or proposed conservation areas;
- (b) enter into negotiations on behalf of the Minister in relation to existing or proposed conservation areas; and
- (c) in the case of every conservation area, but subject to the terms of the conservation agreement concerned—
 - (i) promote such educational activities as the Director considers necessary in respect of the area;
 - (ii) arrange for the carrying out of such works as the Director considers necessary for or in connection with the management and maintenance of the area;
 - (iii) undertake such scientific research as the Director considers necessary for or in connection with the preservation, protection, management and use of the area; and
 - (iv) take such other action as the Director considers

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necessary for or in connection with the carrying out of directions by the Minister relating to existing or proposed conservation agreements.

(3) Section 12 (**Powers and functions of Service**)—

Omit “and for the exploration of lands with the object of discovering relics”, insert instead “, for the exploration of lands with the object of discovering relics and in relation to conservation agreements and conservation areas”.

(4) Section 23 (**Functions and duties of Council**)—

Section 23 (1) (a)—

Omit “, and to the preservation and protection of wildlife,”, insert instead “, to the preservation and protection of wildlife, and to conservation agreements and conservation areas,”.

(5) Part IV, Division 7—

After section 69, insert:

DIVISION 7—*Conservation agreements***Definitions**

69A. (1) In this Division—

“development”, in relation to a conservation area, means—

- (a) the erection of a building in that area;
- (b) the carrying out of a work in, on, over or under that area;
- (c) the use of that area or of a building or work in that area;
- (d) the subdivision of that area; and
- (e) the clearing of vegetation in that area;

“owner”, in relation to land, includes a person who leases land under the Crown Lands Consolidation Act 1913, the Closer Settlement Acts or the Western Lands Act 1901;

“statutory authority” means—

- (a) a Government Department;
- (b) an Administrative Office within the meaning of the Public Service Act 1979;
- (c) a city, municipal, shire or county council; and
- (d) any other body constituted by or under an Act.

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(2) A reference in this Division to the carrying out of development includes a reference to the erection of a building, the carrying out of a work, the use of land or of a building or work, the subdivision of land or the clearing of vegetation.

(3) A reference in this section—

- (a) to the erection of a building includes a reference to the rebuilding of, the making of structural alterations to, or the enlargement or extension of a building or the placing or relocating of a building on land;
- (b) to the carrying out of a work includes a reference to the rebuilding of, the making of alterations to, or the enlargement or extension of, a work; and
- (c) to the subdivision of land is a reference to—
 - (i) (without limiting the following provisions of this paragraph) the subdivision of land within the meaning of the Local Government Act 1919;
 - (ii) any other division of land into 2 or more parts which, after the division, would be obviously adapted for separate occupation, use or disposition; or
 - (iii) the redivision of land into different parts which, after the redivision, would be obviously adapted for separate occupation, use or disposition,
 and includes a reference to a subdivision effected under the Strata Titles Act 1973.

Conservation agreements

69B. (1) The Minister may enter into a conservation agreement relating to land with the owner of the land.

(2) The Minister shall not enter into a conservation agreement for land leased under the Crown Lands Consolidation Act 1913, the Closer Settlement Acts or the Western Lands Act 1901, except with the consent of the Minister administering the relevant Act.

(3) The Minister shall not enter into a conservation agreement relating to land unless—

- (a) all the owners of the land are parties to the agreement or have consented in writing to the agreement;
- (b) where the land (not being land referred to in subsection (2)) is subject to a residential tenancy agreement or other lease, the tenant or the lessee has consented in writing to the conservation agreement; and

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- (c) where the land is subject to a mortgage, charge or positive covenant, the mortgagee, chargee or person entitled to the benefit of the covenant has consented in writing to the agreement.

Purpose and content of agreements

69c. (1) A conservation agreement may be entered into—

- (a) in relation to areas containing scenery, natural environments or natural phenomena worthy of preservation;
- (b) in relation to areas of special scientific interest;
- (c) in relation to areas that are the sites of buildings, objects, monuments or events of national significance;
- (d) in relation to areas in which relics, or Aboriginal places, of special significance are situated;
- (e) for the purpose of the study, preservation, protection, care or propagation of fauna or native plants or other flora; or
- (f) for any purpose connected with an area or purpose referred to in paragraph (a), (b), (c), (d) or (e).

(2) A conservation agreement may contain terms, binding on the owner from time to time of the conservation area—

- (a) restricting the use of the area;
- (b) requiring the owner to refrain from or not to permit specified activities in the area;
- (c) requiring the owner to carry out specified activities or do specified things;
- (d) requiring the owner to permit access to the area by specified persons;
- (e) requiring the owner to contribute towards costs incurred which relate to the area or the agreement;
- (f) specifying the manner in which any money provided to the owner under the agreement shall be applied by the owner;
- (g) requiring the owner to repay money paid to the owner under the agreement if a specified breach of the agreement occurs; or
- (h) providing for any other matter relating to the conservation or enhancement of the area, including the implementation of any plan of management for the area.

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(3) A conservation agreement may contain terms, binding on the Minister—

- (a) requiring the Minister to provide financial assistance;
- (b) requiring the Minister to provide technical advice;
- (c) requiring the Minister to provide other assistance;
- (d) requiring the Minister to carry out specified activities or do specified things; or
- (e) providing for any other matter relating to the conservation or enhancement of the conservation area, including the implementation of any plan of management for the area.

Duration and variation of agreements

69D. (1) A conservation agreement shall have effect from a day, or on the happening of an event, specified in the agreement.

(2) An agreement may be varied by a subsequent agreement between the Minister and the owner of the conservation area.

(3) An agreement shall have effect until it is terminated by consent of both the Minister and the owner of the conservation area or in any such other manner or in such circumstances as may be set out in the agreement.

(4) An agreement may be varied or terminated by the Minister, by order published in the Gazette, without the consent of the owner of the conservation area, if the Minister is of the opinion that the area is no longer needed for, or is no longer capable of being used to achieve, any purpose for which the agreement was entered into.

(5) A copy of the order shall be laid before each House of Parliament within the prescribed time after publication of the order.

(6) If an agreement is varied by the Minister under subsection (4), the owner of the conservation area may, by written notice given to the Minister, terminate the agreement.

(7) The owner of a conservation area is not entitled to any compensation as a result of any variation or termination of an agreement by the Minister under subsection (4).

Agreements to run with land

69E. (1) A conservation agreement which has been registered by the Registrar-General and which is in force is binding on, and enforceable by and against, the successors in title to the owner

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who entered into the agreement and those successors in title shall be deemed to have notice of the agreement.

(2) In this section—

“successors in title” includes a mortgagee, chargee, covenant chargee or other person, in possession of a conservation area pursuant to a mortgage, charge, positive covenant or other encumbrance entered into before the registration of the conservation agreement.

Registration of agreements

69F. (1) On being notified by the Minister that a conservation agreement has been entered into, or that any such agreement has been varied or terminated, the Registrar-General shall—

- (a) register the agreement, variation or termination in the General Register of Deeds; and
- (b) if appropriate, make an entry—
 - (i) in any folio of the Register kept under the Real Property Act 1900; or
 - (ii) in any official record relating to Crown land, which relates to the conservation area.

(2) A conservation agreement relating to land under the Real Property Act 1900 about which an entry is made in a folio and which is in force is an interest recorded in the folio for the purposes of section 42 of that Act.

Enforcement of agreements

69G. (1) Proceedings relating to the enforcement of conservation agreements shall be taken in the Land and Environment Court.

(2) Damages shall not be awarded against the owner of a conservation area for breach of a conservation agreement unless the breach arose from an intentional or reckless act or omission by the owner or a previous owner of the land (being an act or omission of which the owner had notice).

(3) In assessing damages for breach of a conservation agreement by an owner, the Court may have regard to—

- (a) any detriment to the public interest arising from the breach;
- (b) any financial or other benefit that the owner sought to gain by committing the breach; and
- (c) any other matter that it considers relevant.

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(4) Except as provided by subsection (2), nothing in this section limits the remedies of a party under a conservation agreement.

Register of agreements

69H. (1) The Director shall keep a register containing copies of conservation agreements as in force from time to time.

(2) The register shall be open for public inspection during ordinary business hours, and copies of or extracts from the register shall be available, on payment of the fee fixed by the Director.

Proposals by statutory authorities affecting conservation areas

69I. (1) A statutory authority shall not carry out development in a conservation area unless—

- (a) it has given written notice of the proposed development to the Minister and the owner of the area; and
- (b) it has received written notice from the Minister consenting to the development.

(2) The Minister may consent to the development only if the Minister is of the opinion that the proposed development will not adversely affect the area or the Minister is satisfied that—

- (a) there is no practicable alternative to the carrying out of the proposed development; or
- (b) the area is required for an essential public purpose or for a purpose of special significance to the State.

(3) For the purpose of enabling a statutory authority to carry out development in a conservation area, the Minister may, by order published in the Gazette, vary or terminate a conservation agreement without the consent of the owner of the conservation area.

(4) A copy of the order shall be laid before each House of Parliament within the prescribed time after publication of the order.

(5) If an agreement is varied by the Minister under this section, the owner of the conservation area may, by written notice given to the Minister, terminate the agreement.

(6) The owner of a conservation area is not entitled to any compensation as a result of any variation or termination of an agreement by the Minister under this section.

(7) In this section, “statutory authority” does not include the Soil Conservation Service.

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69J. (1) If—

- (a) a statutory authority proposes to carry out development in a conservation area; and
- (b) in relation to the proposal, a dispute arises between the Minister and the Minister responsible for the authority or the Minister administering the Act by or under which the authority is constituted,

a party to the dispute may submit that dispute to the Premier for settlement.

(2) On the submission of a dispute to the Premier, the Premier may—

- (a) appoint a Commissioner of Inquiry to hold an inquiry and make a report to the Premier; or
- (b) hold an inquiry into the dispute.

(3) After the completion of the inquiry, and after considering any report, the Premier may make such order with respect to the dispute, having regard to the public interest and to the circumstances of the case, as the Premier thinks fit.

(4) An order made by the Premier may direct the payment of any costs or expenses of or incidental to the holding of the inquiry.

(5) A Minister or statutory authority shall comply with an order given under this section and shall, despite the provisions of any Act, be empowered to comply with any such order.

(6) Part IV, Division 8, heading—

Before section 70, insert:

DIVISION 8—Offences relating to wildlife districts, wildlife refuges, wildlife management areas and conservation areas

(7) Section 70 (**Fauna in wildlife districts, wildlife refuges, wildlife management areas and conservation areas**)—

(a) Section 70 (1), (2), (4), (6)—

Omit “or wildlife management area” wherever occurring, insert instead “, wildlife management area or conservation area”.

(b) Section 70 (6A)—

After section 70 (6), insert:

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- (6A) A person shall not be convicted of an offence arising under this section if—
- (a) the offence occurred with respect to a conservation area; and
 - (b) the act or the state of affairs constituting the offence did not contravene the conservation agreement relating to the area.
- (8) Section 71 (**Native plants in wildlife refuges, wildlife management areas or conservation areas**)—
- (a) Section 71 (1), (3)—
Omit “or wildlife management area” wherever occurring, insert instead “, wildlife management area or conservation area”.
 - (b) Section 71 (3A)—
After section 71 (3), insert:
 - (3A) A person shall not be convicted of an offence arising under this section if—
 - (a) the offence occurred with respect to a conservation area; and
 - (b) the act or the state of affairs constituting the offence did not contravene the conservation agreement relating to the area.
- (9) Section 72 (**Plans of management**)—
- (a) Section 72 (1) (c)—
Omit “and”.
 - (b) Section 72 (1) (d), (e)—
At the end of section 72 (1) (d), insert:
 - ; and
 - (e) may from time to time, after consulting with the owner, cause a plan of management to be prepared for a conservation area.
 - (c) Section 72 (3A)—
After section 72 (3), insert:
 - (3A) The plan of management for a conservation area shall contain a written scheme of the operations which it is proposed to undertake in relation to the area to carry out the purpose and objects of the conservation agreement.

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(d) Section 72 (5)—

Omit “or wildlife management area”, insert instead “, wildlife management area or conservation area”.

(10) Section 73 (**State forests**)—

Section 73 (3)—

Omit “or wildlife management area”, insert instead “, wildlife management area or conservation area”.

(11) Section 78A—

After section 78, insert:

Adoption etc. of plan of management for conservation area

78A. (1) Where a plan of management for a conservation area or proposed conservation area has been prepared, the Minister may, on the recommendation of the Director and with the consent of the owner of the area to which the plan relates, adopt the plan.

(2) The Minister may, on the recommendation of the Director and with the consent of the owner of the land to which a plan of management relates—

- (a) amend or alter the plan from time to time;
- (b) cancel the plan; or
- (c) cancel the plan and substitute a new plan.

(3) The provisions of section 72 (3A) apply to an amendment or alteration of any such plan of management.

(4) In this section, “owner” has the same meaning as it has in Division 7 of Part IV.

(12) Section 81 (**Operations under plan of management**)—

Section 81 (2)—

After section 81 (1), insert:

(2) Where the Minister has adopted a plan of management for a conservation area, it shall be carried out and given effect to by the Director, the owner (within the meaning of Division 7 of Part IV) of the area and any successors in title (within the meaning of section 69E) to the owner.

(13) Section 120 (**General licence**)—

Section 120 (2)—

Omit “or wildlife management area”, insert instead “, wildlife management area or conservation area”.

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(14) Section 123 (**Trapper's licence**)—

Section 123 (2)—

Omit “or wildlife management area”, insert instead “, wildlife management area or conservation area”.

(15) Section 129 (**Certain licences authorising shooting etc. in national parks etc.**)—

Section 129 (b)—

Omit “or wildlife management area”, insert instead “, wildlife management area or conservation area”.

(16) Section 138 (**Payments into the Fund**)—

Section 138 (1) (f)—

Omit “or wildlife management area”, insert instead “, wildlife management area or conservation area”.

(17) Section 139 (**Payments out of the Fund**)—

Section 139 (2) (m)—

Omit “or wildlife management area”, insert instead “, wildlife management area or conservation area”.

(18) Section 171 (**Authority of officers of Service to take or kill etc.**)—

Section 171 (1) (a) (i)—

Omit “or wildlife management area”, insert instead “, wildlife management area or conservation area”.

(19) Section 181 (**Evidentiary provisions etc.**)—

Section 181 (7), (8)—

After section 181 (6), insert:

(7) In any proceedings, a certificate purporting to be signed by the Director or an officer of the Service authorised by the Director and certifying that at a time, or during a period, specified in the certificate—

- (a) a conservation agreement relating to land so specified was in force; and

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(b) the agreement contained the terms specified in the certificate,

shall be prima facie evidence of the matter or matters so certified.

(8) In any proceedings, a document purporting to be certified by the Director or the Registrar-General as a copy of a conservation agreement registered under section 69F shall be prima facie evidence of the agreement.