

Passed by both Houses



New South Wales

National Parks and Wildlife Amendment (Jenolan Caves Reserves) Bill 2005

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2005*



New South Wales

National Parks and Wildlife Amendment (Jenolan Caves Reserves) Bill 2005

Act No , 2005

An Act to amend the *National Parks and Wildlife Act 1974* to dissolve the Jenolan Caves Reserve Trust and to establish a Karst Management Advisory Committee; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *National Parks and Wildlife Amendment (Jenolan Caves Reserves) Act 2005*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of National Parks and Wildlife Act 1974 No 80

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

4 Amendment of other legislation

The Acts and Regulation specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendment of National Parks and Wildlife Act 1974

(Section 3)

[1] Section 5 Definitions

Omit the definitions of *Jenolan Caves Reserve Trust*, *Jenolan Caves Reserve Trust lands*, *member of the Jenolan Caves Reserve Trust Board* and *officer of the Jenolan Caves Reserve Trust* from section 5 (1).

[2] Section 8 Miscellaneous functions of Director-General

Omit “, prospective honorary rangers and (with the concurrence of the Jenolan Caves Reserve Trust) officers of the Jenolan Caves Reserve Trust” from section 8 (8).

Insert instead “and prospective honorary rangers”.

[3] Section 8 (11) and (12)

Omit the subsections.

[4] Section 23 Functions and duties of Council

Omit section 23 (3).

[5] Section 24 Constitution of advisory committees

Insert “by the Minister” after “constituted” in section 24 (3).

[6] Part 3 Council and committees

Insert after Division 3:

Division 4 Karst Management Advisory Committee

29 Constitution of Karst Management Advisory Committee

- (1) There is constituted by this Act the Karst Management Advisory Committee.
- (2) The Committee is to consist of:
 - (a) the Chairperson of the Committee who is to be the Director-General or a member of staff of the Department of Environment and Conservation nominated for the time being by the Director-General, and
 - (b) 9 other persons appointed by the Minister.

- (3) Of the members appointed by the Minister under subsection (2) (b):
- (a) one is to be a person who is a member of a regional advisory committee for a region that, in the opinion of the Minister, contains significant areas of karst, and
 - (b) one is to be a person who has qualifications in karst or earth sciences or in a related discipline, and
 - (c) one is to be a person with qualifications in geomorphology, hydrology, water management or a related discipline, and
 - (d) one is to be a person with qualifications and experience in eco-tourism or recreational planning, and
 - (e) one is to be a person nominated by the Australian Speleological Federation Inc, and
 - (f) one is to be a person nominated by the NSW Heritage Office, and
 - (g) one is to be a person nominated by the National Parks Association of NSW Inc, and
 - (h) one is to be a person nominated by the New South Wales Aboriginal Land Council, and
 - (i) one is to be a person nominated by the Nature Conservation Council of New South Wales.
- (4) The Chairperson of the Committee is entitled to attend and chair meetings of the Committee but is not entitled to vote at any such meeting.
- (5) Schedule 4 has effect with respect to the members and procedure of the Committee.

30 Function of Karst Management Advisory Committee

The function of the Karst Management Advisory Committee is to advise the Council on the following matters:

- (a) the conservation and management of karst environments on lands reserved, or acquired for reservation, under this Act (including matters relating to planning and policy),
- (b) any plan of management for land reserved under this Act that the Council considers contains significant karst environments, being a plan that the Council has referred to the Committee for its consideration and advice,
- (c) such other matters as are referred to the Committee by the Council, being matters relating to the administration of this Act with respect to karst environments,

- (d) the development, implementation and review of policies directed towards achieving the objects of this Act in relation to karst environments,
- (e) priorities for research relating to the management and conservation of karst environments across the State,
- (f) opportunities for sustainable visitor use and enjoyment of karst conservation reserves compatible with the reserves' natural and cultural values,
- (g) opportunities for sustainable use (including adaptive reuse) of any buildings or structures on, or modified natural areas of, karst conservation reserves having regard to the conservation of the reserves' natural and cultural values,
- (h) opportunities to secure funding in relation to the management and conservation of karst environments,
- (i) the protection of karst environments across the State,
- (j) assisting, supporting and promoting Government initiatives in relation to karst conservation.

[7] Section 58S Application of certain provisions to karst conservation reserves

Omit section 58S (2).

[8] Part 4, Division 8 Abercrombie, Jenolan and Wombeyan Karst Conservation Reserves

Omit the Division.

[9] Section 71BO Definitions

Omit “, 73 or 75B” from the definition of *responsible authority*.

Insert instead “or 73”.

[10] Section 72AA Objectives and content of plans of management

Insert after section 72AA (5):

- (5A) A plan of management for a karst conservation reserve is to include environmental performance standards and indicators for the purposes of sections 151 (4A) and 151B (10A) that ensure the environmental values of the reserve are conserved or restored.

[11] Section 75B Plans of management for Jenolan Caves Reserve Trust lands

Omit the section.

- [12] Section 138 Payments into Fund**
Omit section 138 (1A).
- [13] Section 140 Community service contribution**
Omit section 140 (5).
- [14] Section 143 Charges and fees**
Omit section 143 (2).
- [15] Section 144A Overdue community service contributions, charges, fees and other money**
Omit “(or, in the case of money payable to the Jenolan Caves Reserve Trust, that Trust)” from section 144A (3).
- [16] Section 146 Acquisition or occupation of lands for certain purposes**
Omit section 146 (4).
- [17] Section 151 Leases of and licences over reserved or dedicated lands**
Insert after section 151 (4):
- (4A) The Minister is to include:
 - (a) in every lease of lands within a karst conservation reserve granted under subsection (1) (d), and
 - (b) in every licence in relation to lands within a karst conservation reserve granted under subsection (1) (f),
a condition requiring:
 - (c) the lessee or licensee (in relation to the lands leased or licensed) to comply with the relevant environmental performance standards set out in the plan of management for the reserve, and
 - (d) the environmental performance of the lessee or licensee (in relation to the lands leased or licensed) to be measured against the relevant environmental performance indicators set out in that plan of management.
 - (4B) The Director-General is (in relation to a lease or licence to which subsection (4A) applies):
 - (a) to monitor:
 - (i) the lessee’s or licensee’s compliance with the relevant environmental performance standards set out in the relevant plan of management, and

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- (ii) the lessee's or licensee's environmental performance as measured against the relevant environmental performance indicators set out in that plan of management, and
 - (b) to report on the results of that monitoring, annually, by:
 - (i) recording the results in the register kept under section 151D, and
 - (ii) placing the results on the website of the Department of Environment and Conservation.

[18] Section 151B Leases and licences of reserved land in accordance with plan of management

Insert after section 151B (10):

- (10A) The Minister is to include in every lease of lands within a karst conservation reserve granted under this section a condition requiring:
 - (a) the lessee (in relation to the lands leased) to comply with the relevant environmental performance standards set out in the plan of management for the reserve, and
 - (b) the environmental performance of the lessee (in relation to the lands leased) to be measured against the relevant environmental performance indicators set out in that plan of management.
- (10B) The Director-General is (in relation to a lease to which subsection (10A) applies):
 - (a) to monitor:
 - (i) the lessee's compliance with the relevant environmental performance standards set out in the relevant plan of management, and
 - (ii) the lessee's environmental performance as measured against the relevant environmental performance indicators set out in that plan of management, and
 - (b) to report on the results of that monitoring, annually, by:
 - (i) recording the results in the register kept under section 151D, and
 - (ii) placing the results on the website of the Department of Environment and Conservation.

[19] Sections 169 and 170

Omit “, member of the Jenolan Caves Reserve Trust Board” wherever occurring in sections 169 (1)–(3) and 170.

[20] Sections 169 (1)–(3) and 170

Omit “, honorary ranger or officer of the Jenolan Caves Reserve Trust” wherever occurring.

Insert instead “or honorary ranger”.

[21] Section 170 Corruption

Omit “, ranger or member” wherever occurring. Insert instead “or ranger”.

[22] Section 178 Recovery of charges

Omit “, the Jenolan Caves Reserve Trust” from section 178 (1).

[23] Section 178 (3)

Omit the subsection.

[24] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

National Parks and Wildlife Amendment (Jenolan Caves Reserves) Act 2005

[25] Schedule 3, Part 6

Insert at the end of the Schedule:

**Part 6 Provisions consequent on enactment of
National Parks and Wildlife Amendment
(Jenolan Caves Reserves) Act 2005**

45 Definitions and interpretation

(1) In this Part:

amending Act means the *National Parks and Wildlife Amendment (Jenolan Caves Reserves) Act 2005*.

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

conveyance includes transfer, assignment and assurance.

Department means the Department of Environment and Conservation.

Director-General means the Director-General of the Department.

instrument means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

liabilities means all liabilities, debts or obligations (whether present or future and whether vested or contingent).

relevant period means the period commencing on the repeal of section 58V by the amending Act and ending on a day to be appointed by proclamation, being a day subsequent to the day on which the Minister first adopts a plan of management for the Jenolan Caves Visitor Use and Services Zone after the period commences.

rights means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent).

the Jenolan Caves Reserves means the lands reserved under repealed section 58U as the Abercrombie Karst Conservation Reserve, the Jenolan Karst Conservation Reserve and the Wombeyan Karst Conservation Reserve, and any other lands reserved as, or as part of, a karst conservation reserve the care, control and management of which was vested in the Jenolan Caves Reserve Trust, immediately before the repeal of section 58V by the amending Act.

the Jenolan Caves Visitor Use and Services Zone means the areas in the Jenolan Caves Reserves shown, on the commencement of this definition, edged heavy black on the map marked "Jenolan Caves Visitor Use and Services Zone", copies of which are deposited in the offices of the Department at Haymarket, Hurstville and Parramatta.

Trust means the Jenolan Caves Reserve Trust constituted under repealed section 58V.

Trust Board means the Jenolan Caves Reserve Trust Board established under repealed section 58ZA.

- (2) In this Part, a reference to a **repealed section**, a **repealed clause** or a **repealed Schedule** is a reference to the section, the clause or the Schedule as in force immediately before its repeal by the amending Act.

46 General

The provisions of this Part are subject to any regulations made under clause 1.

47 References to Trust or its staff or Trust lands

A reference in any other Act, or in any instrument made under any Act or in any instrument of any kind:

- (a) to the Trust is to be read as a reference to the Director-General, and
- (b) to the staff (however expressed) of the Trust is to be read as a reference to the staff of the Department, and
- (c) to Jenolan Caves Reserve Trust lands is to be read as a reference to the Jenolan Caves Reserves.

48 Transfer of care, control and management of Jenolan Caves Reserves

The care, control and management of the Jenolan Caves Reserves vests in the Director-General for the purposes of this Act.

49 Transfer of assets, rights and liabilities of Trust

- (1) The assets, rights and liabilities of the Trust are transferred to the Director-General and the following provisions have effect:
 - (a) those assets vest in the Director-General by virtue of this clause and without the need for any conveyance,
 - (b) those rights and liabilities become the rights and liabilities of the Director-General,
 - (c) all proceedings relating to those assets, rights and liabilities commenced before the transfer by or against the Trust and pending immediately before the transfer are taken to be proceedings pending by or against the Director-General,
 - (d) any act, matter or thing relating to those assets, rights and liabilities done or omitted to be done before the transfer by, to or in respect of the Trust is (to the extent that the act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Director-General.
- (2) Duty is not chargeable in respect of the transfer of assets, rights and liabilities under this clause.

50 Transfer of staff of Trust

- (1) The persons who are members of staff of the Trust immediately before the repeal of section 58V by the amending Act are transferred to the Department and become members of staff of the Department.
- (2) A person who is transferred to the Department pursuant to subclause (1):
 - (a) retains any rights to leave (including annual leave, extended leave and sick leave) accrued or accruing to the person as a member of staff of the Trust, and
 - (b) is, until such time as provision is otherwise made under any Act or law, to continue to be employed in accordance with any State industrial instrument or determination that, immediately before the transfer, applied to the person as a member of staff of the Trust.

51 Trust Board

- (1) A reference in any other Act, or in any instrument made under any Act or in any instrument of any kind to the Trust Board is to be read as a reference to the Director-General.
- (2) Any act, matter or thing done or omitted to be done by, to or in respect of the Trust Board is (to the extent that the act, matter or thing has any force or effect) to be taken to have been done or omitted to be done by, to or in respect of the Director-General.

52 Members of committees

A person who held office as a member of a committee established under section 58Z immediately before its repeal by the amending Act:

- (a) ceases to hold office, and
- (b) is not entitled to any remuneration or compensation because of the loss of that office.

53 Continuation of reserved status of land reserved under section 58U

- (1) Land reserved as a karst conservation reserve under repealed section 58U (1) continues to be so reserved as if that subsection (and repealed Schedule 4) had not been repealed.
- (2) Repealed section 58U (2) and (3) (but not repealed section 58U (4)) continue to apply to the land referred to in subclause (1) as if those provisions had not been repealed.

54 Continuation of reserved status of land referred to in section 58W

No amendment made by the amending Act affects a reservation of land made by a notice referred to in repealed section 58W (4).

55 Funds of Trust

Any account maintained by the Trust under repealed section 58X and operating on the repeal of section 58V by the amending Act is to be closed by the Director-General and any amount standing to its credit is to be paid into the Fund.

56 Operation of Part

The operation of this Part is not to be regarded:

- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
- (d) as an event of default under any contract or other agreement.

57 Operation of certain provisions in this Part during relevant period

- (1) During the relevant period:
 - (a) clause 47 (a) operates in relation to references to the Trust only to the extent that the Trust is not taken to continue under clause 58, and
 - (b) clause 47 (b) operates in relation to references to staff of the Trust only to the extent that such staff have become members of staff of the Department under clause 50, and
 - (c) clause 48 does not operate in relation to the Jenolan Caves Visitor Use and Services Zone, and
 - (d) clause 49 does not operate in relation to assets, rights and liabilities of the Trust in relation to the Jenolan Caves Visitor Use and Services Zone, and
 - (e) clause 50 operates only in relation to a person who was, immediately before the repeal of section 58V by the amending Act, the Jenolan ranger or a permanent or

temporary member of staff of the Wombeyan Caves, the Abercrombie Caves or the Karst Conservation Unit, and

- (f) clause 51 operates only to the extent that the Trust is not taken to continue under clause 58.
- (2) Clauses 52 and 55 commence on the expiry of the relevant period.
- (3) This clause, clause 58 and the definitions of *the Jenolan Caves Visitor Use and Services Zone* and *relevant period* in clause 45 (1), are repealed on the expiry of the relevant period.

58 Interim management of Jenolan Caves Visitor Use and Services Zone

- (1) Despite the repeal of section 58V by the amending Act, the Trust is taken to continue during the relevant period for the purposes of this clause.
- (2) The Minister is to appoint an administrator to manage the affairs of the Trust in relation to the Jenolan Caves Visitor Use and Services Zone during the relevant period.
- (3) During the relevant period:
 - (a) the administrator has all the responsibilities, powers, authorities, duties and functions that the Trust had in relation to the Jenolan Caves Visitor Use and Services Zone immediately before the repeal of section 58V by the amending Act, and
 - (b) any provision amended or repealed by Schedule 1 to the amending Act that is relevant to the operation of paragraph (a) (including repealed section 58ZD) continues to apply for the purposes of, and to the extent required by, that paragraph, as if the provision had not been so amended or repealed.
- (4) During the relevant period:
 - (a) repealed section 58ZE (4)–(6) apply to the administrator as if those provisions were still in force, and
 - (b) repealed clause 15 of Schedule 6 applies to the administrator, and any person acting under the direction of the administrator, as if that clause were still in force.
- (5) During the relevant period, repealed Schedule 5A continues to apply to the staff of the Trust (other than staff referred to in clause 57 (1) (e)) as if that Schedule were still in force.

- (6) On and from the commencement of the relevant period until the day on which the Minister first adopts a plan of management for the Jenolan Caves Visitor Use and Services Zone after that commencement, the Minister must not:
- (a) consent to any lease or licence of land within that Zone under repealed section 58ZB (as continued in force under subclause (3)), or
 - (b) grant any lease of land within that Zone under section 151 (1) (d) or 151B or any licence in relation to land within that Zone under section 151 (1) (f),
the term of which (including any option to renew) exceeds 2 years.
- (7) The Trust is dissolved on the expiration of the relevant period.

59 Conditions in leases and licences under sections 151 and 151B

An amendment made by Schedule 1 [17] or [18] to the amending Act does not apply to a lease or licence granted before the commencement of the amendment, or to the renewal of a lease or licence after that commencement under an option to renew that was granted before that commencement.

[26] Schedule 4

Omit the Schedule. Insert instead:

Schedule 4 Karst Management Advisory Committee

(Section 29 (5))

1 Definitions

In this Schedule:

appointed member means a member other than the Chairperson.

Chairperson means the Chairperson of the Committee.

Committee means the Karst Management Advisory Committee constituted by this Act.

member means a member of the Committee.

2 Nomination of members

If, for the purposes of section 29 (3) (e), (f), (g), (h) or (i), a nomination is not made within the time or in the manner specified

by the Minister in a written notice given to the person or body entitled to make the nomination:

- (a) the Minister may appoint a person to be a member of the Committee instead of the person required to be appointed under section 29 (3) (e), (f), (g), (h) or (i), and
- (b) the person so appointed is taken to have been duly nominated.

3 Removal from office

The Minister may remove from office any appointed member at any time.

4 Vacancy in office of member

The office of an appointed member becomes vacant if the member:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) becomes a mentally incapacitated person, or
- (e) is removed from office by the Minister under clause 3.

5 Vacancies

If the office of an appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

6 Acting members

- (1) The Minister may, from time to time, appoint a person to act in the office of an appointed member during the illness or absence of the appointed member, and the person, while so acting, has and may exercise all the functions of the appointed member and is taken to be an appointed member.
- (2) The Minister may remove a person from the office to which the person was appointed under this clause.
- (3) For the purposes of this clause, a vacancy in the office of a member is regarded as an absence from office of the member.

7 Term of office

Subject to this Schedule, an appointed member holds office for such period not exceeding 5 years as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

8 Quorum

The quorum for a meeting of the Committee is 6 members.

9 Voting

A decision supported by a majority of the votes cast at a meeting of the Committee at which a quorum is present is the decision of the Committee.

10 Transaction of business outside meetings or by telephone

- (1) The Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Committee.
- (2) The Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson of the Committee and each member of the Committee have the same voting rights as they have at an ordinary meeting of the Committee.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Committee.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

11 Procedure

- (1) Subject to this Act and the direction of the Minister, the procedure for calling meetings of the Committee and for the conduct of business at those meetings is to be as determined by the Committee.
- (2) The Director-General is to call the first meeting of the Committee in such manner as the Director-General thinks fit.

12 Expenses

A member is entitled to receive such travelling and other expenses (if any) as the Minister may determine in respect of the member.

[27] Schedules 5, 5A and 6

Omit the Schedules.

Schedule 2 Amendment of other legislation

(Section 4)

2.1 First State Superannuation Act 1992 No 100

Schedule 1 Employers

Omit “Jenolan Caves Reserve Trust”.

2.2 National Parks and Wildlife Regulation 2002

[1] Clause 3 Definitions

Omit paragraph (c) from the definition of *park authority* in clause 3 (1).

[2] Clause 3 (1), definition of “park authority”

Omit “(other than a karst conservation reserve of which the Jenolan Caves Reserve Trust is trustee)” from paragraph (d).

2.3 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory bodies

Omit “Jenolan Caves Reserve Trust”.

2.4 Public Reserves Management Fund Act 1987 No 179

Section 6 Payments out of Public Reserves Management Fund

Omit section 6 (1) (f1).

2.5 State Authorities Non-contributory Superannuation Act 1987 No 212

Schedule 1 Employers

Omit “Jenolan Caves Reserve Trust” from Part 1.

2.6 State Authorities Superannuation Act 1987 No 211

Schedule 1 Employers

Omit “Jenolan Caves Reserve Trust” from Part 1.

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Amendment of other legislation

Schedule 2

2.7 Superannuation Act 1916 No 28

Schedule 3 List of employers

Omit “Jenolan Caves Reserve Trust” from Part 1.