

National Parks and Wildlife Act 1974 No 80

[1974-80]



New South Wales

Status Information

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Licensing and Registration \(Uniform Procedures\) Act 2002 No 28](#) (amended by [Statute Law \(Miscellaneous Provisions\) Act 2008 No 62](#) and [National Parks and Wildlife Amendment Act 2010 No 38](#)) (not commenced)
[National Parks and Wildlife Amendment \(Jenolan Caves Reserves\) Act 2005 No 83](#), Sch 1 [20] (not commenced)
- **See also**
[National Parks and Wildlife Amendment \(Adjustment of Areas\) Bill 2012](#)
[National Parks and Wildlife Amendment \(Illegal Forestry Operations\) Bill 2012](#) [Non-government Bill: Hon L A Foley, MLC]
[Game and Feral Animal Control Further Amendment Bill 2012](#) [Non-government Bill: Hon R L Brown, MLC]

Authorisation

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File last modified 1 September 2012

National Parks and Wildlife Act 1974 No 80



New South Wales

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National Parks and Wildlife Act 1974 No 80



New South Wales

An Act to consolidate and amend the law relating to the establishment, preservation and management of national parks, historic sites and certain other areas and the protection of certain fauna, native plants and Aboriginal objects; to repeal the *Wild Flowers and Native Plants Protection Act 1927*, the *Fauna Protection Act 1948*, the *National Parks and Wildlife Act 1967* and certain other enactments; to amend the *Local Government Act 1919* and certain other Acts in certain respects; and for purposes connected therewith.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *National Parks and Wildlife Act 1974*.

2 Commencement

- (1) This section and section 1 shall commence on the date of assent to this Act.
- (2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

2A Objects of Act

- (1) The objects of this Act are as follows:
 - (a) the conservation of nature, including, but not limited to, the conservation of:
 - (i) habitat, ecosystems and ecosystem processes, and
 - (ii) biological diversity at the community, species and genetic levels, and
 - (iii) landforms of significance, including geological features and processes, and
 - (iv) landscapes and natural features of significance including wilderness and wild rivers,
 - (b) the conservation of objects, places or features (including biological diversity) of cultural value within the landscape, including, but not limited to:

- (i) places, objects and features of significance to Aboriginal people, and
 - (ii) places of social value to the people of New South Wales, and
 - (iii) places of historic, architectural or scientific significance,
- (c) fostering public appreciation, understanding and enjoyment of nature and cultural heritage and their conservation,
- (d) providing for the management of land reserved under this Act in accordance with the management principles applicable for each type of reservation.
- (2) The objects of this Act are to be achieved by applying the principles of ecologically sustainable development.
- (3) In carrying out functions under this Act, the Minister, the Director-General and the Service are to give effect to the following:
- (a) the objects of this Act,
 - (b) the public interest in the protection of the values for which land is reserved under this Act and the appropriate management of those lands.

3 Act binds Crown

This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

4 Repeals, amendments, savings, transitional and other provisions

- (1), (2) (Repealed)
- (3) Schedule 3 has effect.

5 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

Aboriginal area means lands dedicated as an Aboriginal area under this Act.

Aboriginal heritage impact permit means a permit issued under Division 2 of Part 6.

Aboriginal object means any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.

Aboriginal owner board members, in relation to lands reserved or dedicated under Part 4A, means the Aboriginal owners who are members of the board of management for the lands.

Aboriginal owners has the same meaning as in the [Aboriginal Land Rights Act 1983](#).

Note—

The term **Aboriginal owners** of land is defined in the [Aboriginal Land Rights Act 1983](#) to mean the Aboriginal persons named as having a cultural association with the land in the Register of Aboriginal Owners kept under Division 3 of Part 9 of that Act.

Aboriginal person has the same meaning as in the [Aboriginal Land Rights Act 1983](#) and **Aboriginal people** has a corresponding meaning.

Aboriginal place means any place declared to be an Aboriginal place under section 84.

Aboriginal remains means the body or the remains of the body of a deceased Aboriginal person, but does not include:

- (a) a body or the remains of a body buried in a cemetery in which non-Aboriginal persons are also buried, or
- (b) a body or the remains of a body dealt with or to be dealt with in accordance with a law of the State relating to medical treatment or the examination, for forensic or other purposes, of the bodies of deceased persons.

Act of 1967 means the [National Parks and Wildlife Act 1967](#).

adaptive reuse of a building or structure on land means the modification of the building or structure and its curtilage to suit an existing or proposed use, and that use of the building or structure, but only if:

- (a) the modification and use is carried out in a sustainable manner, and
- (b) the modification and use are not inconsistent with the conservation of the natural and cultural values of the land, and
- (c) in the case of a building or structure of cultural significance, the modification is compatible with the retention of the cultural significance of the building or structure.

advisory committee means an advisory committee constituted under this Act.

amphibian means any frog or other member of the class amphibia that is native to Australia and includes the eggs and the young thereof and the skin or any other part thereof.

animal means any animal, whether vertebrate or invertebrate, and at whatever stage

of development, but does not include fish within the meaning of the [Fisheries Management Act 1994](#) other than amphibians or aquatic or amphibious mammals or aquatic or amphibious reptiles.

approval includes a consent, licence or permission and any form of authorisation.

authorised officer means the Director-General or a person appointed as an authorised officer for the time being under section 156B.

bird means any bird that is native to, or is of a species that periodically or occasionally migrates to, Australia, and includes the eggs and the young thereof and the skin, feathers or any other part thereof.

board of management means a board of management established under Division 6 of Part 4A.

commencement day means the day appointed and notified under section 2 (2).

community service includes the supply, provision or maintenance of access roads, parking areas or mooring areas, an electricity, gas or water service and a sewerage or garbage disposal service.

conservation agreement means an agreement entered into under Division 12 of Part 4.

conservation area means land subject to a conservation agreement.

Council means the National Parks and Wildlife Advisory Council constituted under this Act.

critical habitat has the same meaning as in the [Threatened Species Conservation Act 1995](#).

critically endangered species has the same meaning as in the [Threatened Species Conservation Act 1995](#).

Crown lands means:

- (a) Crown land within the meaning of the [Crown Lands Act 1989](#), and
- (b) those parts of the seabed and of the waters beneath which it is submerged that are within the territorial jurisdiction of New South Wales and not within the Eastern Division described in the Second Schedule to the [Crown Lands Consolidation Act 1913](#) (as in force immediately before its repeal).

damage in relation to habitat (including critical habitat) includes damage by the removal or relocation of the habitat or a part of the habitat.

Department means the Department of Environment, Climate Change and Water.

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

ecological community has the same meaning as in the [Threatened Species Conservation Act 1995](#).

egg includes any part of an egg or eggshell.

emu means any bird of the species *Dromaius novaehollandiae*.

emu breeder means a person who exercises or carries on the business of breeding emus (including the rearing of emu chicks lawfully taken in the wild) or dealing in live emus, whole emu eggs or other emu products.

emu products means products (such as eggs, meat, skin, feathers, claws and oil) derived from emus or from the processing of emu carcasses.

endangered ecological community means an endangered or critically endangered ecological community within the meaning of the [Threatened Species Conservation Act 1995](#).

endangered population means an endangered population within the meaning of the [Threatened Species Conservation Act 1995](#).

endangered species means an endangered or critically endangered species within the meaning of the [Threatened Species Conservation Act 1995](#).

exercise a function includes perform a duty.

ex-officio ranger means a person who, by the operation of section 16, is a ranger by virtue of the person's office.

explosive means an explosive within the meaning of the [Explosives Act 2003](#).

fauna means any mammal, bird, reptile or amphibian.

fauna dealer means a person who exercises or carries on the business of dealing in fauna, whether by buying or selling or by buying and selling, and whether on the person's own behalf or on behalf of any other person, and whether or not the person deals in other things, and whether or not the person exercises or carries on any other business.

flora reserve means a flora reserve within the meaning of the [Forestry Act 1916](#).

Forestry Commission means the Forestry Commission of New South Wales constituted under the [Forestry Act 1916](#).

function includes a power, authority or duty.

Fund means the National Parks and Wildlife Fund referred to in section 137.

game animal means any of the following animals that is not husbanded in the manner of a farmed animal and is killed in the field:

- (a) any goat, kid, swine, deer, rabbit, hare, camel, donkey, horse or bird,
- (b) any fauna permitted to be harmed for the purposes of sale in accordance with a licence under this Act.

game bird means a wild duck, wild goose or wild quail, or a bird of any other species that the Governor, by order, declares to be a species of game bird for the purposes of this Act.

habitat includes habitat periodically or occasionally occupied by a species, population or ecological community.

harm an animal (including an animal of a threatened species, population or ecological community) includes hunt, shoot, poison, net, snare, spear, pursue, capture, trap, injure or kill, but does not include harm by changing the habitat of an animal.

harm an object or place includes any act or omission that:

- (a) destroys, defaces or damages the object or place, or
- (b) in relation to an object—moves the object from the land on which it had been situated, or
- (c) is specified by the regulations, or
- (d) causes or permits the object or place to be harmed in a manner referred to in paragraph (a), (b) or (c),

but does not include any act or omission that:

- (e) desecrates the object or place, or
- (f) is trivial or negligible, or
- (g) is excluded from this definition by the regulations.

historic site means lands reserved as a historic site under this Act.

honorary ranger means a person appointed as an honorary ranger under this Act.

interim protection order means an order made under Part 6A.

intertidal zone means the area between mean high water mark and mean low water mark.

karst conservation reserve means lands dedicated as a karst conservation reserve under this Act.

karst environment means an area of land, including subterranean land, that has developed in soluble rock through the processes of solution, abrasion or collapse, together with its associated bedrock, soil, water, gases and biodiversity.

lands of the Crown means lands vested in a Minister of the Crown or in a public authority.

livestock health and pest authority means a livestock health and pest authority constituted under the [Rural Lands Protection Act 1998](#).

local council means the council of a local government area.

mammal means any mammal, whether native, introduced or imported, and includes an aquatic or amphibious mammal, the eggs and the young of a mammal, and the skin or any other part of a mammal, but does not include any introduced or imported domestic mammal or any rat or mouse not native to Australia.

management principles, in relation to land reserved under this Act, means the management principles set out in Division 2 of Part 4 for the land.

marine mammal means all animals of the orders of Cetacea, Sirenia and Pinnipedia.

minerals includes coal, shale and petroleum.

modified natural area means an area of land where the native vegetation cover has been substantially modified or removed by human activity (other than activity relating to bush fire management or wild fire) and that is identified in a plan of management as not being appropriate for or capable of restoration.

motor vehicle means a motor car, motor carriage, motor cycle or other apparatus propelled on land, snow or ice wholly or partly by volatile spirit, steam, gas, oil or electricity.

national park means lands reserved as a national park under this Act.

National Parks and Wildlife Reserve Trust means the National Parks and Wildlife Reserve Trust established under section 9 of the [Forestry and National Park Estate Act 1998](#).

national parks legislation means each of the following Acts and the regulations under those Acts:

- (a) this Act,
- (b) [Threatened Species Conservation Act 1995](#),
- (c) [Wilderness Act 1987](#),
- (d) [Marine Parks Act 1997](#).

native plant means any tree, shrub, fern, creeper, vine, palm or plant that is native to Australia, and includes the flower and any other part thereof.

nature reserve means lands dedicated as a nature reserve under this Act.

officer of the Service means a person referred to in section 6.

owner, in relation to lands, includes every person who jointly or severally, whether at law or in equity:

- (a) is entitled to the lands for any estate of freehold in possession,
- (b) is a person to whom the Crown has lawfully contracted to sell the lands under the [Crown Lands Consolidation Act 1913](#) or any other Act relating to the alienation of lands of the Crown, or
- (c) is entitled to receive, or is in receipt of, or if the lands were let to a tenant would be entitled to receive, the rents and profits thereof, whether as beneficial owner, trustee, mortgagee in possession or otherwise.

pick a plant (including a native plant, a protected native plant and a plant that is of, or is part of, a threatened species, population or ecological community) includes gather, pluck, cut, pull up, destroy, poison, take, dig up, crush, trample, remove or injure the plant or any part of the plant.

plan of management means a plan of management under Part 5.

plant includes fungi and lichen.

population has the same meaning as in the [Threatened Species Conservation Act 1995](#).

premises includes building, store, shop, tent, hut or other structure, or place, whether built upon or not, or any part thereof.

prescribed means prescribed by this Act or the regulations.

principles of ecologically sustainable development means the principles of ecologically sustainable development described in section 6 (2) of the [Protection of the Environment Administration Act 1991](#).

prohibited weapon means:

- (a) a gun, rifle, weapon or other article:
 - (i) from which a bullet, shot or other hurtful thing or material may be discharged, whether by an explosive or by any other means whatever, or
 - (ii) that is designed to be used to discharge, whether by an explosive or by any

other means whatever, a dart or other thing or material containing, coated or impregnated with a drug or other substance, for the purpose of tranquillising or immobilising an animal by means of the administration to the animal of the drug or other substance,

and any telescopic sight, silencer or other accessory attached to the gun, rifle, weapon or article,

- (b) any other weapon prescribed for the purposes of this paragraph, and
- (c) an article or device that, but for the absence of, or a defect in, some part thereof, or some obstruction therein, would be a gun, rifle, weapon or article referred to in paragraph (a) or a weapon prescribed for the purposes of paragraph (b).

prospect means search for any mineral by any means and carry out such works and remove such samples as may be necessary to test the mineral bearing qualities of land.

protected fauna means fauna of a species not named in Schedule 11.

protected native plant means a native plant of a species named or referred to in Schedule 13.

public authority means a public or local authority constituted by or under an Act, a Government Department or a statutory body representing the Crown.

public register means the public register kept under section 188F.

regional advisory committee means an advisory committee constituted under section 24 (2).

regional park means land reserved as a regional park under this Act.

regional park trust means a regional park trust established under section 47S.

registered native title claimant has the same meaning as it has in the [Native Title Act 1993](#) of the Commonwealth.

regulations means regulations under this Act.

reptile means a snake, lizard, crocodile, tortoise, turtle or other member of the class reptilia (whether native, introduced or imported), and includes the eggs and the young thereof and the skin or any other part thereof.

sell includes:

- (a) auction, barter, exchange or supply,
- (b) offer, expose, supply or receive for sale,

- (c) send, forward or deliver for sale or on sale,
- (d) dispose of under a hire-purchase agreement,
- (e) cause, permit or suffer the doing of an act referred to in paragraph (a), (b), (c) or (d),
- (f) offer or attempt to do an act so referred to,
- (g) cause, permit or suffer to be sold,
- (h) attempt to sell or offer to sell, or
- (i) have in possession for sale.

Service means the National Parks and Wildlife Service as referred to in section 6.

skin, in relation to fauna, means the whole or part of the integument of any fauna, whether dressed or tanned or otherwise processed, but does not include any manufactured article.

skin dealer means a person who exercises or carries on:

- (a) the business of dealing in the skins of protected fauna, whether by buying or selling or by buying and selling, and whether or not the person deals in other things, or
- (b) the business of tanning the skins of protected fauna, whether or not the person tans other skins,

or both, and whether on the person's own behalf or on behalf of any other person, and whether or not the person exercises or carries on any other business.

species has the same meaning as in the [Threatened Species Conservation Act 1995](#).

species presumed extinct has the same meaning as in the [Threatened Species Conservation Act 1995](#).

specified, in relation to a licence or other instrument under this Act, means specified in the licence or other instrument.

state conservation area means land reserved as a state conservation area under this Act.

state conservation area trust means a state conservation area trust established under section 47GA in respect of Cape Byron State Conservation Area.

State forest means a State forest within the meaning of the [Forestry Act 1916](#).

sustainable, in relation to visitor or tourist use and enjoyment of land, means

sustainable within the meaning of the principles of ecologically sustainable development.

threatened interstate fauna means protected fauna of a species named in Schedule 12.

threatened species has the same meaning as in the [Threatened Species Conservation Act 1995](#).

threatened species, populations and ecological communities and **threatened species, population or ecological community** have the same meanings as in the [Threatened Species Conservation Act 1995](#).

threatening process has the same meaning as in the [Threatened Species Conservation Act 1995](#).

timber reserve means a timber reserve within the meaning of the [Forestry Act 1916](#).

trust board means a trust board established under:

- (a) section 47GB in respect of a state conservation area trust, or
- (b) section 47T in respect of a regional park trust.

Valuer-General means the valuer-general appointed under the [Valuation of Land Act 1916](#).

vehicle includes:

- (a) a boat or other object that, while floating on water or submerged, whether wholly or partly, under water, is wholly or partly used for the conveyance of persons or things,
- (b) an apparatus that, while propelled, or directed or controlled, in the air by human or mechanical power or by the wind, is wholly or partly used for the conveyance of persons or things,
- (c) a motor vehicle,
- (d) an apparatus propelled, or directed or controlled, upon land, snow or ice by human or animal power or by the wind, and
- (e) a trailer or caravan, whether or not it is in the course of being towed.

vulnerable species has the same meaning as in the [Threatened Species Conservation Act 1995](#).

wild, in relation to any species of fauna, means not domesticated.

wild river means a river declared to be a wild river under this Act.

wilderness area means land (including subterranean land) that is reserved under this Act and is declared to be a wilderness area under the [Wilderness Act 1987](#).

wilderness protection agreement has the same meaning as it has in the [Wilderness Act 1987](#).

wildlife means fauna and native plants.

wildlife refuge means lands declared to be a wildlife refuge under this Act.

world heritage property means property of outstanding universal value that is inscribed on the World Heritage List under Article 11 of the Convention for the Protection of the World Cultural and Natural Heritage done at Paris on 23 November 1972, as in force in Australia.

world heritage values means natural, heritage and cultural values contained in a world heritage property that are of outstanding universal value as described by the Convention for the Protection of the World Cultural and Natural Heritage done at Paris on 23 November 1972, as in force in Australia.

- (2) In this Act, a reference to the Minister administering the [Crown Lands Consolidation Act 1913](#) is:
- (a) in relation to lands that are not within an irrigation area within the meaning of that Act—a reference to the minister for lands, or
 - (b) in relation to lands that are within such an irrigation area—a reference to the Minister for the time being administering the [Water Management Act 2000](#).
- (2A) In this Act, a reference to a person convicted of an offence includes a reference to a person in respect of whom an order under section 10 of the [Crimes \(Sentencing Procedure\) Act 1999](#) is made after the commencement of this subsection.
- (3) In this Act, a reference to a licence or certificate under Part 9 or a licence under the [Threatened Species Conservation Act 1995](#) is a reference to such a licence or certificate that is valid and in force.
- (4) Without affecting the generality of any of the definitions in subsection (1), a reference in this Act to protected fauna includes fauna in New South Wales that is of a species not named in Schedule 11 and that has been imported, or is being imported, into New South Wales.
- (5) In this Act, a reference to sustainable visitor or tourist use and enjoyment includes a reference to appropriate public recreation.
- (6) Nothing in this Act shall be construed as operating to affect the law from time to time

in force with respect to the navigation of the waters referred to in paragraph (b) of the definition of **Crown lands** in subsection (1).

- (7) Before a regulation is made under paragraph (c) or (g) of the definition of **harm** in subsection (1), the Minister is required to ensure, as far as is reasonably practicable, that:
- (a) a notice is to be published in a daily newspaper circulating throughout New South Wales:
 - (i) stating the objects of the proposed regulation, and
 - (ii) advising where a copy of the regulation may be obtained or inspected, and
 - (iii) inviting comments and submissions within a specified time, but not less than 28 days from publication of the notice, and
 - (b) consultation is to take place with the Aboriginal Cultural Heritage Advisory Committee, and
 - (c) all the comments and submissions received are to be appropriately considered.

5A Notes in text

Notes in the text of this Act do not form part of this Act.

Part 2 Administration

Division 1 National Parks and Wildlife Service

6 The Service

The National Parks and Wildlife Service consists of the following:

- (a) the Director-General,
- (b) those members of staff of the Department who are principally involved in the administration of the national parks legislation,
- (c) the persons in respect of whom any arrangements under section 11 are for the time being in force.

7 Functions of Director-General relating to reservation of land

- (1) The Director-General is to consider, and may investigate, proposals for the addition of areas to any land reserved under Part 4 or for the reservation of any new areas under Part 4.
- (2) When considering or investigating any such proposal, the Director-General is to have regard to the following:

- (a) the desirability of protecting the full range of natural heritage and the maintenance of natural processes,
- (b) whether the proposal is consistent with the establishment of a comprehensive, adequate and representative reserve system,
- (c) the desirability of protecting cultural heritage,
- (d) providing opportunities for appropriate public appreciation and understanding, and sustainable visitor or tourist use and enjoyment, of land reserved under this Act,
- (e) the opportunities for promoting the integration of the management of natural and cultural values,
- (f) the desirability of protecting wilderness values,
- (g) the objects of this Act,
- (h) the desirability of protecting world heritage properties and world heritage values.

8 Miscellaneous functions of Director-General

(1)-(2A) (Repealed)

- (3) The Director-General shall in the case of every national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve and Aboriginal area:
 - (a) promote such educational activities as the Director-General considers necessary in respect thereof,
 - (b) arrange for the carrying out of such works as the Director-General considers necessary for or in connection with the management and maintenance thereof, and
 - (c) undertake such scientific research as the Director-General considers necessary for or in connection with the preservation, protection, management and use thereof.
- (4) The Director-General may promote such educational activities, and undertake such scientific research, in respect of Aboriginal objects and Aboriginal places as the Director-General thinks fit, either separately or in conjunction with other persons or bodies.
- (4A) The Director-General is to promote opportunities for partnerships and agreements between Aboriginal people and land owners and managers in relation to places, objects and features of significance to Aboriginal people (whether on land reserved or acquired under this Act or not).

- (5) As soon as practicable after an Aboriginal object is discovered on any land reserved under this Act, the Director-General, after such consultation with the Australian Museum Trust as appears necessary or expedient, is required to assess the scientific importance of the Aboriginal object.
- (6) The Director-General may consider and investigate proposals in relation to existing or proposed Aboriginal places, wilderness areas, wild rivers, wildlife refuges and interim protection orders.
- (6A) The Director-General 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-General considers necessary in respect of the area,
 - (ii) arrange for the carrying out of such works as the Director-General considers necessary for or in connection with the management and maintenance of the area,
 - (iii) undertake such scientific research as the Director-General 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-General considers necessary for or in connection with the carrying out of directions by the Minister relating to existing or proposed conservation agreements.
- (7) The Director-General:
- (a) may promote such educational activities as the Director-General considers necessary to awaken and maintain an appreciation of the value of and the need to conserve animal and plant life, including to conserve threatened species, populations and ecological communities, and their habitats,
 - (b) may enter into arrangements for the carrying out of such works as the Director-General considers necessary for or in connection with the protection and care of fauna and the protection of native plants,
 - (c) may undertake such scientific research as the Director-General considers necessary for or in connection with the preservation, protection and care of fauna

and the protection of native plants and other flora, either separately or in conjunction with other persons or bodies, and

(d) shall co-operate with the trustees of any lands dedicated or reserved under the *Crown Lands Consolidation Act 1913*, or the Closer Settlement Acts, in connection with:

(i) the preservation of, the protection and care of, and the promotion of the study of, fauna, and

(ii) the protection of, and the promotion of the study of, native plants and other flora,

and generally shall co-operate with any other persons or bodies in the establishment, care and development of areas of lands set apart for the conservation and preservation of wildlife.

(8) The Director-General may promote such educational activities as the Director-General considers necessary for the instruction and training of ex-officio rangers, honorary rangers and prospective honorary rangers.

(9) Without affecting the generality of any other provision of this Act conferring powers on the Director-General, the Director-General may make and enter into contracts with any person for the carrying out of works or the performance of services or the supply of goods or materials in connection with the exercise or performance by the Director-General or the Service of the Director-General's or its responsibilities, powers, authorities, duties or functions conferred or imposed by or under this or any other Act.

(10) The Director-General shall, in the exercise and discharge of the powers, authorities, duties and functions conferred or imposed on the Director-General by or under this or any other Act, be subject to the control and direction of the Minister.

(11), (12) (Repealed)

9 Audit and compliance

(1) The Minister is to establish an Audit and Compliance Committee to oversee the compliance of the Director-General with his or her obligations under this or any other Act.

(2) The Minister may also request the Audit and Compliance Committee to oversee the investigation of any matter relating to the Director-General's obligations under this or any other Act.

(2A) The Audit and Compliance Committee has such other functions as may be conferred or imposed on it by this or any other Act.

(3) The Audit and Compliance Committee may request the Director-General to provide

any document or information in the Director-General's possession to assist the Committee in the exercise of its functions. The Director-General must, unless the Minister directs otherwise, provide such documents or information to the Committee.

- (4) The members of the Committee are to comprise the Director-General (or the Director-General's delegate) and the following members appointed by the Minister:
 - (a) 1 member of the Council,
 - (b) (Repealed)
 - (c) 1 member with expertise in the protection of natural or cultural heritage who is not a member of the Public Service,
 - (d) 1 member with scientific qualifications and expertise in nature conservation, not being an officer of the Service,
 - (e) 1 member with legal or financial experience and expertise, not being a member of the Public Service,
 - (f) 2 officers of the Service.
- (5) The members of the Committee referred to in subsection (4) (a), (c), (d) and (e) are entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.
- (6) An appointed member of the Committee holds office for such period, and on such terms, as are specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (7) The Audit and Compliance Committee is to report to the Minister at least every 2 years from the commencement of this section.

10 (Repealed)

11 Use of services of personnel of public authorities

- (1) The Minister or the Director-General may, with the approval of the Minister administering the Department concerned, on such terms as may be arranged, make use of the services of any of the officers or employees of any Government Department.
- (2) The Minister or the Director-General may, with the approval of the statutory corporation or council concerned, on such terms as may be arranged, make use of the services of any of the officers, employees or servants of a statutory corporation or of a council or county council under the [Local Government Act 1993](#).
- (3) (Repealed)

- (4) The Minister or the Director-General may, with the approval of the trustees of any state conservation area, on such terms as may be arranged, make use of the services of any of the officers, employees or servants of those trustees.
- (5) The services of any person may only be used under this section for the purposes of the national parks legislation.

12 Powers and functions of Service

The Service is to carry out such works and activities as the Minister may direct, either generally or in a particular case, in relation to the following:

- (a) the conservation and protection of land reserved under this Act or acquired for reservation under this Act and of land for which the National Parks and Wildlife Reserve Trust is the trustee,
- (b) the conservation and protection of wildlife (including threatened species, populations and ecological communities, and their habitats),
- (c) the conservation and protection of wilderness areas and wild rivers,
- (d) the identification, conservation and protection of, and prevention of damage to, Aboriginal objects and Aboriginal places,
- (e) conservation agreements and conservation areas,
- (f) the provision of facilities and opportunities for sustainable visitor or tourist use and enjoyment on land reserved under this Act,
- (g) the identification and protection of buildings, places and objects of non-Aboriginal cultural values on land reserved under this Act,
- (h) the conduct of research into and the monitoring of any of the matters referred to in paragraphs (a)–(e),
- (i) the undertaking of public education in relation to any of the matters referred to in paragraphs (a)–(e).

Division 2

13-15 (Repealed)

Division 3 Ex-officio and honorary rangers

16 Ex-officio rangers

- (1) Unless removed from office under this Division, each police officer and each fisheries officer within the meaning of the *Fisheries Management Act 1994* shall, by virtue of his or her office, be a ranger.

- (2) Unless removed from office under this Division, each officer or employee of the Forestry Commission who belongs to a class or description prescribed for the purposes of this subsection shall, by virtue of his or her office, be a ranger.

17 Honorary rangers

- (1) The Director-General may, by instrument in writing, appoint honorary rangers.
- (2) Where the term for which an honorary ranger is to hold office is specified in the instrument of the honorary ranger's appointment, the honorary ranger shall, unless he or she is sooner removed from office under this Division, cease to hold office upon the expiration of that term.
- (3) An honorary ranger shall, unless the honorary ranger is sooner removed from office under this Division, cease to hold office if the honorary ranger resigns the office by instrument in writing addressed to the Director-General.

18 Removal or suspension of ex-officio and honorary rangers

- (1) The Director-General may, by instrument in writing, remove or suspend from office any ex-officio ranger or honorary ranger.
- (2) An ex-officio ranger or honorary ranger who is suspended from office under this section shall not exercise any of the powers, authorities, duties and functions of an ex-officio ranger or honorary ranger, as the case may be, during the period of his or her suspension.
- (3) The Director-General may, by instrument in writing, reinstate any ex-officio ranger or honorary ranger suspended from office under this section.

19 Powers and functions of ex-officio rangers

- (1) In addition to any other powers, authorities, duties and functions conferred or imposed upon an ex-officio ranger by or under this or any other Act, an ex-officio ranger shall have and may exercise and perform such of the powers, authorities, duties and functions as are conferred or imposed by or under this Act, the [Wilderness Act 1987](#) or the [Threatened Species Conservation Act 1995](#) on officers of the Service and as are specified or described in the regulations for the purposes of this subsection, but subject to such limitations and restrictions (if any) as are specified or described therein.
- (2) Without affecting the generality of section 156 (2), a regulation made in relation to any matter referred to in subsection (1) may apply generally or to any ex-officio ranger or class of ex-officio rangers specified or described therein.

20 Powers and functions of honorary rangers

In addition to any other powers, authorities, duties and functions conferred or imposed

upon an honorary ranger by or under this or any other Act, an honorary ranger shall have and may exercise and perform such of the powers, authorities, duties and functions as are conferred or imposed by or under this Act, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995* on officers of the Service and as are specified or described in the instrument of his or her appointment, but subject to such limitations and restrictions (if any) as are specified or described therein.

Division 4 Delegation

21 Delegation

- (1) The Minister may delegate the exercise of any function of the Minister under this Act (other than this power of delegation) to:
 - (a) the Director-General, or
 - (b) a member of staff of the Department, or
 - (c) a board of management, or
 - (c1) a state conservation area trust or a regional park trust, or
 - (c2) the Chairperson of the Environment Protection Authority, or
 - (c3) a member of staff of the Office of the Environment Protection Authority, or
 - (d) any person, or any class of persons, authorised for the purposes of this subsection by the regulations.
- (2) The Director-General may delegate the exercise of any function of the Director-General under this Act (other than this power of delegation) to:
 - (a) a member of staff of the Department, or
 - (b) a board of management, or
 - (b1) the Chairperson of the Environment Protection Authority, or
 - (b2) a member of staff of the Office of the Environment Protection Authority, or
 - (c) any person, or any class of persons, authorised for the purposes of this subsection by the regulations.
- (3) The power to delegate under subsection (1) or (2) extends to the following functions of the Minister or the Director-General, as the case may be:
 - (a) functions conferred or imposed by Acts that substantially provide for the reservation of land under this Act, or the vesting of land in the Minister for the purposes of Part 11 (for example, the *Brigalow and Nandewar Community Conservation Area Act 2005*, the *National Park Estate (Reservations) Act 2002* and

the *National Park Estate (Southern Region Reservations) Act 2000*),

- (b) functions conferred or imposed by Acts, that are exercisable:
- (i) by the Minister as owner or occupier of land, being land acquired, or the subject of other dealings, by the Minister (whether on behalf of Her Majesty or on the Minister's own behalf) under Part 11, or
 - (ii) by the Director-General as an occupier of land, being land of which the Director-General has care, control and management under this Act,
- (c) functions conferred or imposed:
- (i) on the Minister by clause 9 (2) or 10 (2) of Schedule 7A to the *Crown Lands (Continued Tenures) Act 1989*, or
 - (ii) on the Director-General by section 14 (1A) of the *Dividing Fences Act 1991*, or
 - (iii) on the Director-General (as an impounding authority) by the *Impounding Act 1993* (other than by section 26 (1)), or
 - (iv) on the Director-General by section 36A (3) (d) (ii), 36B (4) (d) (ii) or 36D (3) (d) (ii) of the *Local Government Act 1993*, or
 - (v) on the Director-General by section 15 (4) or (5) of the *Plantations and Reafforestation Act 1999*, or
 - (vi) on the Director-General under the *Public Health Act 2010* in relation to burials on land reserved or acquired under this Act, or
 - (vii) on the Director-General by section 47 (1) (d) or 100K (1) (b) of the *Rural Fires Act 1997*, or
 - (viii) on the Director-General by section 25 (2) of the *State Records Act 1998*, or
 - (ix) on the Director-General (as an enforcement agency) by or under the *Food Act 2003*.

Part 3 Council and committees

Division 1 National Parks and Wildlife Advisory Council

22 The Council

- (1) There shall be a National Parks and Wildlife Advisory Council.
- (2) Schedule 7 has effect.

23 Functions and duties of Council

- (1) The Council has the following functions:
 - (a) to provide advice to the Minister and the Director-General on:
 - (i) strategies for attaining the objects of this Act, and
 - (ii) the development, implementation and review of the policies and plans of the Service directed towards achieving those objects, and
 - (iii) strategies for promoting, consistent with this Act, the conservation of natural and cultural heritage outside the reserve system, and
 - (iv) the care, control and management of areas reserved under this Act and the development, implementation, review, amendment and alteration of plans of management for those areas, and
 - (v) the preservation and protection of wildlife, and
 - (vi) conservation agreements and conservation areas, and
 - (vii) wilderness areas and wild rivers, and
 - (viii) any matter referred to the Council for advice under this Act or by the Minister or the Director-General or that the Council considers necessary for the administration of this Act.
 - (b) to consult with the Director-General on the Service's operations and on the administration of this Act,
 - (c) such other functions as are conferred on it by or under this or any other Act.
- (2) Subject to section 8 (10), the Director-General shall furnish to the Council full information in relation to any matters arising out of the administration of this Act which the Council may require.
- (3) (Repealed)

Division 2 Advisory committees

24 Constitution of advisory committees

- (1) The Director-General is to divide the State into administrative regions and may at any time alter or abolish those administrative regions.
- (2) A regional advisory committee is to be constituted for each administrative region.
- (3) Additional advisory committees may be constituted by the Minister for particular purposes determined by the Minister.

- (4) Schedule 8 contains provisions with respect to each regional advisory committee constituted under subsection (2).
- (5) The Minister may determine the constitution and procedure of an additional advisory committee constituted under subsection (3).

25 Functions of advisory committees

- (1) A regional advisory committee has the following functions:
 - (a) to provide advice to the Director-General and the Council on policies and plans for the administrative region for which it was constituted,
 - (b) to provide advice to the Director-General and the Council on activities carried out or proposed to be carried out within the administrative region for which it was constituted,
 - (c) to provide advice to responsible authorities within the meaning of section 71BO on draft plans of management relating to the administrative region for which it was constituted and to the Council on the implementation of such plans of management,
 - (d) to provide advice to the Director-General on the implementation of plans of management relating to the administrative region for which it was constituted.
- (2) An advisory committee referred to in section 24 (3) has such advisory functions as are conferred or imposed on it by the Minister.
- (3) A regional advisory committee has no function in relation to the Community Conservation Area under the *Brigalow and Nandewar Community Conservation Area Act 2005*.

Note—

The members of a Community Conservation Advisory Committee established under that Act are to include a member of the relevant regional advisory committee.

26 Dissolution of advisory committees

- (1) If an administrative region for which a regional advisory committee is constituted is abolished, the advisory committee is dissolved.
- (2) A person who was a member of the advisory committee immediately before its dissolution is eligible for appointment to another advisory committee constituted for an administrative region that encompasses all or any part of the former administrative region for which the dissolved committee was constituted.

Division 3 Aboriginal Cultural Heritage Advisory Committee

27 Aboriginal Cultural Heritage Advisory Committee

- (1) There is to be an Aboriginal Cultural Heritage Advisory Committee.
- (2) Schedule 9 has effect.

28 Functions of Committee

The Aboriginal Cultural Heritage Advisory Committee is to advise the Minister and the Director-General on any matter relating to the identification, assessment and management of Aboriginal cultural heritage, including providing strategic advice on the plan of management and the heritage impact permit process, whether or not the matter has been referred to the Committee by the Minister or the Director-General.

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 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 or tourist 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.

Part 4 Reservation of land

Division 1 Reservation of land

30A Governor may reserve certain land

- (1) The Governor may, by notice published in the Gazette, reserve land as any of the following or as part of any of the following:
 - (a) a national park,
 - (b) a historic site,
 - (c) a state conservation area,
 - (d) a regional park,
 - (e) a karst conservation reserve,
 - (f) a nature reserve,
 - (g) an Aboriginal area.
- (2) The Governor may in a notice reserving land under this Division, or another notice published in the Gazette, assign a name to the reserved land or alter its name.

30B Land that may be reserved under this Division

Land may only be reserved under this Division if it is:

- (a) Crown lands, or
- (b) lands of the Crown, or
- (c) land acquired under section 145, 146 or 148, or
- (d) land in respect of which the National Parks and Wildlife Reserve Trust is appointed trustee under section 9 of the *Forestry and National Park Estate Act 1998* or under section 8 of the *National Park Estate (Southern Region Reservations) Act 2000*, or
- (e) crown lands reserved under the Crown Lands Acts (within the meaning of the *Crown Lands Act 1989*).

30C Limitations on reservation of land as national park, historic site regional park, karst conservation reserve, nature reserve or Aboriginal area

Despite section 30B, land must not be reserved as a national park, historic site, regional park, karst conservation reserve, nature reserve or Aboriginal area:

- (a) in the case of lands of the Crown, without the concurrence in writing of the Minister or public authority in whom or which they are vested, and
- (b) in the case of Crown lands referred to in paragraph (b) of the definition of **Crown**

lands, without the concurrence in writing of the Minister administering the *Fisheries Management Act 1994*, and

- (c) in the case of Crown-timber lands within the meaning of the *Forestry Act 1916*, without the concurrence in writing of the Minister administering that Act.

30D Limitation on reservation of land as state conservation area

Despite section 30B, land must not be reserved as a state conservation area:

- (a) in the case of lands of the Crown, without the concurrence in writing of the Minister or public authority in whom they are vested, and
- (b) in the case of Crown lands referred to in paragraph (b) of the definition of **Crown lands**, without the concurrence in writing of the Minister administering the *Fisheries Management Act 1994*, and
- (c) in the case of Crown-timber lands within the meaning of the *Forestry Act 1916*, without the concurrence in writing of the Minister administering that Act, and
- (d) without the concurrence in writing of the Minister administering the *Mining Act 1992* or the Minister administering the *Offshore Minerals Act 1999*, as the case requires.

Division 2 Management principles

30E National parks

- (1) The purpose of reserving land as a national park is to identify, protect and conserve areas containing outstanding or representative ecosystems, natural or cultural features or landscapes or phenomena that provide opportunities for public appreciation and inspiration and sustainable visitor or tourist use and enjoyment so as to enable those areas to be managed in accordance with subsection (2).
- (2) A national park is to be managed in accordance with the following principles:
 - (a) the conservation of biodiversity, the maintenance of ecosystem function, the protection of geological and geomorphological features and natural phenomena and the maintenance of natural landscapes,
 - (b) the conservation of places, objects, features and landscapes of cultural value,
 - (c) the protection of the ecological integrity of one or more ecosystems for present and future generations,
 - (d) the promotion of public appreciation and understanding of the national park's natural and cultural values,
 - (e) provision for sustainable visitor or tourist use and enjoyment that is compatible with the conservation of the national park's natural and cultural values,

- (f) provision for the sustainable use (including adaptive reuse) of any buildings or structures or modified natural areas having regard to the conservation of the national park's natural and cultural values,
- (fa) provision for the carrying out of development in any part of a special area (within the meaning of the *Hunter Water Act 1991*) in the national park that is permitted under section 185A having regard to the conservation of the national park's natural and cultural values,
- (g) provision for appropriate research and monitoring.

30F Historic sites

- (1) The purpose of reserving land as a historic site is to identify, protect and conserve areas associated with a person, event or historical theme, or containing a building, place, feature or landscape of cultural significance so as to enable those areas to be managed in accordance with subsection (2).
- (2) A historic site is to be managed in accordance with the following principles:
 - (a) the conservation of places, objects, features and landscapes of cultural value,
 - (b) the conservation of natural values,
 - (c) provision for sustainable visitor or tourist use and enjoyment that is compatible with the conservation of the historic site's natural and cultural values,
 - (d) provision for the sustainable use (including adaptive reuse) of any buildings or structures or modified natural areas having regard to the conservation of the historic site's natural and cultural values,
 - (da) provision for the carrying out of development in any part of a special area (within the meaning of the *Hunter Water Act 1991*) in the historic site that is permitted under section 185A having regard to the conservation of the historic site's natural and cultural values,
 - (e) the promotion of public appreciation and understanding of the historic site's natural and cultural values,
 - (f) provision for appropriate research and monitoring.

30G State conservation areas

- (1) The purpose of reserving land as a state conservation area is to identify, protect and conserve areas:
 - (a) that contain significant or representative ecosystems, landforms or natural phenomena or places of cultural significance, and

- (b) that are capable of providing opportunities for sustainable visitor or tourist use and enjoyment, the sustainable use of buildings and structures or research, and
 - (c) that are capable of providing opportunities for uses permitted under other provisions of this Act in such areas, including uses permitted under section 47J,
- so as to enable those areas to be managed in accordance with subsection (2).

(2) A state conservation area is to be managed in accordance with the following principles:

- (a) the conservation of biodiversity, the maintenance of ecosystem function, the protection of natural phenomena and the maintenance of natural landscapes,
- (b) the conservation of places, objects and features of cultural value,
- (c) provision for the undertaking of uses permitted under other provisions of this Act in such areas (including uses permitted under section 47J) having regard to the conservation of the natural and cultural values of the state conservation area,
- (ca) provision for the carrying out of development in any part of a special area (within the meaning of the [Hunter Water Act 1991](#)) in the state conservation area that is permitted under section 185A having regard to the conservation of the natural and cultural values of the state conservation area,
- (d) provision for sustainable visitor or tourist use and enjoyment that is compatible with the conservation of the state conservation area's natural and cultural values and with uses permitted under other provisions of this Act in such areas,
- (e) provision for the sustainable use (including adaptive reuse) of any buildings or structures or modified natural areas having regard to the conservation of the state conservation area's natural and cultural values and with uses permitted under other provisions of this Act in such areas,
- (f) provision for appropriate research and monitoring.

30H Regional parks

- (1) The purpose of reserving land as a regional park is to identify, protect and conserve areas in a natural or modified landscape that are suitable for public recreation and enjoyment so as to enable those areas to be managed in accordance with subsection (2).
- (2) A regional park is to be managed in accordance with the following principles:
 - (a) the provision of opportunities, in an outdoor setting, for recreation and enjoyment in natural or modified landscapes,
 - (b) the identification, interpretation, management and conservation of the park so as

- to maintain and enhance significant landscape values,
- (c) the conservation of natural and cultural values,
 - (d) the promotion of public appreciation and understanding of the regional park's natural and cultural values,
 - (e) provision for sustainable visitor or tourist use and enjoyment that is compatible with the conservation of the regional park's natural and cultural values,
 - (f) provision for the sustainable use (including adaptive reuse) of any buildings or structures or modified natural areas having regard to the conservation of the regional park's natural and cultural values,
 - (g) provision for the carrying out of development in any part of a special area (within the meaning of the *Hunter Water Act 1991*) in the regional park that is permitted under section 185A having regard to the conservation of the regional park's natural and cultural values.

30I Karst conservation reserves

- (1) The purpose of reserving land as a karst conservation reserve is to identify, protect and conserve areas, including subterranean land, containing outstanding or representative examples of karst landforms and natural phenomena so as to enable those areas to be managed in accordance with subsection (2).
- (2) A karst conservation reserve is to be managed in accordance with the following principles:
 - (a) the conservation of the karst environment, including the protection of catchment values, such as hydrological processes and water quality,
 - (b) the conservation of cultural values,
 - (c) the protection of natural water movement and air movement regimes and processes within the karst environment,
 - (d) the conservation of biodiversity, the maintenance of ecosystem function, the protection of the geological and geomorphological features and natural phenomena and the maintenance of natural landscapes, cave formations and fossil deposits,
 - (e) provision for research and monitoring,
 - (f) the promotion of public appreciation and understanding of the karst conservation reserve's natural and cultural values,
 - (g) provision for sustainable visitor or tourist use and enjoyment that is compatible

with the karst conservation reserve's natural and cultural values,

- (h) provision for sustainable use (including adaptive reuse) of any buildings or structures or modified natural areas having regard to the conservation of the karst conservation reserve's natural and cultural values,
- (i) provision for the carrying out of development in any part of a special area (within the meaning of the *Hunter Water Act 1991*) in the karst conservation reserve that is permitted under section 185A having regard to the conservation of the karst conservation reserve's natural and cultural values.

30J Nature reserves

- (1) The purpose of reserving land as a nature reserve is to identify, protect and conserve areas containing outstanding, unique or representative ecosystems, species, communities or natural phenomena so as to enable those areas to be managed in accordance with subsection (2).
- (2) A nature reserve is to be managed in accordance with the following principles:
 - (a) the conservation of biodiversity, the maintenance of ecosystem function, the protection of geological and geomorphological features and natural phenomena,
 - (b) the conservation of places, objects, features and landscapes of cultural value,
 - (c) the promotion of public appreciation, enjoyment and understanding of the nature reserve's natural and cultural values,
 - (d) provision for appropriate research and monitoring,
 - (e) provision for the carrying out of development in any part of a special area (within the meaning of the *Hunter Water Act 1991*) in the nature reserve that is permitted under section 185A having regard to the conservation of the nature reserve's natural and cultural values.

30K Aboriginal areas

- (1) The purpose of reserving land as an Aboriginal area is to identify, protect and conserve areas associated with a person, event or historical theme, or containing a building, place, object, feature or landscape:
 - (a) of natural or cultural significance to Aboriginal people, or
 - (b) of importance in improving public understanding of Aboriginal culture and its development and transitions,so as to enable those areas to be managed in accordance with subsection (2).
- (2) An Aboriginal area is to be managed in accordance with the following principles:

- (a) the conservation of natural values, buildings, places, objects, features and landscapes of cultural value to Aboriginal people in accordance with the cultural values of the Aboriginal people to whose heritage the buildings, places, objects, features or landscapes belong,
- (b) the conservation of natural or other cultural values,
- (c) allowing the use of the Aboriginal area by Aboriginal people for cultural purposes,
- (d) the promotion of public understanding and appreciation of the Aboriginal area's natural and cultural values and significance where appropriate,
- (e) provision for appropriate research and monitoring, in accordance with the cultural values of the Aboriginal people,
- (f) provision for the carrying out of development in any part of a special area (within the meaning of the *Hunter Water Act 1991*) in the Aboriginal area that is permitted under section 185A having regard to the conservation of the Aboriginal area's natural and cultural values,
- (g) provision for sustainable visitor or tourist use and enjoyment that is compatible with the Aboriginal area's natural and cultural values and the cultural values of the Aboriginal people,
- (h) provision for sustainable use (including adaptive reuse) of any buildings or structures or modified natural areas having regard to the Aboriginal area's natural and cultural values and the cultural values of the Aboriginal people.

Division 3 National parks and historic sites

31 Care, control and management of parks and sites

- (1) The Director-General has the care, control and management of all national parks and historic sites except as provided by subsection (2).
- (2) On the establishment of a board of management for a national park or historic site reserved under Part 4A, the care, control and management of the park or site is vested in the board of management.

32 (Repealed)

33 Reservation of parks and sites

- (1)-(3) (Repealed)
- (4) On the publication in the Gazette of a notice under Division 1 reserving land as a national park or historic site:
 - (a) the lands described in the notice become Crown lands to the extent to which they

- were not Crown lands immediately before that publication,
- (b) where a trustee of all or any part of the lands so described was holding office under any other Act immediately before that publication, the trustee shall cease to hold that office in respect of those lands or that part, as the case may be, and
 - (c) the care, control and management of the lands so described shall vest in the Director-General.
- (5) On the publication of a notice under Division 1 effecting the reservation, as a particular national park or historic site, of any lands described in the notice (which lands are in this subsection referred to as **the described lands**):
- (a) any by-laws or rules and regulations that, immediately before that publication, applied to all of the described lands and not to any other lands:
 - (i) shall continue to apply to the described lands, and
 - (ii) shall be deemed to be regulations made under this Act and may be amended or repealed accordingly, and
 - (b) any by-laws or rules and regulations that, immediately before that publication, applied to:
 - (i) part only of the described lands, or
 - (ii) all of the described lands and also to any other lands,shall cease to apply to the described lands.
- (6) On the publication of a notice under Division 1 effecting the reservation as part of a particular national park or historic site, of any lands described in the notice (which lands are in this subsection referred to as **the described lands**):
- (a) any by-laws or rules and regulations that, immediately before that publication, applied to that national park or historic site shall apply to the described lands, and
 - (b) any by-laws or rules and regulations that, immediately before that publication, applied to all or any part of the described lands shall cease to apply to the described lands.
- (7) (Repealed)
- (8) To the extent to which a dedication, reservation (other than a reservation under this Division), Crown grant or vesting affects lands described in a notice under Division 1, the publication revokes the dedication, reservation, grant or vesting, and the instruments of title (if any) shall be surrendered for cancellation or notation, as the case may require.

- (9) A notice under Division 1 may relate to:
- (a) one or more national parks or one or more historic sites, or
 - (b) one or more national parks and one or more historic sites.

(10) (Repealed)

34 (Repealed)

35 Tabling of notice of reservation, and disallowance

- (1) In this section, **prescribed time**, in relation to a House of Parliament, means 14 sitting days of that House, whether or not they occur during the same session.
- (2) A copy of a notice published under Division 1 reserving land as a national park or historic site shall be laid before each House of Parliament within the prescribed time after publication thereof.
- (3) Where a House of Parliament passes a resolution of which notice has been given within 15 sitting days of that House after a copy of a notice has been laid before it under subsection (2) (whether or not those sitting days occur during the same session) and the resolution disallows the reservation effected by the notice of any lands as, or as part of, a particular national park or historic site:
- (a) the reservation thereupon ceases to have effect, and
 - (b) those lands cease to be, or to be part of, a national park or historic site.
- (4) Where any lands cease to be, or to be part of, a national park or historic site by virtue of the disallowance of a reservation under this Division:
- (a) the Director-General shall cease to have the care, control and management of those lands,
 - (b) any by-laws applicable thereto immediately before the disallowance shall cease to apply to those lands, and
 - (c) those lands may be dealt with as if they had been acquired under Part 11.
- (5) (Repealed)

36 (Repealed)

37 Revocation or compulsory acquisition of park or site

- (1) Notwithstanding anything in any Act:
- (a) the reservation of lands as, or as part of, a national park or historic site shall not be revoked, or

(b) lands within a national park or historic site shall not be compulsorily acquired, except by an Act of Parliament.

(1A) Nothing in subsection (1) prevents the compulsory acquisition under this Act of lands within a national park or historic site if the reservation of the lands as, or as part of, the national park or historic site is not affected by the compulsory acquisition.

(2) Nothing in subsection (1) prevents the withdrawal of land from or the termination of any lease, licence or occupancy in accordance with the terms and conditions thereof.

38 Limitation on use of name “national park”

The word “national” shall not be used either alone or in conjunction with other words as the name of a park within New South Wales unless the park is a national park under this Act.

39 Existing interests

- (1) In this section, **existing interest** means any authority, authorisation, permit, lease, licence or occupancy.
- (2) Except as provided in this Act, the reservation of lands as, or as part of, a national park or historic site does not affect:
 - (a) the terms and conditions of any existing interest in respect of those lands from the Crown or the trustees, current and in force at the time of the reservation, or
 - (b) the use permitted of those lands under the interest.
- (3) Subject to subsection (4), no such interest shall be renewed nor shall the term of any such interest be extended except with the approval of the Minister and subject to such conditions as the Minister determines.
- (4) The provisions of subsection (3) do not apply to any authority, lease or licence under the *Mining Act 1992*, the *Offshore Minerals Act 1999*, the *Fisheries Management Act 1994* or the *Petroleum (Onshore) Act 1991*, or any permit or licence under the *Petroleum (Offshore) Act 1982*.
- (5) Upon the termination, surrender, forfeiture or determination of any existing interest (otherwise than for the purpose of renewing it or extending its term) referred to in subsection (2), the lands the subject of the interest are, to the extent to which they would not, but for this subsection, be lands reserved as part of the national park or historic site within which they are situated, hereby so reserved.

40 Restrictions on disposal of or dealing with lands within parks or sites

- (1) Notwithstanding anything in the *Crown Lands Consolidation Act 1913* or any other Act, no lands within a national park or historic site shall be sold, leased or otherwise

dealt with except as provided in this Act or in the *Snowy Hydro Corporatisation Act 1997*.

- (2) No permit to graze over any part of a travelling stock reserve or camping reserve under the care, control and management of a livestock health and pest authority, which reserve is situated within the external boundaries of a national park or historic site, shall be granted except with the concurrence in writing of the Minister.
- (3) A permit referred to in subsection (2) may be granted subject to such conditions as the Minister determines.

41 Mining

- (1) It is unlawful to prospect or mine for minerals in a national park or historic site, except as expressly authorised by an Act of Parliament.
- (2) The *Mining Act 1992*, the *Offshore Minerals Act 1999*, the *Petroleum (Onshore) Act 1991* and the *Petroleum (Offshore) Act 1982* do not apply to or in respect of lands within a national park or historic site.
- (3) This section does not apply to or in respect of existing interests, or the renewal or extension of the term of any such interest, as referred to in section 39.
- (4) The Minister may, subject to such terms and conditions as the Minister may determine from time to time, approve of prospecting for minerals being carried out on behalf of the Government in a national park or historic site by a person nominated by the Minister for Minerals and Energy.
- (5) Such an approval has no force unless, before the approval is granted, notice of intention to grant the approval is laid before both Houses of Parliament and:
 - (a) no notice of motion that the approval not be granted is given in either House of Parliament within 15 sitting days of that House after the notice of intention was laid before it, or
 - (b) if notice of such a motion is given, the motion is withdrawn, is defeated or lapses.
- (6) A certificate by the Minister to the effect that the requirements of this section have been complied with in respect of an approval specified in the certificate is conclusive evidence of compliance with those requirements.
- (7) Except as provided by this section, nothing in this section affects the right, title or interest of any person in respect of minerals in any lands within a national park or historic site.

42 Application of Forestry Act 1916

- (1) The *Forestry Act 1916* does not apply to or in respect of lands within a national park

or historic site.

- (2) Notwithstanding anything in subsection (1), all licences and permits under the *Forestry Act 1916* affecting lands within a national park or historic site shall, unless sooner cancelled under that Act, continue in force until the expiration of the respective terms for which they were granted, and that Act shall continue to apply to and in respect of those licences and permits until they respectively expire or are cancelled.

43 Application of *Soil Conservation Act 1938*

The *Soil Conservation Act 1938* applies to and in respect of lands within a national park or historic site, but any experimental or research work conducted pursuant to section 6 of that Act upon those lands shall be undertaken only with the concurrence of the Director-General and subject to such conditions and restrictions as the Director-General may impose.

44 Application of *Fisheries Management Act 1994*

- (1) Subject to subsection (2), nothing in this Act affects the operation of the *Fisheries Management Act 1994* in relation to lands within a national park or historic site.
- (2) A lease under the *Fisheries Management Act 1994* shall not, without the concurrence in writing of the Minister, be granted in respect of lands within a national park or historic site or in respect of any waters beneath which those lands are submerged.

45 Provisions respecting animals in parks and sites

- (1) A person shall not:
 - (a) harm any animal that is within a national park or historic site, or
 - (b) discharge a prohibited weapon in a national park or historic site.
- (2) A person who commits an offence arising under subsection (1) is liable to the penalty prescribed by section 175 for an offence against this Act or to imprisonment for a term not exceeding 6 months or both.
- (3) A person shall not be convicted of an offence arising under subsection (1) if the person proves that the act constituting the offence was done:
 - (a) under and in accordance with or by virtue of the authority conferred by a general licence under section 120, an occupier's licence under section 121, a commercial fauna harvester's licence under section 123 or a scientific licence under section 132C, or
 - (b) in pursuance of a duty imposed on the person by or under any Act.
- (4) A person, being a lessee or occupier of any lands within a national park or historic site, or a person authorised by such a lessee or occupier in that behalf, shall not be

convicted of an offence arising under subsection (1) in respect of the harming of any animal (other than fauna or an animal of a threatened species) that is within those lands, other than fauna.

(5) The regulations may make provision for or with respect to exempting, subject to the prescribed conditions and restrictions (if any), any person or class or description of persons from the provisions of subsection (1).

(6) This section does not prevent:

(a) an Aboriginal owner on whose behalf the lands of a national park or historic site are held by one or more Aboriginal Land Councils in accordance with Part 4A, or

(b) any other Aboriginal person who has the consent of the Aboriginal owner board members,

from harming an animal within the park or site for domestic purposes or for ceremonial or cultural purposes (other than an animal of a threatened species or an animal protected by the plan of management for the park or site).

46 Transfer of rights, liabilities and property

(1) Where upon the taking effect of a notice under Division 1 any persons cease to hold office as trustees of lands reserved as, or as part of, a national park or historic site and the care, control and management of the park or site are vested in the Director-General, the following provisions have effect:

(a) all property and all right and interest therein (in this section referred to as **the trust property**) and all management and control of anything which immediately before that notice took effect was vested in or belonged to the trustees and was held or used by them for or in connection with the park or site shall vest in and belong to the Director-General,

(b) all money and liquidated and unliquidated claims that, immediately before that notice took effect, were payable to or recoverable by the trustees or their predecessors in relation to the park or site or the trust property or any part thereof shall be money and liquidated and unliquidated claims payable to or recoverable by the Director-General,

(c) all proceedings pending immediately before that notice took effect at the suit of the trustees in relation to the park or site or the trust property or any part thereof shall be deemed to be proceedings pending at the suit of the Director-General and all proceedings so pending at the suit of any person against the trustees shall be deemed to be proceedings pending at the suit of that person against the Director-General,

(d) all contracts, agreements, arrangements and undertakings entered into with, and

all securities lawfully given to or by, the trustees or their predecessors in relation to the park or site or the trust property or any part thereof, and in force immediately before that notice took effect, shall be deemed to be contracts, agreements, arrangements and undertakings entered into with, and securities given to or by, the Director-General,

- (e) the Director-General may, in addition to pursuing any other remedies or exercising any other powers that may be available to the Director-General, pursue the same remedies for the recovery of money and claims referred to in this subsection and for the prosecution of proceedings so referred to as the trustees or their predecessors might have done had they continued to be trustees of the park or site after that notice took effect,
 - (f) the Director-General may enforce and realise any security or charge existing immediately before that notice took effect in favour of the trustees in connection with the care, control and management of the park or site, and may exercise any powers thereby conferred on the trustees as if the security or charge were a security or charge in favour of the Director-General,
 - (g) all debts, money and claims, liquidated and unliquidated, that, immediately before that notice took effect, were due or payable by, or recoverable against, the trustees or their predecessors in connection with the care, control and management of the park or site or the trust property or any part thereof shall be debts due and money payable by, and claims recoverable against, the Director-General, and
 - (h) all liquidated and unliquidated claims in connection with the care, control and management of the park or site for which the trustees would, but for the notice, have been liable shall be liquidated and unliquidated claims for which the Director-General shall be liable.
- (2) Where part only of the lands vested in trustees is, by a notice under Division 1, reserved as, or as part of, a national park or historic site and the care, control and management of the park or site are vested in the Director-General, the Director-General and the trustees shall, as soon as practicable after publication of that notice, arrange and agree upon a division of the assets, debts and liabilities of the trustees, so that the assets, debts and liabilities appropriate to the park or site and to the lands retained by the trustees may be determined, and if any difference arises between the Director-General and the trustees, the difference shall be determined in such manner as the Minister may direct.
- (3) (Repealed)

47 (Repealed)

Division 4 State conservation areas

47A Definition

In this Division:

prescribed time, in relation to a House of Parliament, means 14 sitting days of that House, whether or not they occur during the same session.

47B Reservation of state conservation areas

- (1) (Repealed)
- (2) On the publication of a notice under Division 1 reserving land as a state conservation area:
 - (a) the land described in the notice becomes Crown land to the extent to which it was not Crown land immediately before that publication, and
 - (b) if trustees of all or any of the land so described were holding office under any other Act in respect of the land immediately before that publication, those trustees cease to hold office in respect of that land, and
 - (c) the care, control and management of the land so described vests:
 - (i) in the Director-General, or
 - (ii) if a state conservation area trust is established in respect of the land—in the state conservation area trust.
- (3) To the extent to which a dedication, reservation (other than a reservation under Division 1 of land as a state conservation area) or vesting affects land described in a notice published under Division 1 reserving land as a state conservation area, the publication revokes the dedication, reservation or vesting, and the instruments of title (if any) are to be surrendered for cancellation or notation.
- (4) A notice under Division 1 may be made in relation to one or more state conservation areas.
- (5) Schedule 9A (Transfer of assets, rights and liabilities) has effect.

47BA (Repealed)

47C Care, control and management of state conservation areas reserved under Part 4A

- (1) Despite section 47B, on the publication of a notice under Part 4A reserving land as a state conservation area, the Director-General has the care, control and management of the state conservation area until such time as a board of management is established for the state conservation area.
- (2) On the establishment of a board of management for the state conservation area, the board of management has the care, control and management of the state

conservation area.

47D Tabling of notification of reservation, and disallowance

- (1) A copy of a notice published under Division 1 reserving land as a state conservation area shall be laid before each House of Parliament within the prescribed time after publication thereof.
- (2) Where a House of Parliament passes a resolution of which notice has been given within 15 sitting days of that House after a copy of a notice has been laid before it under subsection (1) (whether or not those sitting days occur during the same session) and the resolution disallows the reservation effected by the notice of any lands as, or as part of, a particular state conservation area:
 - (a) the reservation thereupon ceases to have effect, and
 - (b) those lands cease to be, or to be part of, a state conservation area.
- (3) If any land ceases to be, or to be part of, a state conservation area by virtue of a disallowance of a reservation under this Division:
 - (a) the Director-General, or any state conservation area trust appointed as trustee of the land, ceases to have the care, control and management of the land, and
 - (b) the land may be dealt with as if it had been acquired by the Minister under Part 11.
- (4) (Repealed)

47E, 47F (Repealed)

47G Limitation on use of expression “state conservation area”

The expression “state conservation area” shall not be used either alone or in conjunction with other words as the name of any lands used for the purpose of public recreation and enjoyment unless the lands are within a state conservation area reserved under this Division.

47GA State conservation area trusts for certain state conservation areas

- (1) The Minister may, by notice published in the Gazette, establish and name a state conservation area trust and appoint it as trustee of any one or more of the following state conservation areas (or as trustee of any one or more parts of one or more of the following state conservation areas):
 - (a) Arakoon state conservation area,
 - (b) Bents Basin state conservation area,
 - (c) Cape Byron state conservation area.

- (2) A state conservation area trust established under this section is constituted by this Act as a corporation having as its corporate name the name assigned to the trust in the notice of its establishment. The Minister may, by notice published in the Gazette, change the corporate name of a state conservation area trust.
- (3) A state conservation area trust:
 - (a) has the care, control and management of any state conservation area (or part of a state conservation area) of which it is appointed trustee, and
 - (b) has the powers and functions conferred or imposed on it by or under this or any other Act.
- (4) If the Director-General had the care, control and management of the state conservation area immediately before the establishment of the state conservation area trust, any thing done or entered into by the Director-General in connection with the state conservation area is taken to have been done or entered into by the state conservation area trust.
- (5) If a state conservation area trust is appointed as trustee of more than one state conservation area (or more than one part of a state conservation area), a reference in this Act to the state conservation area (or part of the area) in relation to the state conservation area trust includes a reference to any one or more of the state conservation areas (or any one or more of the parts of the state conservation area) of which the state conservation area trust has been appointed as trustee.

47GB State conservation area trust boards

- (1) There is to be a trust board established in respect of each state conservation area trust.
- (2) A trust board is to consist of:
 - (a) at least 3, but no more than 7, members appointed by the Minister, and
 - (b) the holder of any office, or the holders of any offices, that the Minister considers appropriate.
- (3) The affairs of a state conservation area trust are to be managed by the trust board.
- (4) A trust board is subject to the control and direction of the Director-General.
- (5) Schedule 10 has effect with respect to the members and procedure of a trust board.

47GC (Repealed)

47GD Reports by state conservation area trusts

- (1) A state conservation area trust must:

- (a) provide reports to the Director-General at such times, concerning such matters, and specifying such information, as may be required by the Director-General, and
 - (b) keep such records as may be required by the Director-General.
- (2) A state conservation area trust must, at the request of the Director-General:
- (a) give the Director-General such information as the Director-General requires in relation to the operations of the trust, and
 - (b) send to the Director-General such records kept by the state conservation area trust as the Director-General requires (including accounting records).

47GE Inspection of state conservation area trust

- (1) The Director-General may appoint a person to inquire into, or carry out an audit of, any of the affairs of a state conservation area trust.
- (2) The appointed person may, for the purposes of the inquiry or audit:
 - (a) inspect and take copies of or extracts from any records (including accounting records) of the trust, and
 - (b) require any person concerned in the management of the state conservation area trust to give information and answer questions relating to the affairs of the state conservation area trust.
- (3) The power of the appointed person to inspect the records of a state conservation area trust includes the power to inspect the records of a lessee or licensee which the trust has power to inspect under the lease or licence.
- (4) A person must not:
 - (a) without lawful excuse, refuse or fail to allow the appointed person access to records to which the appointed person is entitled, or
 - (b) without lawful excuse, refuse or fail to give information or answer questions, as required by the appointed person, or
 - (c) wilfully obstruct or delay the appointed person in the exercise of a power under this section.

Maximum penalty: 5 penalty units.

47GF Removal of trust board members and appointment of administrator

- (1) The Minister may, by notice published in the Gazette:
 - (a) remove any or all of the members of a state conservation area trust board from office, or

- (b) remove all the members of a state conservation area trust board from office and appoint a person as the administrator of the state conservation area trust concerned.
- (2) If an administrator is appointed:
 - (a) the affairs of the state conservation area trust are to be managed by the administrator, and
 - (b) the administrator has and may exercise all the functions of the state conservation area trust.
 - (3) Subject to this Act, an administrator holds office for such period as may be specified in the administrator's instrument of appointment.
 - (4) The Minister may remove an administrator from office at any time.
 - (5) An administrator is entitled to be paid such remuneration as the Minister may direct. The office of administrator is not, for the purposes of any Act, an office or place of profit under the Crown.

47GG Dissolution of state conservation area trusts

- (1) The Minister may, by notice published in the Gazette, dissolve a state conservation area trust. A notice takes effect on the date of publication or such later date as is specified in the notice.
- (2) Schedule 9A (Transfer of assets, rights and liabilities) has effect.

47H Existing interests

- (1) In this section, **existing interest** means any authority, authorisation, permit, lease, licence or occupancy.
- (2) Except as provided by this Act, the reservation of lands as, or as part of, a state conservation area does not affect:
 - (a) the terms and conditions of any existing interest in respect of those lands from the Crown or the trustees, current and in force at the time of the reservation, or
 - (b) the use permitted of those lands under the interest.
- (3) Subject to subsection (4), no such interest shall be renewed nor shall the term of any such interest be extended except with the approval of the Minister and subject to such conditions as the Minister determines.
- (4) The provisions of subsection (3) do not apply to any authority, lease or licence under the *Mining Act 1992*, the *Offshore Minerals Act 1999*, the *Fisheries Management Act 1994* or the *Petroleum (Onshore) Act 1991*, or to any permit or licence under the

Petroleum (Offshore) Act 1982.

- (5) Upon the termination, surrender, forfeiture or determination of any existing interest (otherwise than for the purpose of renewing it or extending its term) referred to in subsection (2), the lands the subject of the interest are, to the extent to which they would not, but for this subsection, be lands reserved as part of the state conservation area within which they are situated, hereby so reserved.

47I Restrictions on dealing with land in state conservation areas

- (1) Despite anything in this or any other Act, land within a state conservation area is not to be dealt with except as provided under this Act.
- (2) Without limiting the generality of subsection (1), land within a state conservation area is not to be dedicated, reserved or otherwise dealt with under Part 5 of the *Crown Lands Act 1989*.

47J Provisions relating to mining

- (1) In this section, **mining interest** means:
 - (a) any mining lease under the *Mining Act 1992*, or
 - (b) any mining licence under the *Offshore Minerals Act 1999*, or
 - (c) any lease under the *Petroleum (Onshore) Act 1991*.
- (2) Subject to this section, the *Mining Act 1992*, the *Offshore Minerals Act 1999*, the *Petroleum (Onshore) Act 1991* and the *Petroleum (Offshore) Act 1982* apply, at any time, to lands within a state conservation area to the extent to which those Acts are in force at that time.
- (3) A mining interest shall not be granted in respect of lands within a state conservation area without the concurrence in writing of the Minister.
- (4) A renewal of, or extension of the term of, a mining interest in respect of lands within a state conservation area (other than an existing interest referred to in section 47H) shall not be granted under the *Mining Act 1992*, the *Offshore Minerals Act 1999* or the *Petroleum (Onshore) Act 1991* without the concurrence in writing of the Minister.
- (5) Except as provided in this section, nothing in this Division affects the right, title or interest of any person (other than a person who is or was trustee of the lands comprised in a state conservation area) in respect of minerals in any such lands.
- (6) A mineral claim must not be granted under the *Mining Act 1992* over any lands within a state conservation area.
- (7) Where a provision of the *Mining Act 1992* or the *Offshore Minerals Act 1999* prevents, or has the effect of preventing, a person from exercising in lands within a state

conservation area any of the rights conferred by either of those Acts or by an instrument under either of those Acts, except with the consent or an authorisation of the Minister for the time being administering the *Mining Act 1992* or the *Offshore Minerals Act 1999*, as the case requires, that Minister shall not, in the case of any such lands, give consent or an authorisation under that provision without the approval of:

- (a) where the lands are not within an irrigation area or special land district as defined in the *Crown Lands Act 1989*—the Minister, or
- (b) where the lands are within such an irrigation area—the Minister for the time being administering the *Water Management Act 2000*, or
- (c) where the lands are within such a special land district—the Minister for the time being administering the *Crown Lands Act 1989* obtained after consultation with the Minister administering the *Water Management Act 2000*.

47K Application of certain other provisions

The provisions of sections 42, 43 and 44 apply to and in respect of a state conservation area in the same way as they apply to and in respect of a national park or historic site.

47L Revocation or compulsory acquisition of state conservation areas

- (1) Despite anything in this or any other Act:
 - (a) the reservation of land as, or as part of, a state conservation area is not to be revoked, or
 - (b) land within a state conservation area is not to be appropriated or resumed, except by an Act of Parliament.
- (2) Nothing in subsection (1) prevents:
 - (a) the compulsory acquisition under this Act of land within a state conservation area if the reservation of the land as, or as part of, the state conservation area is not affected by the compulsory acquisition, or
 - (b) the withdrawal of land from, or the termination of, any lease, licence or occupancy in accordance with its terms and conditions, or
 - (c) the revocation of the reservation of land as a state conservation area in accordance with section 47MA.

47M Review of classification as state conservation area

- (1) The Minister is to review, every 5 years after the commencement of this section, the status of land within state conservation areas.
- (2) The review is to give reasons as to why each area of land within a state conservation

area should or should not be reserved as a national park or nature reserve under section 47MA.

- (3) The results of the review are to be made available for public inspection free of charge, during ordinary office hours, at the head office of the Service and are to be published on the Internet by means of the website of the Service.
- (4) The review is to be undertaken in consultation with the Minister administering the *Mining Act 1992*.

47MA Reservation of land in state conservation area as national park or nature reserve

- (1) The Governor may, by notice published in the Gazette, revoke the reservation of any land as a state conservation area or part of a state conservation area and reserve the land as a national park or nature reserve or as part of a national park or nature reserve.
- (2) The Governor may take action under subsection (1) only with the concurrence in writing of the Minister administering the *Mining Act 1992*.
- (3) Land that is the subject of an authority, lease, licence or permit under the *Mining Act 1992*, the *Petroleum (Onshore) Act 1991*, the *Offshore Minerals Act 1999* or the *Petroleum (Offshore) Act 1982* must not be reserved under this section as a national park or nature reserve, or as a part of a national park or nature reserve, during the term of that authority, lease, licence or permit (including any renewal).
- (4) A plan of management that applied to land immediately before its reservation as a national park or nature reserve (or as part of a national park or nature reserve) under subsection (1) continues to apply, to the extent to which it applied previously, to the land before that reservation, as a plan of management for the purposes of this Act.
- (5) A plan of management to which subsection (4) applies may be amended, altered, cancelled or substituted in accordance with Part 5.

47N Special provisions relating to certain state recreation areas

- (1) This section applies to the following state recreation areas:

Copeton,

Lake Keepit,

Burrendong,

Lake Glenbawn,

Wyangala,

Grabine,

Killalea,

Burrinjuck (but only in respect of such part of the Burrinjuck state recreation area as is specified by the Director-General by notice published in the Gazette on or before the commencement of this section).

- (2) On the commencement of this section:
 - (a) the reservation under this Act of land as a state recreation area to which this section applies is, by this section, revoked, and
 - (b) the land comprising each of those former state recreation areas is taken to be land dedicated for the purposes of public recreation under Part 5 of the *Crown Lands Act 1989*, and
 - (c) a reserve trust is taken to be established under Part 5 of the *Crown Lands Act 1989* in respect of the land so dedicated, and
 - (d) the trustees (if any) of each of those former state recreation areas are taken to be appointed as the members of a trust board for the reserve trust.
- (3) This section has effect despite section 47L.
- (4) Schedule 9A (Transfer of assets, rights and liabilities) has effect.

Division 5 Regional parks

470 Reservation of regional parks

- (1), (2) (Repealed)
- (3) On the publication of a notice under Division 1 reserving land as a regional park:
 - (a) the land described in the notice becomes Crown land to the extent to which it was not Crown land immediately before that publication, and
 - (b) if trustees of all or any of the land so described were holding office under any other Act in respect of the land immediately before that publication, those trustees cease to hold office in respect of that land, and
 - (c) the care, control and management of the land so described vests:
 - (i) in the Director-General, or
 - (ii) if a regional park trust is established in respect of the land—in the regional park trust, or
 - (iii) if a local council has, with the concurrence of the council, been nominated by the Minister in the notice—in the council.

- (4) To the extent to which a dedication, reservation (other than a reservation under Division 1 reserving land as a regional park) or vesting affects land described in a notice published under Division 1 reserving land as a regional park, the publication revokes the dedication, reservation or vesting, and the instruments of title (if any) are to be surrendered for cancellation or notation.
- (5) A notice under Division 1 reserving land as a regional park may be made in relation to one or more regional parks.
- (6) Schedule 9A (Transfer of assets, rights and liabilities) has effect.
- (7) A local council may not be nominated by the Minister under subsection (3) (c) (iii) in respect of a regional park if the regional park is wholly or partly within the area of another local council, except with the consent of the other council.
- (8) A local council nominated under subsection (3) (c) (iii) by the Minister:
 - (a) has, subject to this Act, the care, control and management of the regional park concerned, and
 - (b) has the powers and functions conferred or imposed on it by or under this Act, and
 - (c) is, in the exercise of such powers and functions, subject to the control and direction of the Minister.

470A Care, control and management of regional parks reserved under Part 4A

- (1) Despite section 470, on the publication of a notice under Part 4A reserving lands as a regional park, the Director-General has the care, control and management of the regional park until such time as a board of management is established for the regional park.
- (2) On the establishment of a board of management for the regional park, the board of management has the care, control and management of the regional park.

47P Name of regional park and limitation on use of term “regional park”

- (1) (Repealed)
- (2) The term **regional park** is not to be used either alone or in conjunction with other words as the name of any land used for the purpose of public recreation and enjoyment unless the land is within a regional park reserved under this Division.

47Q (Repealed)

47R Tabling of notice of reservation, and disallowance

- (1) A copy of a notice published under Division 1 reserving land as a regional park must be laid before each House of Parliament within 14 sitting days (whether or not they

occur in the same session) after publication of the notice.

- (2) If either House of Parliament passes a resolution of which notice has been given within 15 sitting days after such a copy has been laid before it (whether or not those sitting days occur in the same session) and the resolution disallows the reservation effected by the notice of any land as a particular regional park:
 - (a) the reservation ceases to have effect, and
 - (b) the land ceases to be, or ceases to be part of, a regional park.
- (3) If any land ceases to be, or to be part of, a regional park by virtue of the disallowance of a reservation under Division 1:
 - (a) the Director-General, or any regional park trust appointed as trustee of the land, or any local council nominated by the Minister under section 470, ceases to have the care, control and management of the land, and
 - (b) the land may be dealt with as if it had been acquired under Part 11.

47S Regional park trusts

- (1) The Minister may, by notice published in the Gazette, establish and name a regional park trust and appoint it as trustee of any one or more specified regional parks or any one or more parts of a regional park.
- (2) A regional park trust established under this section is constituted by this Act as a corporation having as its corporate name the name assigned to the trust in the notice of its establishment. The Minister may, by notice published in the Gazette, change the corporate name of a regional park trust.
- (3) A regional park trust:
 - (a) has the care, control and management of any regional park (or part of a regional park) of which it is appointed trustee, and
 - (b) has the powers and functions conferred or imposed on it by or under this or any other Act.
- (4) If the Director-General had the care, control and management of the regional park immediately before the establishment of the regional park trust, any thing done or entered into by the Director-General in connection with the regional park is taken to have been done or entered into by the regional park trust.
- (5) If a regional park trust is appointed as trustee of more than one regional park (or more than one part of a regional park), a reference in this Act to the regional park (or part of the park) in relation to the regional park trust includes a reference to any one or more of the regional parks (or any one or more of the parts of the regional park) of which

the trust has been appointed as trustee.

47T Regional park trust boards

- (1) There is to be a trust board established in respect of each regional park trust.
- (2) A regional park trust board is to consist of:
 - (a) at least 3, but no more than 7, members appointed by the Minister, and
 - (b) the holder of any office, or the holders of any offices, that the Minister considers appropriate.
- (3) The affairs of a regional park trust are to be managed by the trust board.
- (4) A trust board is subject to the control and direction of the Director-General.
- (5) Schedule 10 has effect with respect to the members and procedure of a trust board.

47U (Repealed)

47V Reports

- (1) A regional park trust must:
 - (a) provide reports to the Director-General at such times, concerning such matters, and specifying such information, as may be required by the Director-General, and
 - (b) keep such records as may be required by the Director-General.
- (2) A regional park trust must, at the request of the Director-General:
 - (a) give the Director-General such information as the Director-General requires in relation to the operations of the trust, and
 - (b) send to the Director-General such records kept by the regional park trust as the Director-General requires (including accounting records).
- (3) If a local council has the care, control and management of a regional park, the council must:
 - (a) provide reports to the Minister at such times, concerning such matters, and specifying such information, as may be required by the Minister, and
 - (b) keep such records as may be required by the Minister, and
 - (c) at the Minister's request, give the Minister such information as the Minister requires in relation to the care, control and management of the park by the council, and
 - (d) at the Minister's request, send to the Minister such records kept by the council in

relation to the care, control and management of the park as the Minister requires.

47W Inspection and audit

- (1) The Director-General may appoint a person to inquire into, or carry out an audit of, any of the affairs of a regional park trust.
- (2) If a local council has the care, control and management of a regional park, the Minister may appoint a person to inquire into, or carry out an audit of, any of the affairs of the council in relation to the park.
- (3) The appointed person may, for the purposes of the inquiry or audit:
 - (a) inspect and take copies of or extracts from any records (including accounting records) of the trust or the local council in respect of the regional park, and
 - (b) require any person concerned in the management of the regional park trust or the local council to give information and answer questions relating to the affairs of the regional park trust or the local council in respect of the regional park.
- (4) The power of the appointed person to inspect the records of a regional park trust or local council includes the power to inspect the records of a lessee or licensee which the trust or council has power to inspect under the lease or licence.
- (5) A person must not:
 - (a) without lawful excuse, refuse or fail to allow the appointed person access to records to which the appointed person is entitled, or
 - (b) without lawful excuse, refuse or fail to give information or answer questions, as required by the appointed person, or
 - (c) wilfully obstruct or delay the appointed person in the exercise of a power under this section.

Maximum penalty: 5 penalty units.

47X Removal of trust board members or local council and appointment of administrator

- (1) The Minister may, by notice published in the Gazette:
 - (a) remove any or all of the members of a regional park trust board from office, or
 - (b) remove all the members of a regional park trust board from office and appoint a person as the administrator of the regional park trust concerned.
- (2) If an administrator is appointed:
 - (a) the affairs of the regional park trust are to be managed by the administrator, and

- (b) the administrator has and may exercise all the functions of the regional park trust.
- (3) The Minister may, by notice published in the Gazette, appoint an administrator:
 - (a) to have the care, control and management of a regional park instead of a local council as nominated by the Minister under section 470 (3) (c) (iii), and
 - (b) to exercise any of the functions of the local council in respect of the regional park.
- (4) Subject to this Act, an administrator holds office for such period as may be specified in the administrator's instrument of appointment.
- (5) The Minister may remove an administrator from office at any time.
- (6) An administrator is entitled to be paid such remuneration as the Minister may direct. The office of an administrator is not, for the purposes of any Act, an office or place of profit under the Crown.

47Y Dissolution of regional park trusts and revocation of nomination of local councils

- (1) The Minister may, by notice published in the Gazette, dissolve a regional park trust. A notice takes effect on the date of publication or such later date as is specified in the notice.
- (2) On such a notice taking effect, Schedule 9A (Transfer of assets, rights and liabilities) has effect.
- (3) The Minister may, by notice published in the Gazette, revoke the nomination of a local council under section 470 (3) (c) (iii) and transfer the care, control and management of the regional park concerned to the Director-General. Any such notice takes effect on the date of publication or such later date as is specified in the notice.
- (4) On the date that a notice under subsection (3) takes effect, the care, control and management of the regional park concerned is vested in the Director-General and the following provisions have effect:
 - (a) any act, matter or thing done or omitted to be done before that date by, to or in respect of the local council in relation to the park is (to the extent that that 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, and
 - (b) a reference in any instrument of any kind to the local council (in so far as it relates to the care, control and management of the park) is to be read as a reference to the Director-General.

47Z Restrictions on dealing with land within regional parks

- (1) Despite anything in this or any other Act, land within a regional park is not to be dealt with except as provided under this Act.

- (2) Without limiting the generality of subsection (1), land within a regional park is not to be dedicated, reserved or otherwise dealt with under Part 5 of the *Crown Lands Act 1989*.

47ZA Application of certain provisions to regional parks

The provisions of sections 39, 41, 42, 43 and 44 apply to and in respect of a regional park in the same way as they apply to and in respect of a national park or historic site.

47ZB Revocation of regional park

- (1) Despite anything in this or any other Act:
- (a) the reservation of land as (or as part of) a regional park is not to be revoked, and
 - (b) land within a regional park is not to be appropriated or resumed, except by an Act of Parliament.
- (2) Nothing in subsection (1) prevents:
- (a) the compulsory acquisition under this Act of land within a regional park if the reservation of the land as, or as part of, the regional park is not affected by the compulsory acquisition, or
 - (b) the withdrawal of land from, or the termination of, any lease, licence or occupancy in accordance with its terms and conditions.

Division 6 Nature reserves

48 Care, control and management of nature reserves

- (1) The Director-General has the care, control and management of all nature reserves except as provided by subsection (2).
- (2) On the establishment of a board of management for a nature reserve reserved under Part 4A, the care, control and management of the reserve is vested in the board of management.

49 Reservation of nature reserves

- (1)-(3) (Repealed)
- (4) On the publication of a notice under Division 1 reserving land as a nature reserve:
- (a) the lands described in the notice become Crown lands to the extent to which they were not Crown lands immediately before that publication,
 - (b) where a trustee of all or any part of the lands so described was holding office under any other Act immediately before that publication, the trustee shall cease to

hold that office in respect of those lands or that part, as the case may be, and

(c) the care, control and management of the lands so described shall vest in the Director-General for the purposes of this Act.

(5) To the extent to which a dedication, reservation (other than a reservation of land as a nature reserve under Division 1), Crown grant or vesting affects lands described in a notice published under Division 1 reserving land as a nature reserve, the publication revokes the dedication, reservation, grant or vesting, and the instruments of title (if any) shall be surrendered for cancellation or notation, as the case may require.

(6) A notice under Division 1 may be made in relation to one or more nature reserves.

50, 51 (Repealed)

52 Revocation or compulsory acquisition of nature reserve

(1) Notwithstanding anything in any Act:

(a) the dedication of lands as, or as part of, a nature reserve shall not be revoked, or

(b) lands within a nature reserve shall not be compulsorily acquired,

except by an Act of Parliament.

(1A) Nothing in subsection (1) prevents the compulsory acquisition under this Act of lands within a nature reserve if the dedication of the lands as, or as part of, the nature reserve is not affected by the compulsory acquisition.

(2) Nothing in subsection (1) prevents the withdrawal of land from or the termination of any lease, licence or occupancy in accordance with the terms and conditions thereof.

53 Restrictions on disposal of or dealing with lands within nature reserves

(1) Notwithstanding anything in the *Crown Lands Consolidation Act 1913* or any other Act, no lands within a nature reserve shall be sold, leased or otherwise dealt with except as provided in this Act or in the *Snowy Hydro Corporatisation Act 1997*.

(2) No permit to graze over any part of a travelling stock reserve or camping reserve under the control of a livestock health and pest authority, which reserve is situated within the external boundaries of a nature reserve, shall be granted except with the concurrence in writing of the Director-General.

(3) A permit referred to in subsection (2) may be granted subject to such conditions as the Director-General determines.

54 Mining

The provisions of section 41 apply to and in respect of a nature reserve in the same way

as they apply to and in respect of a national park or historic site.

55 Application of *Forestry Act 1916*

- (1) The *Forestry Act 1916* does not apply to or in respect of lands within a nature reserve.
- (2) Notwithstanding anything in subsection (1), all licences and permits under the *Forestry Act 1916* affecting lands within a nature reserve shall, unless sooner cancelled under that Act, continue in force until the expiration of the respective terms for which they were granted, and that Act shall continue to apply to and in respect of those licences and permits until they respectively expire or are cancelled.

56 Provisions respecting animals in nature reserves

- (1) A person shall not:
 - (a) harm any animal that is within a nature reserve,
 - (b) use any animal, firearm, explosive, net, trap, hunting device or instrument or means whatever for the purpose of harming any animal that is within a nature reserve,
 - (c) carry, discharge or have in the person's possession any prohibited weapon in a nature reserve,
 - (d) carry or have in the person's possession any explosive, net, trap or hunting device in a nature reserve, or
 - (e) be accompanied by a dog in a nature reserve.
- (2) A person who commits an offence arising under subsection (1) is liable to the penalty prescribed by section 175 for an offence against this Act or to imprisonment for a term not exceeding 6 months or both.
- (3) A person shall not be convicted of an offence arising under subsection (1) if the person proves that the act constituting the offence was done, or that the state of affairs constituting the offence existed:
 - (a) under and in accordance with or by virtue of the authority conferred by a general licence under section 120, an occupier's licence under section 121, a commercial fauna harvester's licence under section 123 or a scientific licence under section 132C, or
 - (b) in pursuance of a duty imposed on the person by or under any Act.
- (4) A person shall not be convicted of an offence arising under subsection (1) in respect of the carrying or having in the person's possession of a net if the person proves that the net was carried or in the person's possession for the purpose only of taking, or attempting to take, fish from any waters.

- (5) A person, being a lessee or occupier of any lands within a nature reserve, or a person authorised by such a lessee or occupier in that behalf, shall not be convicted of an offence arising under subsection (1) in respect of the harming of an animal that is within those lands (other than fauna or an animal of a threatened species).
- (6) The regulations may make provision for or with respect to exempting, subject to the prescribed conditions and restrictions (if any), any person or class or description of persons from the provisions of subsection (1).
- (7) Without limiting subsection (6), this section does not prevent:
 - (a) an Aboriginal owner on whose behalf the lands of a nature reserve are held by one or more Aboriginal Land Councils in accordance with Part 4A, or
 - (b) any other Aboriginal person who has the consent of the Aboriginal owner board members,from harming an animal within the reserve for domestic purposes or for ceremonial or cultural purposes (other than an animal of a threatened species or an animal protected by the plan of management for the reserve).

57 Restrictions as to timber, vegetation, plants etc in nature reserves

- (1) Subject to section 55 (2), a person shall not fell, cut, destroy, injure, pick, remove or set fire to any tree, timber, plant, flower or vegetation in a nature reserve.
- (2) A person shall not have in the person's possession any native plant within a nature reserve.
- (3) A person who commits an offence arising under subsection (1) or (2) is liable to the penalty prescribed by section 175 for an offence against this Act or to imprisonment for a term not exceeding 6 months or both.
- (4) A person shall not be convicted of an offence arising under subsection (1) or (2) if the person proves that the act constituting the offence was done, or the state of affairs constituting the offence existed:
 - (a) under and in accordance with or by virtue of the authority conferred by a licence issued under Division 3 of Part 9 or section 132C, or
 - (b) in pursuance of a duty imposed on the person by or under any Act.
- (5) A person, being a lessee or occupier of any lands within a nature reserve, or a person authorised by such a lessee or occupier in that behalf, shall not be convicted of an offence arising under subsection (1) or (2) in respect of the felling, cutting, destroying, injuring, picking, removing of, or setting fire to any tree, timber, plant, flower or vegetation, or the possession of a native plant (not being a plant of a threatened species), that is or was growing within those lands.

- (6) The regulations may make provision for or with respect to exempting, subject to the prescribed conditions and restrictions (if any), any person or class or description of persons from the provisions of subsection (1) or (2) or both.
- (7) Without limiting subsection (6), this section does not prevent:
- (a) an Aboriginal owner on whose behalf the lands of a nature reserve are held by one or more Aboriginal Land Councils in accordance with Part 4A, or
 - (b) any other Aboriginal person who has the consent of the Aboriginal owner board members,
- from picking within the reserve any tree, timber, plant (including a native plant), flower or vegetation for food for domestic purposes or for ceremonial or cultural purposes (including a protected native plant but not including a plant of a threatened species or a plant protected by the plan of management for the reserve).

58 Application of certain provisions to nature reserves

The provisions of sections 33 (5) and (6), 35, 39, 43, 44 and 46 apply to and in respect of a nature reserve in the same way as they apply to and in respect of a national park or historic site and so apply as if a reference in those provisions to:

- (a) a notice under Division 1 reserving land as a national park or historic site were a reference to a notice under Division 1 reserving land as a nature reserve, and
- (b) a reservation of land under Division 1 as a national park or historic site were a reference to a reservation of land under that Division as a nature reserve.

58A-58J (Repealed)

Division 7 Karst conservation reserves

58K Reservation of karst conservation reserves

- (1)-(3) (Repealed)
- (4) On the publication of a notice under Division 1 reserving land as a karst conservation reserve:
- (a) the lands described in the notice become Crown lands to the extent to which they were not Crown lands immediately before that publication, and
 - (b) if a trustee of all or any part of the lands so described was holding office under any other Act immediately before that publication, the trustee ceases to hold that office in respect of those lands or that part, as the case may be, and
 - (c) the care, control and management of the lands so described vests in the Director-General for the purposes of this Act except as provided by subsection (4A).

- (4A) On the establishment of a board of management for a karst conservation reserve reserved under Part 4A, the care, control and management of the reserve is vested in the board of management.
- (5) A notice under Division 1 reserving land as a karst conservation reserve may, but need not be, restricted to lands that are wholly or predominantly subterranean lands.
- (6) To the extent to which a reservation (other than a reservation of land under Division 1 as a karst conservation reserve) or vesting affects land described in a notice published under Division 1 reserving land as a karst conservation area, the publication (unless the notice otherwise provides) revokes the reservation or vesting and the instruments of title (if any) must be surrendered for cancellation or notation, as the case requires.

58L (Repealed)

58M Revocation or compulsory acquisition of karst conservation reserve

- (1) Notwithstanding anything in any Act:
 - (a) the reservation of lands as, or as part of, a karst conservation reserve shall not be revoked, or
 - (b) lands within a karst conservation reserve shall not be compulsorily acquired, except by an Act of Parliament.
- (1A) Nothing in subsection (1) prevents the compulsory acquisition under this Act of lands within a karst conservation reserve if the reservation of the lands as, or as part of, the karst conservation reserve is not affected by the compulsory acquisition.
- (2) Nothing in subsection (1) prevents the withdrawal of land from or the termination of any lease, licence or occupancy in accordance with the terms and conditions thereof.

58N Restriction on disposal of or dealing with lands within karst conservation reserves

Notwithstanding anything in the [Crown Lands Act 1989](#) or any other Act, no lands within a karst conservation reserve shall be sold, leased or otherwise dealt with except as provided in this Act or in the [Snowy Hydro Corporatisation Act 1997](#).

58O Mining

The provisions of section 41 apply to and in respect of a karst conservation reserve in the same way as they apply to and in respect of a national park or historic site.

58P Application of [Forestry Act 1916](#)

- (1) The [Forestry Act 1916](#) does not apply to or in respect of lands within a karst conservation reserve.

- (2) Notwithstanding anything in subsection (1), all licences and permits under the *Forestry Act 1916* affecting lands within a karst conservation reserve shall, unless sooner cancelled under that Act, continue in force until the expiration of the respective terms for which they were granted, and that Act shall continue to apply to and in respect of those licences and permits until they respectively expire or are cancelled.

58Q Provisions respecting animals in karst conservation reserves

- (1) A person shall not:
- (a) harm any animal that is within a karst conservation reserve, or
 - (b) use any animal, firearm, explosive, net, trap, hunting device or instrument or means whatever for the purpose of harming any animal that is within a karst conservation reserve, or
 - (c) carry, discharge or be in possession of any prohibited weapon in a karst conservation reserve, or
 - (d) carry or be in possession of any explosive, net, trap or hunting device in a karst conservation reserve, or
 - (e) be accompanied by a dog in a karst conservation reserve.
- (2) A person who commits an offence arising under subsection (1) is liable to the penalty prescribed by section 175 for an offence against this Act or to imprisonment for a term not exceeding 6 months, or both.
- (3) A person shall not be convicted of an offence arising under subsection (1) if the person proves that the act constituting the offence was done, or that the state of affairs constituting the offence existed:
- (a) under and in accordance with or by virtue of the authority conferred by a general licence under section 120, an occupier's licence under section 121, a commercial fauna harvester's licence under section 123 or a scientific licence under section 132C, or
 - (b) in pursuance of a duty imposed by or under any Act.
- (4) A person shall not be convicted of an offence arising under subsection (1) in respect of the carrying or being in possession of a net if the person proves that the net was carried or was in the person's possession for the purpose only of taking, or attempting to take, fish from any waters.
- (5) A person, being a lessee or occupier of any lands within a karst conservation reserve, or a person authorised by such a lessee or occupier in that behalf, shall not be convicted of an offence arising under subsection (1) in respect of the harming of an animal that is within those lands (other than fauna or an animal of a threatened

species).

- (6) The regulations may make provision for or with respect to exempting, subject to the prescribed conditions and restrictions (if any), any person or class or description of persons from the provisions of subsection (1).
- (7) Without limiting subsection (6), this section does not prevent:
 - (a) an Aboriginal owner on whose behalf the lands of a karst conservation reserve are held by one or more Aboriginal Land Councils in accordance with Part 4A, or
 - (b) any other Aboriginal person who has the consent of the Aboriginal owner board members,from harming within the reserve an animal for domestic purposes or for ceremonial or cultural purposes (other than an animal of a threatened species or an animal protected by the plan of management for the reserve).

58R Restrictions as to timber, vegetation, plants etc in karst conservation reserves

- (1) Subject to section 58P (2), a person shall not fell, cut, destroy, injure, pick, remove or set fire to any tree, timber, plant, flower or vegetation in a karst conservation reserve.
- (2) A person shall not be in possession of any native plant within a karst conservation reserve.
- (3) A person who commits an offence arising under subsection (1) or (2) is liable to the penalty prescribed by section 175 for an offence against this Act or to imprisonment for a term not exceeding 6 months, or both.
- (4) A person shall not be convicted of an offence arising under subsection (1) or (2) if the person proves that the act constituting the offence was done, or that the state of affairs constituting the offence existed:
 - (a) under and in accordance with or by virtue of the authority conferred by a licence issued under Division 3 of Part 9 or section 132C, or
 - (b) in pursuance of a duty imposed by or under any Act.
- (5) A person, being a lessee or occupier of any lands within a karst conservation reserve, or a person authorised by such a lessee or occupier in that behalf, shall not be convicted of an offence arising under subsection (1) or (2) in respect of the felling, cutting, destroying, injuring, picking or removing of or setting fire to any tree, timber, plant, flower or vegetation, or the possession of a native plant (not being a plant of a threatened species), that is or was growing within those lands.
- (6) The regulations may make provision for or with respect to exempting, subject to the prescribed conditions and restrictions (if any), any person or class or description of

persons from the provisions of subsection (1) or (2), or both.

(7) Without limiting subsection (6), this section does not prevent:

- (a) an Aboriginal owner on whose behalf the lands of a karst conservation reserve are held by one or more Aboriginal Land Councils in accordance with Part 4A, or
- (b) any other Aboriginal person who has the consent of the Aboriginal owner board members,

from picking within the reserve any tree, timber, plant (including a native plant), flower or vegetation for food for domestic purposes or for ceremonial or cultural purposes (including a protected native plant but not including a plant of a threatened species or a plant protected by the plan of management for the reserve).

58S Application of certain provisions to karst conservation reserves

(1) The provisions of:

- (a) section 33 (5) and (6),
- (b) section 35,
- (c) section 39,
- (d) sections 43 and 44, and
- (e) section 46,

apply to and in respect of a karst conservation reserve in the same way as they apply to and in respect of a national park or historic site, and so apply as if a reference in those provisions to:

- (f) a notice under Division 1 reserving land as a national park or historic site were a reference to a notice under that Division reserving land as a karst conservation reserve, and
- (g) a reservation under Division 1 of land as a national park or historic site were a reference to a reservation of land under that Division as a karst conservation reserve.

(2) (Repealed)

Division 8

58T-58ZE (Repealed)

Division 9 Wild rivers

59, 60 (Repealed)

61 Declaration of wild rivers

- (1) Subject to section 61A, the Director-General may, by notification published in the Gazette, declare any river or part of a river (when within lands reserved under this Act) to be a wild river.
- (2) The Director-General may, by further notification published in the Gazette, vary or revoke any such declaration.
- (3) The Director-General may make a declaration under subsection (1):
 - (a) only with the concurrence of the Minister administering the *Water Management Act 2000*, if the declaration will have an impact on functions carried out under that Act, and
 - (b) in respect of a river or part of a river in a state conservation area, only with the concurrence of the Minister administering the *Mining Act 1992*, if the declaration will have an impact on functions carried out under that Act.
- (4) The purpose of declaring a river or part of a river as a wild river is to identify, protect and conserve any water course or water course network, or any connected network of water bodies, or any part of those, of natural origin, exhibiting substantially natural flow (whether perennial, intermittent or episodic) and containing remaining examples, in a condition substantially undisturbed since European occupation of New South Wales, of:
 - (a) the biological, hydrological and geomorphological processes associated with river flow, and
 - (b) the biological, hydrological and geomorphological processes in those parts of the catchment with which the river is intrinsically linked,so as to enable that river or part to be managed in accordance with subsection (5).
- (5) A wild river is to be managed in accordance with the following principles:
 - (a) the restoration (wherever possible) and maintenance of the natural biological, hydrological and geomorphological processes associated with wild rivers and their catchments, including natural flow variability,
 - (b) the identification, conservation and appropriate management of Aboriginal objects and Aboriginal places.

61A Effect of declaration of wild river

- (1) Where a plan of management is in force with respect to any river or part of a river within lands reserved under this Act, a declaration shall not be made under section 61 with respect to that river or part of that river except in accordance with the plan.

- (2) A statutory authority shall not carry out development in relation to a wild river unless it has consulted with, and considered any advice given by, the Minister in relation to the development.
- (3) In this section, **statutory authority** and **development** have the same meanings as they have in Division 12.

Division 10 Aboriginal areas

62 Reservation of Aboriginal areas

- (1)-(3) (Repealed)
- (4) Lands within an Aboriginal area shall be deemed to be reserved for the purpose of preserving, protecting and preventing damage to Aboriginal objects or Aboriginal places therein.

63 Care, control and management of Aboriginal areas

- (1) The Director-General has the care, control and management of all Aboriginal areas except as provided by subsection (2).
- (2) On the establishment of a board of management for an Aboriginal area dedicated under Part 4A, the care, control and management of the area is vested in the board of management.

64 Mining

The provisions of sections 41 and 42 apply to and in respect of an Aboriginal area in the same way as they apply to and in respect of a national park or historic site.

65, 66 (Repealed)

Division 11 Wildlife refuges

67 (Repealed)

68 Wildlife refuges

- (1) Subject to this section, the Governor may, by proclamation published in the Gazette, declare any lands described in the proclamation to be a wildlife refuge.
- (2) Lands within a wildlife refuge shall be deemed to be dedicated for the purposes of:
 - (a) preserving, conserving, propagating and studying wildlife,
 - (b) conserving and studying natural environments, and
 - (c) creating simulated natural environments.

- (3) A proclamation under subsection (1):
- (a) shall not be made:
 - (i) where the lands are unoccupied Crown lands—without the consent of the Minister administering the *Crown Lands Consolidation Act 1913*,
 - (ii) where the lands are occupied Crown lands—without the consent of that Minister, the holder and the occupier,
 - (iii) where the lands are not Crown lands and are not within a State forest—without the consent of the owner and the occupier, or
 - (iv) where the lands are within a State forest—without the consent of the Forestry Commission, and
 - (b) may be revoked at any time, and may be varied or amended with the consent of, and shall be revoked at the request of, any person whose consent would, if the lands were, for the time being, not a wildlife refuge, be required for their declaration as such a refuge.
- (4) A person who is a holder or occupier of Crown lands shall be deemed, for the purposes of this section, to have given his or her consent, referred to in subsection (3), if, within thirty days of being given notice that his or her consent is sought, the person does not inform the Minister or Director-General that the person gives or withholds his or her consent.
- (5) A proclamation under this section may be made so as:
- (a) to relate to one or more wildlife refuges specified therein, and
 - (b) to apply differently according to such factors as may be specified therein.
- (6) A revocation, variation or amendment referred to in subsection (3) (b) shall be effected by proclamation of the Governor published in the Gazette.
- (7) Where the consent of the Forestry Commission is required under this section, the consent shall not be given without the approval of the Minister administering the *Forestry Act 1916*.
- (8) The Director-General shall forward a copy of a proclamation under this section to the Valuer-General as soon as practicable after the proclamation is published in the Gazette.

69 (Repealed)

Division 12 Conservation agreements

69A Definitions

(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 any of the following:

- (a) a government department,
- (b) (Repealed)
- (c) a council or a county council within the meaning of the *Local Government Act 1993*,
- (d) any other body constituted by or under an Act.

(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 the subdivision of land as defined by section 4B of the *Environmental Planning and Assessment Act 1979*.

(4) If a conservation agreement is entered into under section 69B (1C) by a public authority that is not the owner of the conservation area concerned:

- (a) the agreement is taken to have been entered into on behalf of the owner of the conservation area, and

- (b) a reference in this Act to the owner of the conservation area (however expressed) includes, while a public authority has the control and management of the conservation area, a reference to the public authority that has that control and management.

69B Conservation agreements

- (1) The Minister may enter into a conservation agreement relating to land with the owner of the land.
 - (1A), (1B) (Repealed)
 - (1C) The Minister may enter into a conservation agreement relating to land that is Crown lands or lands of the Crown with:
 - (a) a public authority (not being a Government Department) that owns or has the control and management of the land, or
 - (b) if the land is under the control and management of a Government Department, the responsible Minister.
 - (1D) The Minister must not enter into a conservation agreement relating to Crown-timber lands within the meaning of the *Forestry Act 1916* except with the consent of the Minister administering that Act.
- (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
 - (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.
- (4) The Minister must not enter into a conservation agreement for land owned by a Local Aboriginal Land Council except with the consent of the New South Wales Aboriginal Land Council.

69C Purpose and content of agreements

- (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 Aboriginal objects, 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,
 - (e1) for the purpose of the study, preservation, protection or care of karst environments,
 - (e2) for the purpose of the conservation of critical habitat or the conservation of threatened species, populations or ecological communities, or their habitats, or
 - (e3) for the purpose of the protection, conservation or management of waters in or in connection with an area or purpose referred to in paragraph (a), (b), (c), (d), (e), (e1) or (e2), or
 - (f) for any purpose connected with an area or purpose elsewhere referred to in this subsection.
- (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.

- (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.

69D Duration and variation of agreements

- (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 all parties to the agreement.
- (3) An agreement shall have effect until it is terminated by consent of all parties to the agreement 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.
- (5A) The Minister is not to vary or terminate an agreement under subsection (4) unless:
 - (a) written notice of the Minister's intention to vary or terminate the agreement has been given to the owner of the conservation area stating that the owner may make submissions to the Minister within the period specified in the notice (being a period of not less than 28 days), and
 - (b) the Minister has considered any submissions made by the owner of the conservation area, being submissions made within that specified period.
- (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).

69E Agreements to run with land

(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 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.

69F Registration of agreements

(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 must:

(a) in the case of a conservation agreement relating to land under the *Real Property Act 1900*—make an entry concerning the agreement, variation or termination in any folio of the Register kept under that Act that relates to that land, or

(b) in the case of a conservation agreement relating to land not under the *Real Property Act 1900*:

(i) register the agreement, variation or termination in the General Register of Deeds kept under Division 1 of Part 23 of the *Conveyancing Act 1919*, and

(ii) if appropriate, make an entry concerning the agreement, variation or termination in any official record relating to Crown land that relates to that land.

(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.

69G Enforcement of agreements

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

69H Register of agreements

- (1) The Director-General 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-General.

69I Proposals by statutory authorities affecting conservation areas

- (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.

- (4A) The Minister is not to vary or terminate an agreement under subsection (3) unless:
- (a) written notice of the Minister's intention to vary or terminate the agreement has been given to the owner of the conservation area stating that the owner may make submissions to the Minister within the period specified in the notice (being a period of not less than 28 days), and
 - (b) the Minister has considered any submissions made by the owner of the conservation area, being submissions made within that specified period.
- (5) If an agreement is varied 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.
- (8) This section does not apply to any part of a conservation area that is a wilderness area within the meaning of the [Wilderness Act 1987](#).

69J Resolution of certain disputes

- (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.

69K Exhibition of proposed agreements

- (1) When a draft conservation agreement between the Minister and a statutory authority or another Minister, or which applies to Crown lands or lands of the Crown, has been prepared, the Minister must, before entering into the agreement:
 - (a) give public notice, in a form and manner determined by the Director-General, of the places at which, the dates on which, and the times during which, the draft agreement may be inspected by the public, and
 - (b) publicly exhibit the draft agreement at the places, on the dates and during the times set out in the notice, and
 - (c) specify, in the notice, the period during which submissions concerning the draft agreement may be made to the Minister.
- (2) The Minister must cause a copy of the draft conservation agreement to be forwarded to the Council.
- (3) Any person may, during the period referred to in subsection (1) (c), make written submissions to the Minister about the draft agreement.
- (4) The Minister must, before entering into the agreement, consider any submissions made under subsection (3) or by the Council.
- (5) This section does not apply to land leased by a person (other than a statutory authority or a Minister) if the lease is made under the *Crown Lands Act 1989*, the *Crown Lands (Continued Tenures) Act 1989* or the *Western Lands Act 1901*.
- (6) This section applies to a draft amendment to a conservation agreement in the same way as it applies to a draft conservation agreement.

69KA Application of *Environmental Planning and Assessment Act 1979*

- (1) For the purposes of section 28 of the *Environmental Planning and Assessment Act 1979*:
 - (a) a conservation agreement is taken to be a regulatory instrument, and
 - (b) the Minister is responsible for the administration of such a regulatory instrument.

Note—

Section 28 of the *Environmental Planning and Assessment Act 1979* allows an environmental planning instrument to suspend the operation of a regulatory instrument for the purpose of enabling development to be carried out. Such a suspension cannot be given effect to without the concurrence in writing of the Minister responsible for the administration of the regulatory instrument.

(2) In relation to any particular conservation agreement, a provision of an environmental planning instrument made under section 28 of the *Environmental Planning and Assessment Act 1979* and in force:

- (a) immediately before the commencement of this section, or
- (b) immediately before the conservation agreement takes effect,

does not affect the operation of the conservation agreement unless the provision is subsequently amended to expressly affect the operation of the conservation agreement.

Division 13 Offences relating to wildlife refuges and conservation areas

70 Fauna in wildlife refuges and other areas

(1) A person shall not:

- (a) harm any fauna, or
- (b) use any animal, firearm, explosive, net, trap, hunting device or instrument or means whatever for the purpose of harming any fauna,

being fauna within a wildlife refuge, conservation area, wilderness area or area subject to a wilderness protection agreement.

(2) A person shall not:

- (a) carry, discharge or have in the person's possession any prohibited weapon,
- (b) carry or have in the person's possession any explosive, net, trap or hunting device, or
- (c) be accompanied by a dog,

in a wildlife refuge, conservation area, wilderness area or area subject to a wilderness protection agreement.

(3) A person shall not be convicted of an offence arising under subsection (1) or (2) if the person proves that the act constituting the offence was done, or that the state of affairs constituting the offence existed:

- (a) under and in accordance with or by virtue of the authority conferred by a general licence under section 120, an occupier's licence under section 121, a commercial fauna harvester's licence under section 123, a scientific licence under section 132C or a licence under Part 6 of the *Threatened Species Conservation Act 1995*, or

(b) in pursuance of a duty imposed on the person by or under any Act.

(4) A person shall not be convicted of an offence arising under subsection (2) in respect of the carrying or having in the person's possession of a net in a wildlife refuge, conservation area, wilderness area or area subject to a wilderness protection agreement if the person proves that the net was carried or in the person's possession for the purpose only of taking, or attempting to take, fish from any waters.

(5) (Repealed)

(6) A person, being an owner, lessee or occupier of any lands within a wildlife refuge, conservation area, wilderness area or area subject to a wilderness protection agreement, or a person authorised by such an owner, lessee or occupier in that behalf, shall not be convicted of:

(a) an offence arising under subsection (1) in respect of the harming of any fauna within those lands, being fauna that is not native to Australia and that is either:

(i) not protected fauna, or

(ii) locally unprotected fauna under section 96, or

(b) an offence arising under subsection (2) in relation to those lands.

(6AA) Subsections (5) and (6) do not apply to the harming for sporting or recreational purposes of game birds that are locally unprotected fauna.

(6A) Subject to subsection (6B), a person shall not be convicted of an offence arising under this section if:

(a) the offence occurred with respect to a conservation area or area subject to a wilderness protection agreement, and

(b) the act or the state of affairs constituting the offence did not contravene the conservation agreement or wilderness protection agreement relating to the area.

(6B) Subsection (6A) does not extend to the damaging of critical habitat or the harming of threatened species, populations or ecological communities.

(7) The regulations may make provision for or with respect to exempting, subject to the prescribed conditions and restrictions (if any), any person or class or description of persons from the provisions of subsection (1) or (2) or both.

71 Native plants in wildlife refuges, conservation areas and certain wilderness areas

(1) A person shall not pick or have in the person's possession any native plant within a wildlife refuge, conservation area, wilderness area or area subject to a wilderness protection agreement.

- (2) A person shall not be convicted of an offence arising under subsection (1) if the person proves that the act constituting the offence was done, or the state of affairs constituting the offence existed:
- (a) under and in accordance with or by virtue of the authority conferred by a licence issued under Division 3 of Part 9, a licence under Part 6 of the *Threatened Species Conservation Act 1995* or a licence issued under the *Forestry Act 1916*, or
 - (b) in pursuance of a duty imposed on the person by or under any Act.
- (3) A person, being an owner, lessee or occupier of any lands within a wildlife refuge, conservation area, wilderness area or area subject to a wilderness protection agreement, or a person authorised by such an owner, lessee or occupier in that behalf, shall not be convicted of an offence arising under subsection (1) in respect of the picking or the possession of a native plant (not being a plant of a threatened species) that is or was growing within those lands.
- (3A) Subject to subsection (3B), a person shall not be convicted of an offence arising under this section if:
- (a) the offence occurred with respect to a conservation area or area subject to a wilderness protection agreement, and
 - (b) the act or the state of affairs constituting the offence did not contravene the conservation agreement or wilderness protection agreement relating to the area.
- (3B) Subsection (3A) does not extend to the damaging of critical habitat or the harming of threatened species, populations or ecological communities.
- (4) The regulations may make provision for or with respect to exempting, subject to the prescribed conditions and restrictions (if any), any person or class or description of persons from the provisions of subsection (1).

Part 4A Aboriginal land

Division 1 Preliminary

71B Definitions

In this Part:

Aboriginal Land Council, Local Aboriginal Land Council and **New South Wales Aboriginal Land Council** have the same meanings as in the *Aboriginal Land Rights Act 1983*.

Aboriginal negotiating panel means a panel appointed in accordance with section 71G or 71H of Division 2.

Aboriginal owner board members—see section 5 (1).

Aboriginal owners—see section 5 (1).

ALR Act lands means lands to which section 36A of the *Aboriginal Land Rights Act 1983* applies that are granted to one or more Aboriginal Land Councils under that Act.

Note—

Part 2 of the *Aboriginal Land Rights Act 1983* makes provision as to land rights and the grant of claims to Crown lands. Section 36A, within that Part, makes provision for the grant of certain land claims, despite the fact that the lands involved are needed, or likely to be needed, for the essential public purpose of nature conservation, if the claimant Aboriginal Land Councils are prepared to lease the lands to the Minister administering this Act and are agreeable to the reservation or dedication of the lands under this Act and in accordance with the requirements of this Part.

board of management—see section 5 (1).

native title or **native title rights and interests** has the same meaning as it has in the *Native Title Act 1993* of the Commonwealth.

Registrar means the Registrar appointed under the *Aboriginal Land Rights Act 1983*.

Schedule 14 lands means lands reserved under this Act that are listed in Schedule 14.

71C Purpose of Part

- (1) The purpose of this Part is to make provision as to the lease to the Minister, and the reservation, under this Act of Schedule 14 lands and ALR Act lands.
- (2) So far as Schedule 14 lands are concerned, this Part provides for the recognition of the cultural significance of those lands to Aboriginal persons and the revocation of their reservation under this Act to enable them:
 - (a) to be vested, on behalf of the Aboriginal owners, in one or more Local Aboriginal Land Councils or the New South Wales Aboriginal Land Council, and
 - (b) to be leased by the Aboriginal Land Council or Councils to the Minister, and
 - (c) to be then reserved under this Act in accordance with this Part.
- (3) So far as ALR Act lands are concerned, this Part provides for the lease of the lands by the Aboriginal Land Council or Councils in which they are vested to the Minister and the reservation of the lands under this Act in accordance with this Part.
- (4) The taking of any action referred to in this section in relation to Schedule 14 lands or ALR Act lands is subject to any native title rights and interests existing in relation to the lands immediately before the taking of the action and does not extinguish or impair such rights and interests.

71D Recognition of cultural significance of certain lands to Aboriginal persons

- (1) Parliament recognises that certain lands reserved under this Act are of cultural significance to Aboriginal persons. Land is of cultural significance to Aboriginal persons if the land is significant in terms of the traditions, observances, customs, beliefs or history of Aboriginal persons.
- (2) The lands listed in Schedule 14 are identified as being of cultural significance to Aboriginal persons.

Division 2 Negotiations for lease

71E Application of Division

This Division applies to and in respect of Schedule 14 lands and ALR Act lands.

71F Purpose of negotiations

- (1) Negotiations under this Division are to be conducted for 2 purposes.
- (2) Firstly, so far as Schedule 14 lands are concerned, negotiations are to be conducted to determine whether one or more Local Aboriginal Land Councils or the New South Wales Aboriginal Land Council wishes to have the present reservation of lands revoked so that the lands may be vested, subject to native title, in the Aboriginal Land Council or Councils in return for:
 - (a) a lease of the lands from the Aboriginal Land Council or Councils to the Minister, and
 - (b) the reservation of the lands in accordance with this Part.
- (3) So far as lands that are the subject of a claim referred to in section 36A of the *Aboriginal Land Rights Act 1983* are concerned, negotiations are to be conducted with the Aboriginal Land Council or Councils that have claimed the lands under that Act to determine whether the Aboriginal Land Council or Councils are agreeable, if the claim is granted, to the lease of the lands to the Minister and the reservation of the lands in accordance with this Part.
- (4) Secondly, if negotiations under subsection (2) or (3) result in an affirmative response, the negotiations are to continue with a view to settling the provisions of the proposed lease between the Aboriginal Land Council or Councils concerned and the Minister.

71G Selection of representatives for negotiations before Aboriginal owners identified

- (1) This section applies if, at the time negotiations under this Division commence, Aboriginal owners of the lands that are the subject of the negotiations have not been identified.
- (2) The Minister administering the *Aboriginal Land Rights Act 1983* may, for the purposes

of the conduct of negotiations under this Division in circumstances referred to in subsection (1), appoint a negotiating panel from Aboriginal persons to represent Aboriginal persons who, in the Minister's opinion, have a cultural association with the lands concerned.

- (3) The Minister may, for the purposes of making appointments to the panel, consult with any other person or body (including any group formed by Aboriginal persons) that may, in the Minister's opinion, assist the Minister to ensure that the panel is appropriately constituted.

71H Selection of representatives for negotiations after Aboriginal owners identified

- (1) This section applies if, at the time negotiations under this Division commence, the Minister administering the *Aboriginal Land Rights Act 1983* is, after consulting the Registrar, satisfied a sufficient number of Aboriginal owners of the lands concerned has been identified to enable that Minister to select a negotiating panel from their number that will adequately represent the wishes of Aboriginal persons who have a cultural association with the lands.
- (2) The Minister administering the *Aboriginal Land Rights Act 1983* may, for the purposes of the conduct of negotiations under this Division in circumstances referred to in subsection (1), and after consulting the Aboriginal owners of the lands concerned or any group representing them concerning nominees to the negotiating panel, appoint a negotiating panel from the Aboriginal owners to represent Aboriginal persons who have a cultural association with the lands concerned.
- (3) The Minister may, for the purposes of making appointments to the panel, consult with any other person or body (including any group formed by Aboriginal persons) that, in the Minister's opinion, may assist the Minister to ensure that the panel is appropriately constituted.

71I Role of Aboriginal negotiating panel

The role of an Aboriginal negotiating panel is:

- (a) to participate in negotiations with the Minister and one or more Aboriginal Land Councils for the purposes of this Division, and
- (b) to provide the Minister with advice as to the cultural significance to Aboriginal persons of any ALR Act lands that are the subject of negotiations under this Part, and
- (c) to recommend a name for any lands to be reserved pursuant to this Part as a result of the negotiations.

71J Minister may negotiate with Aboriginal negotiating panel and Aboriginal Land Councils

- (1) The Minister may enter into negotiations for the purposes of this Division with an Aboriginal negotiating panel appointed in accordance with this Division and:

- (a) one or more Local Aboriginal Land Councils whose members have a cultural association with Schedule 14 lands, or
 - (b) the New South Wales Aboriginal Land Council on behalf of one or more Local Aboriginal Land Councils referred to in paragraph (a), or
 - (c) the New South Wales Aboriginal Land Council on its own behalf, or
 - (d) one or more Aboriginal Land Councils that have made a claim for lands to which section 36A of the *Aboriginal Land Rights Act 1983* applies.
- (2) The Minister may enter into negotiations with one Local Aboriginal Land Council whose members have a cultural association with Schedule 14 lands with which members of one or more other Local Aboriginal Land Councils also have a cultural association only if:
- (a) the members of each of those Councils, and
 - (b) the Aboriginal negotiating panel,
- consent to the Minister negotiating with that Local Aboriginal Land Council.

71K Referral of disagreements between Aboriginal negotiating panel and Aboriginal Land Councils to mediation

- (1) Any disagreement between an Aboriginal negotiating panel and an Aboriginal Land Council or Councils concerning negotiations under this Division that cannot be resolved otherwise is to be referred to a mediator selected by, and acceptable to, the Aboriginal negotiating panel and the Aboriginal Land Council or Councils for resolution.
- (2) The Minister may decline to proceed with the negotiations until the disagreement has been resolved.
- (3) The Aboriginal negotiating panel and the Aboriginal Land Council or Councils concerned are to be jointly responsible for payment of the costs of the mediation.
- (4) The regulations may make provision for or with respect to the mediation of disagreements under this section including the exoneration of mediators from liability.

71L Preference to vesting in Local Aboriginal Land Council—Schedule 14 lands

If both a Local Aboriginal Land Council or Councils and the New South Wales Aboriginal Land Council on its own behalf indicate that they wish Schedule 14 lands to be vested in them, the Minister is to give preference with respect to the vesting:

- (a) if the Minister is satisfied, after consulting the Registrar, that sufficient Aboriginal owners of the lands have been identified to adequately represent the wishes of Aboriginal persons who have a cultural association with the lands—to the wishes of the Aboriginal owners, or

- (b) if Aboriginal owners of the lands have not been so identified—to the wishes of the Local Aboriginal Land Council or Councils.

Division 3 Vesting and reservation of Schedule 14 lands

71M Application of Division

This Division applies to and in respect of Schedule 14 lands only unless this Act otherwise expressly provides.

Note—

See Division 4 as to the application of sections 71R–71U to ALR Act lands and Division 8 as to the application of sections 71R–71T to lands added to national parks or other areas reserved or dedicated under this Part.

71N Tabling of proposal if change of land classification involved

- (1) This section applies if, as a result of negotiations concerning Schedule 14 lands, it is proposed that the classification of the lands concerned under this Act, as listed in Schedule 14, be changed to another classification (such as, for example, from a nature reserve to a national park) when the lands are vested in an Aboriginal Land Council or Councils under this Part.
- (2) The Minister is to cause a notification of such a proposal to be laid before each House of Parliament as soon as practicable after the parties to the negotiations decide that the classification of the lands should be changed.
- (3) If a House of Parliament passes a resolution of which notice has been given within 15 sitting days of that House after a notification has been laid before it (whether or not those sitting days occur during the same session) and the resolution disallows the notification, no further action is to be taken in the matter.
- (4) Nothing in this section prevents the Minister, at some later time, causing to be laid before each House of Parliament in accordance with this Division a notification that has previously been tabled, either with or without amendments.

71O Vesting and reservation of Schedule 14 lands

- (1) This section applies if:
 - (a) no change in the classification of the Schedule 14 lands to which negotiations relate is proposed, or
 - (b) no resolution disallowing a notification concerning a change in the classification of the Schedule 14 lands is or can be passed.
- (2) On completion of negotiations concerning the Schedule 14 lands and preparation of a draft lease in respect of those lands that is acceptable to, and has been executed in escrow by, the Minister and the Aboriginal Land Council or Councils concerned, the Governor may, by proclamation published in the Gazette:

- (a) revoke the existing reservation under this Act of the lands that are the subject of the proposed lease, and
- (b) vest those lands in the Aboriginal Land Council or Councils that are to lease the lands to the Minister (and, if more than one, as joint tenants (without the benefit of survivorship)), subject to the following:
 - (i) any native title rights and interests that exist in relation to the lands concerned,
 - (ii) any existing interest within the meaning of section 39,
 - (iii) any licence issued under Part 9,
 - (iv) any lease, licence, franchise or easement granted under Part 12,
 - (v) any authority or consent issued under this Act or the regulations, and
- (c) reserve or dedicate those lands, with the appropriate classification, under this Act, subject to any matter referred to in paragraph (b) (i)-(v).

71P Effect of publication of proclamation

- (1) On publication of the proclamation, the existing reservation under this Act of the lands described in the proclamation is revoked. This subsection has effect despite anything else in this Act.
- (2) On publication of the proclamation, the lands described in the proclamation vest, by virtue of the proclamation and the operation of this section, in the Aboriginal Land Council or Councils (and, if more than one, as joint tenants (without the benefit of survivorship)) named as lessor or lessors in the lease for an estate in fee simple without the necessity for any further assurance, but subject to the following:
 - (a) any native title rights and interests that exist in relation to the lands concerned,
 - (b) any existing interest within the meaning of section 39,
 - (c) any licence issued under Part 9,
 - (d) any lease, licence, franchise or easement granted under Part 12,
 - (e) any authority or consent issued under this Act or the regulations.
- (3) On publication of the proclamation, the lease takes effect and is taken to have been executed on, and its term commences to run from, the date of publication of the proclamation.
- (4) On publication of the proclamation, the lands described in the proclamation are, despite the fact that the lands are vested in the Aboriginal Land Council or Councils,

reserved, with the appropriate classification, under this Act in accordance with this Part, subject to any matter referred to in subsection (2) (a)-(e).

71Q Certain other consequences of publication of proclamation

On publication of the proclamation:

- (a) the Director-General continues, until the establishment of a board of management for the lands, to have the care, control and management of the lands and may exercise on and with respect to those lands any power, authority, duty or function conferred or imposed on the Director-General by or under this or any other Act, and
- (b) the Service and the officers, employees and contractors of the Minister, the Director-General and the Service may (subject to any plan of management in force with respect to the lands and to any directions given and supervision and oversight exercised by the board of management for the lands) exercise on and with respect to those lands any power, authority, duty or function conferred or imposed on any one or more of them by or under this or any other Act, and
- (c) any regulations that, immediately before that publication, applied to the lands continue to apply to the lands and may be amended and repealed accordingly, and
- (d) any plan of management that, immediately before that publication, applied to the lands continues, subject to this Act, to apply to the lands and may be amended, altered or cancelled accordingly, and
- (e) any existing interest (within the meaning of section 39), any licence issued under Part 9, any lease, licence, franchise or easement granted under Part 12 and any authority or consent issued under this Act or the regulations that affect the lands, or any part of the lands, and that are current at the date of the proclamation continue to have effect and may be terminated or otherwise dealt with in accordance with this Act or the instrument under which they were granted, and
- (f) any fee, rent or other sum that is payable under or with respect to any matter referred to in paragraph (e) is, despite any other requirement to the contrary, to be paid as required by section 138, and
- (g) any declaration made under Division 3 of Part 4 or under the [Wilderness Act 1987](#) with respect to the lands, or any part of the lands, continues in force and may be varied or revoked accordingly.

71R Certain provisions not to apply to lands reserved under this Division

- (1) The provisions of Division 2 of Part 3, Division 1 of Part 4 and sections 33, 35, 46, 47B-47D, 49, 58, 58K (4)-(6), 58S and 62 do not apply to or in respect of lands reserved under this Division.
- (2) Sections 47GA-47GG, 47O and 47R-47Y do not apply to or in respect of a state

conservation area or a regional park reserved under this Part.

(3) Subsection (1) does not limit section 71Q.

71S Application of certain provisions to lands reserved under this Division

The following provisions apply to and in respect of lands reserved under this Division in the same way as they apply to and in respect of lands reserved under Part 4:

Sections 37-44, 47G, 47H, 47I, 47J, 47K, 47L, 47P (2), 47Z, 47ZA, 47ZB, 52-55, 58M, 58N, 58O, 58P and 64.

71T (Repealed)

71U Name of Schedule 14 lands

- (1) The proclamation laid before Parliament under this Division must assign a name to the Schedule 14 lands (or the part or parts of Schedule 14 lands) proposed to be reserved under this Division.
- (2) The name so assigned must be the name recommended by the Aboriginal negotiating panel involved in the negotiations for the vesting and leasing of the lands, and may be the same name as, or a different name from, that listed in Schedule 14.
- (3) The Governor may, on the recommendation of the Aboriginal owner board members for lands reserved under this Division, by proclamation published on the NSW legislation website:
 - (a) alter the name of the lands, and
 - (b) amend Schedule 14 by omitting the former name, and by inserting instead the new name, of the lands.
- (4) If a part or parts only of Schedule 14 lands are reserved under this Division, the Governor may, by proclamation published on the NSW legislation website, assign a new name for the part or parts of the Schedule 14 lands that are not reserved under this Division.
- (5) Section 12 (1) of the [Geographical Names Act 1966](#) does not apply to a name assigned under this Division (or that name as altered or amended). The name so assigned, or the name as so altered or amended, is, for the purposes of the [Geographical Names Act 1966](#), the geographical name of the place to which it relates.
- (6) If, before the reservation under this Division of Schedule 14 lands, the name of the lands is altered pursuant to the publication of a proclamation under Part 4 of this Act, that proclamation or another proclamation published on the NSW legislation website may amend Schedule 14 by omitting the former name, and by inserting instead the new name, of the lands.

71V No consideration payable by Aboriginal Land Council on vesting of lands

- (1) No consideration is payable to the Crown by an Aboriginal Land Council or Councils in relation to the vesting in the Council or Councils of lands pursuant to the publication of a proclamation under this Division.
- (2) No stamp duty under the *Stamp Duties Act 1920* is payable by an Aboriginal Land Council or Councils in relation to any such vesting.

71W Reservation of part only of Schedule 14 lands

- (1) Nothing in this Part prevents the negotiation of a lease and the reservation under this Part of a part or parts only of Schedule 14 lands.
- (2) In that event:
 - (a) on the establishment of a board of management for the part or parts of the Schedule 14 lands that are the subject of the lease, the care, control and management of that part or those parts only of the Schedule 14 lands vest in the board of management, and
 - (b) the provisions of this Act relating to the harming of animals and the picking of timber, vegetation, plants and similar things by Aboriginal persons apply to and in respect of the part or parts only of the Schedule 14 lands that are the subject of the lease, and
 - (c) the provisions of this Part relating to Schedule 14 lands that are leased and reserved under this Part apply to and in respect of the part or parts only of the Schedule 14 lands that are the subject of the lease.

Note—

See sections 31, 47BA, 47OA, 48, 58 (4A), 58K (4A) and 63 as to the vesting of reserved lands on the establishment of a board of management under this Part and sections 45 (6), 56 (7), 57 (7), 58H (7), 58I (7), 58Q (7) and 58R (7) as to the harming of animals and the picking of timber, vegetation, plants and similar things by Aboriginal persons.

Division 4 Reservation or dedication of ALR Act lands

71X Application of Division

- (1) This Division applies to and in respect of lands to which section 36A of the *Aboriginal Land Rights Act 1983* applies and to ALR Act lands only.
- (2) This Division applies to lands only if:
 - (a) the Minister is satisfied that the lands proposed to be reserved under this Act are of sufficient natural conservation value to justify such reservation, and
 - (b) negotiations under Division 2 concerning the preparation of a draft lease in

respect of the lands have been concluded and a lease, prepared as the result of the negotiations, has been executed in escrow by the Minister and the Aboriginal Land Council or Councils concerned.

Note—

Section 36A of the *Aboriginal Land Rights Act 1983* applies to certain Crown lands having nature conservation value that are the subject of a claim under that Act.

71Y Reservation of ALR Act lands

The Governor may, on the grant under the *Aboriginal Land Rights Act 1983* of ALR Act lands that are referred to in section 71X (2), by notice published in the Gazette, reserve the lands under this Act and in accordance with this Part as a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area.

71Z Effect of publication of notice

- (1) On publication of the notice, the lease of the lands takes effect and is taken to have been executed on, and its term commences to run from, the date of publication of the notice.
- (2) On publication of the notice, the lands described in the notice are, despite the fact that the lands are vested in the Aboriginal Land Council or Councils, reserved under this Act according to the tenor of the notice.
- (3) The leasing and vesting of ALR Act lands under this section is subject to the following:
 - (a) any native title rights and interests that exist in relation to the lands concerned,
 - (b) any existing interest within the meaning of section 39.

71AA Certain other consequences of publication of proclamation

On publication of a proclamation under this Division:

- (a) the Director-General has, until the establishment of a board of management for the lands, the care, control and management of the lands and may exercise on and with respect to those lands any power, authority, duty or function conferred or imposed on the Director-General by or under this or any other Act, and
- (b) the Service and the officers, employees and contractors of the Minister, the Director-General and the Service may (subject to any plan of management in force with respect to the lands and to any directions given and supervision and oversight exercised by the board of management for the lands) exercise on and with respect to those lands any power, authority, duty or function conferred or imposed on any one or more of them by or under this or any other Act.

71AB Applications of certain provisions to ALR Act lands

- (1) Sections 71R, 71S and 71T apply to and in respect of ALR Act lands in the same way that they apply to and in respect of Schedule 14 lands.
- (2) Section 71U (1)-(4) applies to and in respect of ALR Act lands in the same way that it applies to and in respect of Schedule 14 lands except that:
 - (a) references in those subsections to a proclamation under Division 3 are to be read as references to a proclamation under this Division, and
 - (b) references in those subsections to Schedule 14 lands are to be read as references to ALR Act lands.

Division 5 Provisions as to leases

71AC Application of Division

This Division applies to and in respect of Schedule 14 lands and ALR Act lands.

71AD Matters to be covered in lease between Aboriginal Land Council and Minister

- (1) A lease of lands under this Part must make provision for the following:
 - (a) the leasing of the whole of the lands vested in the Aboriginal Land Council or Councils to the Minister, subject to native title,
 - (b) a term of at least 30 years,
 - (c) the renewal of the lease for a further term of at least 30 years, with no limitation on the number of times the lease may be so renewed, provided that each party consents to the renewal,
 - (d) the manner in which the lease is to be renewed,
 - (e) the replacement of the lease, in accordance with this Part, with a new lease,
 - (f) an acknowledgement that the care, control and management of the lands is to be vested in a board of management established under this Part,
 - (g) an acknowledgement that the Aboriginal Land Council or Councils in which the lands are vested hold the lands on behalf of the Aboriginal owners of the lands,
 - (h) an acknowledgement that the Service and the officers, employees and contractors of the Minister, the Director-General and the Service are (subject to any plan of management in force with respect to the lands and to any directions given and supervision and oversight exercised by the board of management for the lands) entitled to exercise on and with respect to the lands any power, authority, duty or function conferred or imposed on any one or more of them by or under this or any

other Act,

- (i) an acknowledgement that the Aboriginal owners of the lands, and any other Aboriginal persons who have the consent of the Aboriginal owner board members, are entitled (subject to this and any other Act applying to the lands and any plan of management in force with respect to the lands) to enter and use the lands for hunting or fishing for, or the gathering of, traditional foods for domestic purposes and for ceremonial and cultural purposes to the extent that that entry or use is in accordance with the tradition of the Aboriginal owners,
 - (j) an acknowledgement that the Aboriginal Land Council or Councils in which the lands are vested and their employees, contractors and agents must comply with the provisions of this and any other Act applying to the lands, the regulations and any plan of management in force with respect to the lands, including provisions concerning the protection of animals, trees, timber, plants, flowers and vegetation,
 - (k) an acknowledgement that the lease is subject to any existing interest within the meaning of section 39, any licence issued under Part 9, any lease, licence, franchise or easement granted under Part 12 and any authority or consent issued under this Act or the regulations affecting the lands, or any part of the lands, that is current on the date on which the lands are vested in the Aboriginal Land Council or Councils,
 - (l) the grant, extension or extinguishment of any interest, licence, lease, franchise, easement, authority or consent of a kind referred to in paragraph (k) subject to the requirements of this Act and, in the case of an extension or extinguishment, to any instrument under which the interest, licence, lease, franchise, easement, authority or consent was granted,
 - (m) an acknowledgement that the public generally has (subject to any plan of management in force with respect to the lands) a right of access to the lands in accordance with this Act and the regulations,
 - (n) a term acknowledging that the lands, or any part of the lands, may not be the subject of any sale, exchange, disposal or mortgage and providing that, to the extent to which the lands may otherwise be dealt with, any such dealing must be only with the prior written consent of the Minister.
- (2) A lease under this Part must also make provision for the following:
- (a) a requirement that the Minister consult with the Aboriginal Land Council or Councils in which the lands are vested before the making, amending or repealing of any regulations in respect of the lands,
 - (b) a requirement that consultations concerning the operation of the lease are to involve the Director-General and the board of management for the lands,

- (c) the compliance by the parties to the lease with any requirements that arise because the lands are, or a part of the lands is, situated in an area listed as an item of cultural heritage or natural heritage of outstanding universal value in accordance with:
 - (i) the *World Heritage Properties Conservation Act 1983* of the Commonwealth, and
 - (ii) the Convention for the Protection of the World Cultural and Natural Heritage adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization, being the convention a copy of the English text of which is set out in the Schedule to the Commonwealth Act referred to in subparagraph (i).
- (3) As a condition of a lease under this Part, the Minister must undertake to use the Minister's best endeavours to implement the *Aboriginal Employment and Training Plan 1991-1996* published by the National Parks and Wildlife Service in October 1991 or any plan replacing that Plan and, in particular, any timetable set out in such a plan. The Minister must report to Parliament from time to time on progress achieved in implementing any such plan.
- (4) The lease may make provision for such other matters, not inconsistent with this Act or the regulations, as the Minister and the Aboriginal Land Council or Councils consider appropriate.

71AE Rent payable under lease

- (1) The Minister is to pay rent under any lease entered into with an Aboriginal Land Council or Councils under this Part.
- (2) All rent payable by virtue of this section is payable out of the Consolidated Fund, which, to the necessary extent, is appropriated accordingly.
- (3) The rent is to be an amount, negotiated by the parties or otherwise fixed in accordance with this section, that compensates the Aboriginal Land Council or Councils for the fact that it or they do not have the full use and enjoyment of the lands the subject of the lease.
- (4) In negotiating the rent, the parties are to have regard to the following matters:
 - (a) the nature, size and location of the lands concerned and the nature of the infrastructure and improvements, if any, on the lands,
 - (b) the nature of the ownership rights in the lands that the Aboriginal Land Council or Councils possess,
 - (c) the provisions of this Act and the lease relating to the lands,

- (d) the extent to which the cultural significance of the lands to Aboriginal persons restricts the use that may be made of the lands under the lease,
 - (e) the arrangements contained in this Act and the lease for the care, control, management and development of the lands,
 - (f) the amount of rent payable under leases of lands adjoining or in the vicinity of the lands the subject of the lease,
 - (g) the amounts realised on recent sales of freehold or leasehold land adjoining or in the vicinity of the lands the subject of the lease.
- (5) If the parties are unable to agree on the rent to be paid, the matter is to be referred to a mediator, experienced in valuation matters, selected by, and acceptable to, the Minister and the Aboriginal Land Council or Councils.
- (6) The regulations may make provision for and with respect to the mediation of a matter under this section including the remuneration of mediators and the exoneration of mediators from liability.
- (7) If the mediator is unable to resolve the matter within a reasonable period, the Minister may request the Valuer-General to fix the rent to be paid.
- (8) The Valuer-General, in fixing the rent, is to have regard to the matters referred to in subsection (4) and any other matters that the Valuer-General notifies to the parties and considers to be relevant. The decision of the Valuer-General as to the rent is final.
- (9) The rent is payable by the Minister, on annual rests, to the credit of the separate account in the Fund referred to in section 138 (1B) for payment out in accordance with section 139 (5).

71AF Dating of lease

On publication of a proclamation under Division 3 or 4, the Minister must cause the date of publication of the proclamation to be inserted in the lease as:

- (a) the date of execution of the lease, and
- (b) the date of the commencement of the term of the lease.

71AG Registrar-General to enter particulars of vesting and lease in register

- (1) On publication of a proclamation under Division 3 or 4, there must be lodged at the Land Titles Office:
- (a) all title documents held by the Minister or the Director-General (in the case of Schedule 14 lands) or by the Aboriginal Land Council or Councils concerned (in the case of ALR Act lands) in relation to the lands referred to in the proclamation, and

- (b) the lease, completed with the date of execution and commencement of the term.
- (2) On lodgment of those documents, the Registrar-General must enter in the appropriate register particulars of:
 - (a) in the case of Schedule 14 land—the vesting of the lands in the Aboriginal Land Council or Councils concerned, and
 - (b) in the case of Schedule 14 lands and ALR Act lands—of the lease of those lands to the Minister.
- (3) Following entry of the particulars, the Registrar-General must deliver the title documents to the Aboriginal Land Council or Councils.

71AH Regular review of lease required

- (1) At least once every 5 years during the term of a lease under this Part:
 - (a) the Director-General, on behalf of the Minister, and
 - (b) the Aboriginal Land Council or Councils in which the lands are vested, and
 - (c) the Aboriginal owner board members for the lands concerned,must consider whether or not any one or more of the provisions of the lease (including provisions relating to rent and the term of the lease) require amendment.
- (2) The review must include a consideration of the adequacy of the then existing arrangements for management of the lands concerned and whether a recommendation should be made for amendments to this Act to meet specific requirements relating to the management of those lands.
- (3) If a party to the lease or the Aboriginal owner board members fail to agree to an amendment proposed by another party, the disagreement is to be arbitrated in accordance with this Part.
- (4) A lease may be amended by agreement of the parties and the Aboriginal owner board members as a result of the consultations despite any other provision of this or any other Act or law or of the lease.

71AI Re-negotiation of lease before expiry of lease term

- (1) At least 5 years before the expiry of each term of a lease under this Part:
 - (a) the Director-General, on behalf of the Minister, and
 - (b) the Aboriginal Land Council or Councils in which the lands are vested, and
 - (c) the Aboriginal owner board members for the lands concerned,

must consider whether or not any one or more of the provisions of the lease should be amended to enable the lease to operate more effectively.

- (2) If it is agreed that a provision does require amendment, the Director-General, the Aboriginal Land Council or Councils and the Aboriginal owner board members must negotiate on and prepare the required amendment at least 2 years before the expiry of the then current term of the lease.
- (3) Any amendment prepared in accordance with subsection (2) and agreed to by the Aboriginal Land Council or Councils must be presented to the Minister for approval at least 18 months before the expiry of the then current term of the lease.
- (4) If an amendment is approved by the Minister, a new lease must be prepared incorporating the amended provision.
- (5) At least 6 months before the expiry of the then current term of the lease, the new lease should, if at all possible, be executed in escrow by the Minister and the Aboriginal Land Council or Councils in which the lands are vested.
- (6) A lease executed under subsection (5) takes effect, in substitution for the previous lease between the Minister and the Aboriginal Land Council or Councils, on the expiration of the term of the previous lease.
- (7) If the Director-General and the Aboriginal Land Council or Councils agree that no provisions of the lease require amendment, the lease between the parties operates for a further term of 30 years, commencing on the expiration of the current term of the lease, in accordance with its provisions and the requirements of this Part.
- (8) The times specified by this section for the consideration of the provisions of the lease, the negotiation and preparation of amendments, the presentation of the amendments to the Minister and the execution of the lease may be varied by the agreement of the parties.

71AJ Dating and registration of re-negotiated lease

- (1) The Minister must cause the date on which a re-negotiated lease takes effect under this Division to be inserted in the lease as:
 - (a) the date of execution of the lease, and
 - (b) the date of the commencement of the term of the lease.
- (2) The Aboriginal Land Council or Councils in which the lands are vested must cause all title documents held by the Aboriginal Land Council or Councils in relation to the lands referred to in the re-negotiated lease to be lodged at the Land Titles Office to enable the lease to be lodged for registration and the Registrar-General to enter in the appropriate register particulars of the lease.

- (3) Following entry of the particulars, the Registrar-General must return the title documents to the Aboriginal Land Council or Councils.

71AK Variation of lease

A lease under this Part may be varied only by the agreement of the parties and the Aboriginal owner board members for the land concerned, not inconsistent with this Act, or by an Act of Parliament.

71AL Holding over under lease

- (1) A lease under this Part does not expire by effluxion of time except as otherwise provided by this Part.
- (2) On the expiry of the then current term of a lease under this Part, the Minister holds over under the lease until such time as the lease is renewed or replaced.
- (3) The term of a lease that renews or replaces a lease whose term has expired runs from the date of execution of the new lease by the Minister.
- (4) For the avoidance of doubt, the expiry of a term of a lease under this Part does not affect:
 - (a) the reservation under this Act of the land that is the subject of the lease as a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area, or
 - (b) the establishment of any board of management under this Act for the land that is the subject of the lease and the appointment of any member of any such board.

Division 6 Boards of management

71AM Application of Division

This Division applies to and in respect of Schedule 14 lands and ALR Act lands.

71AN Boards of management

- (1) There is to be a board of management for each area of Schedule 14 lands and ALR Act lands leased and reserved under this Part. A board of management is to be established as soon as practicable after the lands are leased and reserved.
- (2) A board of management is to consist of at least 11, but no more than 13, members appointed by the Minister with the concurrence of the Minister administering the [Aboriginal Land Rights Act 1983](#).
- (3) Of the members:
 - (a) the majority are to be Aboriginal owners of the lands concerned nominated by

themselves or by another Aboriginal owner of the lands with the consent of the nominee, and

- (b) one is to be a person appointed from nominees of a Local Aboriginal Land Council or Councils in whose area or areas the whole or part of the lands are located, and
 - (c) one is to be a person appointed to represent the local council or councils (if any) whose area or areas comprise, or adjoin, the lands, and
 - (d) one is to be an officer of the Service for the time being nominated by the Director-General, and
 - (e) one is to be a person appointed from a panel of persons nominated by a group concerned in the conservation of the region in which the lands are located to represent conservation interests, and
 - (f) one is to be a person appointed on the nomination of owners, lessees and occupiers of land adjoining or in the vicinity of the lands to represent those owners, lessees and occupiers.
- (4) The Minister, in appointing Aboriginal owners under subsection (3) (a), is to have regard to such matters as the gender of the nominees and their cultural affiliations and family groupings in an endeavour to ensure that a representative group of members is appointed.
- (5) A matter or thing done or omitted to be done by a board of management, a member of a board of management or a person acting under the direction of a board of management does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this Act (or any regulation under this Act), subject the member or the person so acting personally to any action, liability, claim or demand.
- (6) However, any such liability attaches instead to the Crown.
- (6A) Schedule 14A contains provisions with respect to the constitution and procedure of boards of management.
- (7) Subject to this Act (including Schedule 14A), the regulations may make provision with respect to the constitution and procedure of a board of management including the declaration of pecuniary interests by members.

71A0 Functions of boards of management

- (1) A board of management for lands to which this Division applies has the following functions:
 - (a) the care, control and management of the lands,

- (b) the preparation of plans of management for the lands,
 - (c) the supervision of payments from the Fund with respect to the lands.
- (2) Without limiting subsection (1), a board of management has the function of considering proposals for the carrying out, by Aboriginal owners or other Aboriginal persons, of cultural activities (such as hunting and gathering) within the lands and of approving, or refusing to approve, the carrying out of those activities.
- (3) A board of management must exercise its functions in accordance with any plan of management in force with respect to the lands for which it is established.
- (4) In the exercise of its functions, a board of management is subject to the control and direction of the Minister.
- (5) Despite subsection (4), the Minister may not give directions to a board of management in relation to:
- (a) the contents of any report, advice, information or recommendation that is to be or may be made or given by the board, or
 - (b) any decision of the board, that is not inconsistent with this Act and the plan of management for the lands for which it was established, relating to the care, control and management of Aboriginal heritage and culture within the lands.
- (6) In the exercise of its functions with respect to the care, control and management of lands for which no plan of management is in force, a board of management is to consult with and have regard to the advice of the Director-General.
- (7) A board of management may delegate the exercise of any function of the board of management under this Act (other than this power of delegation) to:
- (a) a member of the board, or
 - (b) a member of staff of the Department, or
 - (c) any person, or any class of persons, authorised for the purposes of this subsection by the regulations.

71AP Term of office of board members

Subject to Schedule 14A and the regulations, a member of a board of management holds office for such period (being not less than 4 years and not more than 6 years) as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

71AQ Board of management's accounts, budgets, quarterly and annual reports

- (1) A board of management must cause proper accounts and records to be kept in

relation to all of its operations.

- (2) A board of management must, before the commencement of each financial year, prepare and submit to the Minister a detailed budget relating to its proposed operations during that financial year.
- (3) The board of management must furnish to the Minister such information relating to the budget as the Minister requests.
- (4) A board of management must monitor its financial activities to determine whether it is operating in accordance with its budget.
- (5) A board of management must in each year, as soon as practicable after 30 June, but on or before 1 October, forward to the Minister an annual report of its operations for the 12 months ending on 30 June in that year.
- (6) The regulations may prescribe the form and content of budgets and reports under this section.

Division 7 Addition of lands to Schedule 14

71AR Application of Division

This Division applies to and in respect of lands proposed for addition to Schedule 14 only.

71AS Proposals for additions to Schedule 14

- (1) Any person or body (including a statutory authority) may submit to the Director-General a written proposal that lands reserved under this Act be identified as having cultural significance to Aboriginal persons and listed in Schedule 14.
- (2) A copy of the proposal is to be given to the Registrar who must notify the following persons and bodies of the proposal:
 - (a) the New South Wales Aboriginal Land Council, and
 - (b) the Local Aboriginal Land Council or Councils in whose area or areas the lands the subject of the proposal are located, and
 - (c) the Aboriginal owners of the lands concerned (if they have been identified), and
 - (d) any body representing Aboriginal persons that the Registrar considers to be relevant.
- (3) The Registrar is to provide the Director-General with the names of the persons and bodies that the Registrar has notified of the proposal.

Note—

Land in Zone 1, 2 or 3 of the Brigalow and Nandewar Community Conservation Area (established under the

Brigalow and Nandewar Community Conservation Area Act 2005) is not eligible to be proposed under this section for listing in Schedule 14 to this Act.

71AT Assessment of proposals

- (1) The Director-General must, after receiving a proposal, make an assessment of the cultural significance to Aboriginal persons of the lands referred to in the proposal and make a report to the Minister in relation to the proposal.
- (2) The Director-General is to consult with:
 - (a) the person or body that submitted the proposal, and
 - (b) the persons and bodies notified of the proposal by the Registrar, and
 - (c) any other person or body that the Director-General considers should be consulted, in relation to the making of the assessment and report.

71AU Report to Minister

- (1) In preparing a report for the Minister, the Director-General is to consider the following:
 - (a) whether the lands concerned contain places of spiritual or mythological importance in accordance with Aboriginal custom or lore,
 - (b) whether the lands contain places used for the conduct of ceremonial activities by Aboriginal persons, including areas recognised for gender specific cultural activities,
 - (c) whether the lands contain areas that are significant for their association with Aboriginal life after occupation of the area in which the lands are situated by persons of European extraction.
- (2) The Director-General's report is to make comment on the following matters in relation to the lands concerned:
 - (a) whether Aboriginal burials or remains, or both, are present,
 - (b) the rarity of types of Aboriginal sites and objects on the lands in the context of the cultural area in which the lands are located,
 - (c) the diversity of Aboriginal sites and objects on the lands,
 - (d) the antiquity of Aboriginal sites and objects on the lands,
 - (e) whether the lands have been listed:
 - (i) in the Register of the National Estate kept in pursuance of the *Australian Heritage Commission Act 1975* of the Commonwealth, or

- (ii) as an item of cultural heritage of outstanding universal value in accordance with the *World Heritage Properties Conservation Act 1983* of the Commonwealth and the Convention for the Protection of the World Cultural and Natural Heritage that is referred to in section 71AD (2) (c) (ii),

on the basis, or partly on the basis, of their cultural significance to Aboriginal persons.

- (3) The Director-General must also indicate in the report whether any disagreement exists among the persons or bodies consulted by the Director-General regarding the proposal as to whether the lands are of cultural significance to Aboriginal persons or should be listed in Schedule 14, or both.
- (4) The Director-General may include any other matters in the report that the Director-General considers to be relevant.

71AV Consideration of report by Minister

- (1) On receiving a report from the Director-General, the Minister is to consider whether the lands concerned are of cultural significance to Aboriginal persons and, if so, whether the Minister should recommend to the Governor that the lands be listed in Schedule 14.
- (2) The Minister is not to make a recommendation that the lands be listed in Schedule 14 unless the Minister is satisfied that the cultural significance of the lands to Aboriginal persons is at least equivalent to that of the lands already listed in the Schedule.

71AW Listing of additional lands in Schedule 14

- (1) Additional lands may be listed in Schedule 14 only by an Act of Parliament.
- (2) If Parliament approves of the listing of lands in Schedule 14 following the making of a recommendation by the Minister to the Governor that the lands be so listed, the lands may be dealt with in accordance with the provisions of this Part that apply to Schedule 14 lands and, in particular, with the provisions of Divisions 2, 3, 5 and 6.

Division 8 Addition of lands to Schedule 14 lands or ALR Act lands leased under Part

71AX Application of Division

This Division applies to and in respect of Schedule 14 lands and ALR Act lands that are leased and reserved under this Part.

71AY Definition of “area”

In this Division, **area** means lands reserved under this Part as a national park, historic site, state conservation area or regional park or dedicated under this Part as a nature reserve, state game reserve, karst conservation reserve or Aboriginal area.

71AZ Additions may be made to reserved lands leased under Part

- (1) Nothing in this Act prevents the reservation of lands, in accordance with this Division, as part of an area that has been leased and reserved in accordance with this Part (whether those lands are to be reserved as the same category of reserved lands as the area already leased and reserved or otherwise).
- (2) Lands may be reserved as part of an area referred to in this section only with the consent of:
 - (a) the Aboriginal Land Council or Councils in which they are vested, and
 - (b) the board of management for the area.

71BA Addition of lands already reserved under Act

- (1) Lands that are reserved under this Act may be added as part of an area that is leased under this Part only if the lands are listed in Schedule 14.
- (2) The Governor may, by proclamation published in the Gazette, declare that the whole or part of lands listed in Schedule 14, be taken to be reserved as part of an area reserved under this Part.
- (3) On the publication of the proclamation:
 - (a) the lands are reserved as part of the area, and
 - (b) the lands are vested in the Aboriginal Land Council or Councils in which the area is vested, and
 - (c) the care, control and management of the lands is to be exercised:
 - (i) by the board of management for the area, or
 - (ii) if a board of management has not been established for the area, by the Director-General until a board of management is established for the area, and
 - (d) the lease over the area negotiated under this Part is taken to extend and apply to the lands in the same way that the lease applies to the area, and
 - (e) the provisions of this Act and any instrument made under this Act (including any plan of management or regulations) apply to the lands in the same way that they apply to the area.
- (4) Subsections (2) and (3) apply, in relation to the lands added to the area, subject to the following:
 - (a) any native title rights and interests that exist in relation to the lands,
 - (b) any existing interest within the meaning of section 39,

- (c) any licence issued under Part 9,
 - (d) any lease, licence, franchise or easement granted under Part 12,
 - (e) any authority or consent issued under this Act or the regulations.
- (5) Despite subsection (3) (e), a plan of management applying to land in an area already leased and reserved under this Part only applies to lands added to the area if the plan of management already applies to lands of the same reservation category.

Note—

For example, if the plan of management applies only to land reserved as a national park and the added land is to be reserved as a state conservation area, the plan of management will not apply to the newly added state conservation area land.

71BB Tabling of proclamation to add lands if change of land classification involved

- (1) A copy of a proclamation published under section 71BA is to be laid before each House of Parliament within 14 sitting days of that House after the publication of the proclamation if the classification of the lands specified in the proclamation is changed from the classification that the lands have in Schedule 14.
- (2) If a House of Parliament passes a resolution of which notice has been given within 15 sitting days of that House after a copy of a proclamation has been laid before it under this section (whether or not those sitting days occur during the same session) and the resolution disallows the reservation taken to be effected by the proclamation of any lands:
 - (a) the reservation of the lands as part of the area leased under this Part ceases to have effect on the disallowance, and
 - (b) the lands cease to be part of the area concerned and revert to the classification, as lands reserved under this Act and listed in Schedule 14, that they had before the publication of the proclamation, and
 - (c) the vesting of the lands in an Aboriginal Land Council or Councils is of no effect, and
 - (d) the care, control and management of the lands is to be exercised by the person or body that had the care, control and management of the lands before the publication of the proclamation, and
 - (e) the lease of the lands does not operate in respect of the lands, and
 - (f) the provisions of this Act and any instrument made under this Act that applied to the lands by reason only of the publication of the proclamation cease to apply to the lands.

71BC Addition of lands not already reserved under Act

- (1) The Governor may, by proclamation published in the Gazette, reserve or dedicate, as part of an area leased under this Part any of the following:
 - (a) Crown lands,
 - (b) lands of the Crown,
 - (c) lands acquired under section 145, 146 or 148,
 - (d) Aboriginal lands.
- (2) On the publication of the proclamation:
 - (a) the lands described in the proclamation become Crown lands to the extent to which they were not Crown lands immediately before that publication, and
 - (b) if a trustee of all or any part of the lands so described was holding office under any this or any other Act immediately before that publication, the trustee ceases to hold that office in respect of those lands, and
 - (c) any by-laws or regulations that, immediately before that publication, applied to the lands cease to apply so far as they relate to the lands, and
 - (d) the lands are reserved as part of the area, and
 - (e) the lands are vested, or in the case of Aboriginal lands, remain vested, in the Aboriginal Land Council or Councils in which the area is vested, and
 - (f) the care, control and management of the lands is to be exercised:
 - (i) by the board of management for the area, or
 - (ii) if a board of management has not been established for the area, by the Director-General until a board of management is established for the area, and
 - (g) the lease over the area is taken to extend and apply to the lands in the same way that it applies to the area, and
 - (h) the provisions of this Act and any instrument made under this Act (including any plan of management or regulations) apply to the lands in the same way that they apply to the area.
- (3) Subsection (2) applies, in relation to the lands added to the area, subject to the following:
 - (a) any native title rights and interests in relation to the lands,
 - (b) any existing interest within the meaning of section 39.

(3A) Despite subsection (2) (h), a plan of management applying to land in an area already leased and reserved under this Part only applies to lands added to the area if the plan of management already applies to lands of the same reservation category.

Note—

For example, if the plan of management applies only to land reserved as a national park and the added land is to be reserved as a state conservation area, the plan of management will not apply to the newly added state conservation area land.

- (4) To the extent to which a reservation (other than a reservation under Division 4 or this Division), Crown grant or vesting affects lands described in a proclamation published under this section, the publication revokes the reservation, grant or vesting, and the instruments of title (if any) must be surrendered for cancellation or notation.
- (5) In this section, **Aboriginal lands**, in relation to an Aboriginal Land Council or Councils that are the lessors of an area leased under this Part, means:
- (a) lands owned in fee simple by the Aboriginal Land Council or Councils (other than lands referred to in paragraph (b)), or
 - (b) lands granted to the Aboriginal Land Council or Councils under Part 2 of the [Aboriginal Land Rights Act 1983](#), whether or not subject to conditions of the kind referred to in section 36A (2) of that Act,

that the Aboriginal Land Council or Councils have requested, by written notice served on the Minister, be reserved as part of the area vested in the Aboriginal Land Council or Councils.

71BD Application of certain provisions to additional lands

- (1) Sections 71R, 71S and 71T apply to and in respect of lands added to an area reserved under this Part in the same way that they apply to and in respect of lands reserved under Division 3 or 4 except as provided in this section.
- (2) Despite subsection (1), sections 34, 47C, 47I (as substituted by the [National Parks and Wildlife Amendment Act 1996](#)), 47Q (as inserted by the [National Parks and Wildlife Amendment Act 1996](#)), 47Z (as inserted by that Act), 49, 50, 58B and 58N apply to and in respect of lands reserved under this Part.

71BE Review of lease after addition of lands

- (1) A party to a lease under this Part may request a review of the provisions of the lease if:
- (a) lands are added to the lands originally leased, and
 - (b) the next regular review of the lease in accordance with the requirements of Division 5 is not due within the 2 years next following the date of publication of the proclamation by which lands are added to the lands originally leased.

- (2) Section 71AH applies to and in respect of the review of a lease under this section in the same way that it applies to and in respect of a lease referred to in that section.

Division 9 Miscellaneous

71BF Application of Division

This Division applies to and with respect to Schedule 14 lands and ALR Act lands.

71BG Aboriginal Land Councils to act with agreement of Aboriginal owner board members

An Aboriginal Land Council or Councils in which reserved or dedicated lands are vested must, when exercising any power, authority, duty or function conferred or imposed on it or them under this Act or under the lease of the lands made under this Part (but subject to the requirements of this Act and any instrument, including the lease, made under this Act), act only with the agreement of the Aboriginal owner board members for the lands.

71BH Regard to be had to interests of Aboriginal owners

The Director-General and the National Parks and Wildlife Service must, when exercising any power, authority, duty or function conferred or imposed on them under this Act in relation to management of the lands to which this Part applies (but subject to the requirements of this Act and any instrument, including the lease, made under this Act), have regard to the interests of the Aboriginal owners of the lands concerned.

71BI Land management activities subject to native title

- (1) Despite any other provision of this Act:
- (a) the exercise of functions by a board of management, and
 - (b) the exercise of powers, authorities, duties and functions by the Director-General and the National Parks and Wildlife Service,
- in relation to the management of the lands to which this Part applies is subject to the preservation of native title rights and interests (if any) that exist in relation to the lands.
- (2) If at any time an approved determination of native title is made that native title exists in relation to lands to which this Part applies, the Minister, the Aboriginal Land Council or Councils in which the lands concerned are vested and the board of management for the lands are authorised to enter into arrangements with the common law native title holders or their representatives (or both) to ensure that the native title rights and interests in relation to the lands are preserved.
- (3) An arrangement of the kind referred to in subsection (2) may be entered into despite any provision of this or any other Act or law and despite the fact that the entry into of the arrangement may involve the breach of another previously concluded

arrangement.

- (4) No compensation is payable in respect of the breach of an arrangement because of the operation of this section.

Note—

Approved determination of native title is defined in section 253 of the [Native Title Act 1993](#) of the Commonwealth.

71BJ Arbitration of disputes

- (1) Any dispute between:
- (a) the Director-General and a board of management, or
 - (b) the Minister or Director-General and an Aboriginal Land Council or Councils,
- concerning matters arising under this Part (other than matters in respect of which a direction has been given to the Director-General by a board of management in accordance with this Part) is to be arbitrated by a panel of 3 arbitrators.
- (2) One of the 3 arbitrators is to be appointed by the Director-General, one by the board of management for the lands concerned and the third by agreement between the first 2 arbitrators or, failing such agreement, by the Chief Judge of the Land and Environment Court.
- (3) The procedures to apply to an arbitration are to be determined by the panel of arbitrators.
- (4) In conducting an arbitration, the arbitrators are to have regard to:
- (a) the preservation of the rights and interests of native title holders, and
 - (b) the views on the subject of the dispute expressed by the Aboriginal owner board members,
- in relation to the lands concerned.
- (5) The regulations may make provision with respect to the arbitration of disputes under this section including as to the fixing and payment of the remuneration and expenses of the arbitrators.

71BK Dissolution of Local Aboriginal Land Council

- (1) If lands to which this Part applies are vested:
- (a) in one Local Aboriginal Land Council and that Council is dissolved, or
 - (b) in more than one Local Aboriginal Land Council and each of the Councils in which the lands are vested is dissolved,

the lands are on and from the date of dissolution vested in the Aboriginal owners of the lands recorded in the register of Aboriginal owners until a new Aboriginal Land Council or Councils are constituted for the area or areas that constituted or included the area or areas of the dissolved Aboriginal Land Council or Councils.

- (2) On the constitution of the new Aboriginal Land Council or Councils, the lands vest in that Council or those Councils.
- (3) If lands to which this Part applies are vested in more than one Aboriginal Land Council and one or more but not all of the Councils in which the lands are vested are dissolved, on constitution of a new Aboriginal Land Council or Councils to replace the dissolved Council or Councils, the lands vest in that new Council or those new Councils for the interest held immediately before the dissolution by the dissolved Council or Councils.

71BL Status of leased lands and board of management

- (1) A lease of lands to the Minister under this Part is taken, for the purposes of any Act or law, not to be a lease of lands for private purposes.
- (2) Each board of management is taken, for the purposes of the *Environmental Planning and Assessment Act 1979* and any regulation or planning instrument made under that Act, to be a public authority and, for all purposes under that Act and any such regulation or planning instrument, to occupy in respect of the lands of which it has care, control and management under this Part, the same position that the Director-General occupies in respect of lands of which the Director-General has care, control and management under this Act.

71BM Omission of land from Schedule 14

Schedule 14 may be amended by the omission of lands only by Act of Parliament.

71BN Review of Part

- (1) The Minister is to review the operation of this Part to determine whether the policy objectives of the Part remain valid and whether the terms of the Part remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the *National Parks and Wildlife Amendment (Aboriginal Ownership) Act 1996*.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Part 5 Plans of management

71B0 Definitions

In this Part:

appropriate regional advisory committee means, in relation to land reserved under this Act, the regional advisory committee constituted for the administrative region in which the reserved land is situated.

responsible authority, in relation to a plan of management, means the person or body who or which has responsibility under sections 72, 72A, 73 or 75 for preparing, or causing to be prepared, the plan of management.

72 Preparation of plans of management

(1) The Director-General:

- (a) shall cause a plan of management to be prepared for each national park and historic site in existence on the commencement day, as soon as practicable after that day, unless a plan of management was adopted with respect thereto under the Act of 1967,
- (b) shall cause a plan of management to be prepared for each nature reserve in existence on the commencement day, as soon as practicable after that day, unless a scheme of operations was approved with respect thereto under the [Fauna Protection Act 1948](#),
- (c) shall cause a plan of management to be prepared for each historic site, nature reserve, karst conservation reserve or national park reserved after the commencement day, as soon as practicable after the reservation,
- (d) may from time to time cause a plan of management to be prepared for any Aboriginal area, wildlife refuge or wildlife management area, and
- (e) may from time to time, after consulting with the owner, cause a plan of management to be prepared for a conservation area.

(1A) The Director-General is to cause a plan of management to be prepared for each state conservation area, and for each regional park (other than a park that is under the care, control and management of a local council), as soon as practicable after the reservation of the land concerned.

(1B) If a local council is nominated by the Minister to have the care, control and management of a regional park, the council is to cause a plan of management to be prepared for the regional park as soon as practicable after the reservation of the land concerned.

(1BA) The responsible authority is to seek the advice of the appropriate regional advisory committee in the preparation of a plan of management, other than a plan of management prepared for lands reserved under Part 4A or lands within Zone 1, 2 or 3 of the Community Conservation Area under the *Brigalow and Nandewar Community Conservation Area Act 2005*.

Note—

The responsible authority is to consult with the relevant Community Conservation Advisory Committee established under the *Brigalow and Nandewar Community Conservation Area Act 2005* in the preparation of a plan of management for lands within Zone 1, 2 or 3 of the Brigalow and Nandewar Community Conservation Area.

(1C) A plan of management for lands reserved or dedicated under Part 4A is to be prepared by the board of management for the lands concerned in consultation with the Director-General.

(1D) If a part or parts only of lands listed in Schedule 14 are reserved or dedicated under Part 4A:

- (a) the Director-General may prepare a separate plan of management for the part or parts of the lands that are not so reserved or dedicated in accordance with this Part, or
- (b) the Director-General and the board of management may agree that the plan of management prepared for the lands reserved or dedicated under Part 4A should extend and apply to the lands that are not so reserved or dedicated in which event the provisions of this Part applying to the preparation of plans of management by boards of management apply to the plan.

(1E) Subsections (1C) and (1D) do not require a plan of management to be prepared if an existing plan of management is in force when the lands are reserved or dedicated under Part 4A. However, any such existing plan, in so far as it relates to lands reserved or dedicated under Part 4A, must be reviewed by the board of management for the lands concerned within 2 years after the lands are so reserved or dedicated and may be amended, altered or cancelled in accordance with this section.

(1F) Without limiting subsection (1) (c), in the case of lands for which a plan of management is not in force when the lands are reserved or dedicated under Part 4A, a plan of management is to be prepared by the board of management for the lands within 5 years after that reservation or dedication.

(1G)-(4) (Repealed)

(5) This section does not apply to or in respect of a wildlife refuge or conservation area that is comprised wholly or partly of lands within a State forest.

72AA Objectives and content of plans of management

- (1) The following matters are to be taken into consideration in the preparation of a plan of management for land reserved under this Act:
- (a) the relevant management principles,
 - (b) the conservation of biodiversity, including the maintenance of habitat, ecosystems and populations of threatened species,
 - (c) the protection and appreciation of objects, places and structures of cultural significance, and tracts of land,
 - (d) the protection of landscape values and scenic features,
 - (e) the protection of geological and geomorphological features,
 - (f) the protection of wilderness values and the management of wilderness areas,
 - (g) the maintenance of natural processes,
 - (h) the rehabilitation of landscapes and the reinstatement of natural processes,
 - (i) fire management,
 - (j) in the case of a plan of management for a national park, nature reserve or karst conservation reserve, the prohibition of the execution of any works adversely affecting the natural condition or special features of the park or reserve,
 - (k) the potential for the reserved land to be used by Aboriginal people for cultural purposes,
 - (l) the provision of opportunities for public understanding and appreciation of natural and cultural heritage values, including opportunities for sustainable visitor or tourist use and enjoyment of the reserved land,
 - (m) the adaptive reuse of buildings and structures,
 - (n) the appropriate (including culturally appropriate) and ecologically sustainable use of the reserved land, including use by lessees, licensees and occupiers of the land,
 - (o) the preservation of catchment values,
 - (p) the encouragement of appropriate research into natural and cultural features and processes, including threatening processes,
 - (q) the identification and mitigation of threatening processes,
 - (r) the statutory natural resource management, land use management plans and land management practices of land surrounding or within a region of the reserved land,

- (s) the regional, national and international context of the reserved land, the maintenance of any national and international significance of the reserved land and compliance with relevant national and international agreements, including the protection of world heritage values and the management of world heritage properties,
 - (t) benefits to local communities,
 - (u) the social and economic context of the reserve so as to ensure, for example, that the provision of visitor or tourist facilities is appropriate to the surrounding area or that pest species management programs are co-ordinated across different tenures,
 - (v) the protection and management of wild rivers,
 - (w) the impact of the management and the use of land acquired under Part 11 on the reserved land's management.
- (2) A plan of management must include the means by which the responsible authority proposes to achieve the plan's objectives and performance measures.
- (3) The matters referred to in subsection (1) (b)-(s) are to be taken into account, where appropriate, in the preparation of a plan of management for a wildlife refuge, wildlife management area or conservation area.
- (4) A plan of management is to contain a written scheme of operations which it is proposed to undertake in relation to the land that is the subject of the plan of management.
- (5) The written scheme of operations for a plan of management must:
- (a) if the plan is for land within a conservation area, relate to the carrying out of operations for the purpose and objects of the conservation agreement, and
 - (b) if the plan is for land within a State forest, be consistent with the purpose and objects of this Act and the [Forestry Act 1916](#).
- (5A) A plan of management for a karst conservation reserve is to include environmental performance standards and indicators for the purposes of section 151D (1) that ensure the environmental values of the reserve are conserved or restored.
- (6) Without limiting subsection (1), a plan of management may do any one or more of the following:
- (a) (Repealed)
 - (b) in relation to land within a state conservation area, specify any activity proposed to be permitted in any part of the area and the nature of any development

proposed to be carried out to encourage the use of that part for the activity so specified,

(c) in relation to land reserved under Part 4A, provide for the use of the land for any community development purpose prescribed by the regulations.

(7) A plan of management for a national park, historic site, nature reserve or karst conservation reserve may relate to land acquired or occupied, or proposed to be acquired or occupied, under Part 11.

72A Plans of management for combined areas and areas adjoining State borders

(1) A single plan of management may be prepared under this Part for a combination of contiguous or related areas for which separate plans of management may be prepared under this Part or under the *Wilderness Act 1987*.

(2) With the consent or on the request of the Minister, the Director-General may, together with the relevant authority of another State or a Territory, cause a joint plan of management to be prepared for an area comprising an area within that other State or Territory and an area for which a plan of management may be prepared under this Part or under the *Wilderness Act 1987*.

(3) The provisions of this Act or the *Wilderness Act 1987* with respect to a plan of management for a particular area apply to:

(a) a single plan of management referred to in subsection (1), or

(b) a joint plan of management referred to in subsection (2),

in so far as any such plan relates to any such area.

(4) A plan of management prepared in accordance with this section may include provisions relating to any or all of the following types of land:

(a) land reserved under Part 4,

(b) land reserved under Part 4A,

(c) land acquired or occupied or proposed to be acquired or occupied under Part 11.

73 State forests

(1) The Director-General may, from time to time, with the concurrence in writing of the Forestry Commission, cause a plan of management to be prepared for any State forest.

(2) (Repealed)

(3) This section applies to and in respect of a State forest that is comprised wholly or

partly of lands within a wildlife refuge or conservation area or that is not comprised of any such lands.

73A Public exhibition of and consultation on plans of management

- (1) When a plan of management is prepared, the responsible authority is to give notice of the preparation of the plan in accordance with the regulations.
- (2) The notice is to include:
 - (a) the address of the place at which copies of the plan of management may be inspected, and
 - (b) the address to which representations may be forwarded, and
 - (c) the period within which such representations may be made, being a period of not less than 90 days from the date on which the notice is made public.
- (3) The responsible authority for a plan of management for a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area must forward the plan of management and any representations received within the time for making representations specified in the notice to the appropriate regional advisory committee and the Council.
- (4) The appropriate regional advisory committee must consider the plan of management and representations and provide the Council with such advice as the committee considers appropriate.
- (5) The Council must consider the plan of management, the representations and any advice received from the appropriate regional advisory committee and provide the Minister with such advice as it considers appropriate.
- (6) The Council must send a copy of any advice it provides to the Minister to the appropriate regional advisory committee and the appropriate regional advisory committee may provide comments to the Minister within 30 days of receiving the copy of the advice.
- (7) Subsection (3) does not apply to a plan of management for land reserved under Part 4A. However, the responsible authority for such a plan of management is to forward any representations received within the time for making representations specified in the notice to the Council for consideration and advice.
- (8) This section does not apply in relation to a plan of management for land within Zone 1, 2 or 3 of the Community Conservation Area under the *Brigalow and Nandewar Community Conservation Area Act 2005*.

73B Adoption, amendment and cancellation of plans of management

- (1) After considering the representations made under section 73A and any advice from the Council, the Minister may adopt a plan of management without alteration or with such alterations as the Minister may think fit or may refer it back to the responsible authority and the Council for further consideration.
- (2) The Minister is to refer the plan of management back to the responsible authority for consideration if the Minister has not adopted the plan within 12 months after receiving it for consideration.
- (3) The Minister may, on the recommendation of the responsible authority:
 - (a) amend or alter a plan of management from time to time, or
 - (b) cancel a plan of management, or
 - (c) cancel a plan of management and substitute a new plan of management.
- (4) If the Minister proposes to amend or alter a plan of management, or to cancel a plan of management and substitute a new plan of management, the Minister is to instruct the responsible authority to cause the amendment, alteration or new plan of management to be prepared.
- (5) The responsible authority is to cause the amendment, alteration or new plan of management to be prepared as soon as possible.
- (6) The Minister may take action under subsection (1) or (3):
 - (a) in relation to a plan of management for a wildlife refuge—only with the consent in writing of the owner or holder, and the occupier, of the land to which the plan of management relates, or
 - (b) in relation to a plan of management for a conservation area or proposed conservation area—only with the consent in writing of the owner of the land to which the plan of management relates, or
 - (c) in relation to a plan of management for a State forest—only with the concurrence in writing of the Forestry Commission.
- (7) Section 72AA, 73A, 74, 75 and subsections (1)–(6) apply to and in respect of an amendment, alteration or substitution of a plan of management in the same way as they apply to the preparation of a new plan of management.

However, in relation to an amendment or alteration of a plan of management, the reference in section 73A (2) (c) (as applied) to “90 days” is taken to be a reference to “45 days”.
- (8) Despite the other provisions of this section, the Minister is to cancel a plan of

management for a State forest at the request in writing of the Forestry Commission.

Note—

Sections 74 and 80 include other provisions relating to the adoption, amendment and cancellation of plans of management for certain land.

74 Catchment areas and special areas—generally

(1) This section applies where:

- (a) any lands reserved as a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area or that comprise a wilderness area within the meaning of the *Wilderness Act 1987* are wholly or partly within a catchment area or special area of a water authority, or
- (b) the waters from any lands so reserved drain into a catchment area, special area or structure of a water authority.

(1A) This section does not apply to land referred to in subsection (1) (a) that is wholly or partly within a special area within the meaning of the *Hunter Water Act 1991*.

(2) The Director-General (or, if a regional park is under the care, control and management of a local council, the council) must, before submitting to the Minister a plan of management for the national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve, Aboriginal area or wilderness area:

- (a) refer the plan to the relevant water authority for its information, and
- (b) also refer the plan to the Director-General of the Department of Land and Water Conservation if the relevant water authority is the Hunter Water Corporation.

(3) The Minister must, before adopting the plan of management, consider any representations made by the relevant water authority and (in a case involving the Hunter Water Corporation) the Director-General of the Department of Land and Water Conservation.

(4) In this section, **water authority** means the Sydney Water Corporation, the Sydney Catchment Authority, the Hunter Water Corporation or a water supply authority within the meaning of the *Water Management Act 2000*.

75 Special areas under the *Hunter Water Act 1991*—joint preparation and approval of plans of management

(1) This section applies to land that:

- (a) is reserved as a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area, and
- (b) is wholly or partly within a special area within the meaning of the *Hunter Water*

Act 1991.

- (2) The Director-General and the Chief Executive Officer of the Hunter Water Corporation have joint responsibility for:
 - (a) causing any plan of management for land to which this section applies to be prepared under section 72 (1) or (1A), and
 - (b) carrying out and giving effect to any such plan of management under section 81.
- (3) In the case of a plan of management for land to which this section applies that is a regional park under the care, control and management of a local council, the council and the Chief Executive Officer of the Hunter Water Corporation have joint responsibility for:
 - (a) causing any plan of management for the land to be prepared under section 72 (1B), and
 - (b) carrying out and giving effect to any such plan of management under section 81.
- (4) The Minister, and the Minister administering Division 8 of Part 5 of the *Hunter Water Act 1991*, are jointly responsible for the adoption, amendment or alteration, cancellation or substitution of any such plan of management. For this purpose, a reference to the Minister in sections 73B and 81 is taken to be a reference to both of those Ministers.
- (5) If the whole or any part of land reserved as a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area is declared, after it is so reserved, to be a special area under the *Hunter Water Act 1991*, a plan of management for the land is to be prepared as soon as practicable after the whole or part of the land is declared to be a special area.

75A-79 (Repealed)

79A Lapsing of plans of management

- (1) A plan of management for lands reserved under Part 4A expires on the tenth anniversary of the date on which it was adopted unless it is sooner cancelled under this Part.
- (2) Not less than 6 months before a plan of management expires, the board of management for the lands concerned must prepare a new plan of management to replace it.
- (3) The board of management is to have regard to a plan of management that has expired until the new plan of management comes into effect.

80 Lands submerged by water

- (1) Where lands submerged by water are lands that are the subject of any part of a plan of management for a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area, the plan, before being made or adopted by the Minister, shall be referred to the Minister administering the *Fisheries Management Act 1994*.
- (2) A plan of management referred to in subsection (1):
 - (a) shall not be adopted, amended, altered or cancelled by the Minister in so far as it relates to Crown lands within the meaning of paragraph (a) of the definition of **Crown lands** in section 5 (1) (other than Crown lands to which paragraph (b) of this subsection applies), until the Minister has considered any representations made with respect to the plan of management by the Minister administering the *Fisheries Management Act 1994*, and
 - (b) shall not be adopted, amended, altered or cancelled by the Minister in so far as it directly relates to the intertidal zone or Crown lands within the meaning of paragraph (b) of the definition of **Crown lands** in section 5 (1), without the concurrence in writing of the Minister administering the *Fisheries Management Act 1994*.

81 Operations under plan of management

- (1) Where the Minister has adopted a plan of management for a national park, historic site, nature reserve, karst conservation reserve, Aboriginal area or wildlife refuge, it shall, subject to subsections (5) and (6), be carried out and given effect to by the Director-General.
- (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-General, the owner (within the meaning of Division 7 of Part 4) of the area and any successors in title (within the meaning of section 69E) to the owner.
- (3) Where the Minister has adopted a plan of management for a State forest, it shall be carried out and given effect to by the Director-General by arrangement with the Forestry Commission.
- (3A) If the Minister has adopted a plan of management for a state conservation area or a regional park, it is to be carried out and given effect to:
 - (a) by the Director-General, or
 - (b) by the relevant state conservation area trust or regional park, trust, or
 - (c) by the local council (if any) that has the care, control and management of the regional park.

- (4) Despite anything in this or any other Act or in any instrument made under this or any other Act, if the Minister has adopted a plan of management under this Part, no operations shall be undertaken in relation to the lands to which the plan relates unless the operations are in accordance with that plan. However, this subsection does not prevail over section 185A.
- (5) Where any lands to which a plan of management relates are:
 - (a) lands acquired or proposed to be acquired under Part 11 for any purpose referred to in section 145—operations under the plan shall not be undertaken on or in relation to the lands until they have been reserved as, or as part of, the park, site or reserve, as the case may require, to which the plan relates, or
 - (b) lands proposed to be acquired or occupied under Part 11 for any purpose referred to in section 146—operations under the plan shall not be undertaken on or in relation to the lands until they have been so acquired or occupied.
- (6) If the Minister has adopted a plan of management for lands reserved under Part 4A, it is to be carried out and given effect to by the board of management for the lands.

81A Leases, licences and easements subject to plan of management

Without limiting the generality of this Part, this Part has effect in respect of any part of a national park, historic site, nature reserve, karst conservation reserve, state conservation area, regional park or Aboriginal area that is the subject of a lease, licence or easement granted under Part 12.

82 Concurrence of Forestry Commission

Where the concurrence of the Forestry Commission is required under this Part, the concurrence shall not be given without the approval of the Minister administering the [Forestry Act 1916](#).

Part 6 Aboriginal objects and Aboriginal places

Division 1 General

83 Certain Aboriginal objects to be Crown property

- (1) Subject to this section:
 - (a) an Aboriginal object that was, immediately before the commencement day, deemed to be the property of the Crown by virtue of section 33D of the Act of 1967, and
 - (b) an Aboriginal object that is abandoned on or after that day by a person other than the Crown,

shall be, and shall be deemed always to have been, the property of the Crown.

- (2) Nothing in this section shall be construed as restricting the lawful use of land or as authorising the disturbance or excavation of any land.
- (3) No compensation is payable in respect of the vesting of an Aboriginal object by this section or section 33D of the Act of 1967.

84 Aboriginal places

The Minister may, by order published in the Gazette, declare any place specified or described in the order, being a place that, in the opinion of the Minister, is or was of special significance with respect to Aboriginal culture, to be an Aboriginal place for the purposes of this Act.

85 Director-General's responsibilities as to Aboriginal objects and Aboriginal places

- (1) The Director-General shall be the authority for the protection of Aboriginal objects and Aboriginal places in New South Wales.
- (2) In particular, the Director-General shall be responsible:
 - (a) for the proper care, preservation and protection of any Aboriginal object or Aboriginal place on any land reserved under this Act, and
 - (b) subject to Division 2, for the proper restoration of any such land that has been disturbed or excavated in accordance with an Aboriginal heritage impact permit.

85A Transfer of Aboriginal objects

- (1) The Director-General may, despite any other provision of this Act, dispose of Aboriginal objects that are the property of the Crown:
 - (a) by returning the Aboriginal objects to an Aboriginal owner or Aboriginal owners entitled to, and willing to accept possession, custody or control of the Aboriginal objects in accordance with Aboriginal tradition, or
 - (b) by otherwise dealing with the Aboriginal objects in accordance with any reasonable directions of an Aboriginal owner or Aboriginal owners referred to in paragraph (a), or
 - (c) if there is or are no such Aboriginal owner or Aboriginal owners—by transferring the Aboriginal objects to a person, or a person of a class, prescribed by the regulations for safekeeping.
- (2) Nothing in this section is taken to limit the right of an Aboriginal owner or Aboriginal owners accepting possession, custody or control of any Aboriginal object pursuant to this section to deal with the Aboriginal object in accordance with Aboriginal tradition.

- (3) The regulations may make provision as to the manner in which any dispute concerning the entitlement of an Aboriginal owner or Aboriginal owners to possession, custody or control of Aboriginal objects for the purposes of this section is to be resolved.

86 Harming or desecrating Aboriginal objects and Aboriginal places

- (1) A person must not harm or desecrate an object that the person knows is an Aboriginal object.

Maximum penalty:

- (a) in the case of an individual—2,500 penalty units or imprisonment for 1 year, or both, or (in circumstances of aggravation) 5,000 penalty units or imprisonment for 2 years, or both, or
- (b) in the case of a corporation—10,000 penalty units.

- (2) A person must not harm an Aboriginal object.

Maximum penalty:

- (a) in the case of an individual—500 penalty units or (in circumstances of aggravation) 1,000 penalty units, or
- (b) in the case of a corporation—2,000 penalty units.

- (3) For the purposes of this section, ***circumstances of aggravation*** are:

- (a) that the offence was committed in the course of carrying out a commercial activity, or
- (b) that the offence was the second or subsequent occasion on which the offender was convicted of an offence under this section.

This subsection does not apply unless the circumstances of aggravation were identified in the court attendance notice or summons for the offence.

- (4) A person must not harm or desecrate an Aboriginal place.

Maximum penalty:

- (a) in the case of an individual—5,000 penalty units or imprisonment for 2 years, or both, or
- (b) in the case of a corporation—10,000 penalty units.

- (5) The offences under subsections (2) and (4) are offences of strict liability and the defence of honest and reasonable mistake of fact applies.

- (6) Subsections (1) and (2) do not apply with respect to an Aboriginal object that is dealt

with in accordance with section 85A.

- (7) A single prosecution for an offence under subsection (1) or (2) may relate to a single Aboriginal object or a group of Aboriginal objects.
- (8) If, in proceedings for an offence under subsection (1), the court is satisfied that, at the time the accused harmed the Aboriginal object concerned, the accused did not know that the object was an Aboriginal object, the court may find an offence proved under subsection (2).

87 Defences

- (1) It is a defence to a prosecution for an offence under section 86 (1), (2) or (4) if the defendant shows that:
 - (a) the harm or desecration concerned was authorised by an Aboriginal heritage impact permit, and
 - (b) the conditions to which that Aboriginal heritage impact permit was subject were not contravened.
- (2) It is a defence to a prosecution for an offence under section 86 (2) if the defendant shows that the defendant exercised due diligence to determine whether the act or omission constituting the alleged offence would harm an Aboriginal object and reasonably determined that no Aboriginal object would be harmed.
- (3) The regulations may provide that compliance with requirements specified in the regulations, or in a code of practice adopted or prescribed by the regulations, is taken for the purposes of subsection (2) to constitute due diligence in determining whether the act or omission constituting the alleged offence would harm an Aboriginal object.
- (4) It is a defence to a prosecution for an offence under section 86 (2) if the defendant shows that the act or omission constituting the alleged offence is prescribed by the regulations as a low impact act or omission.
- (5) The Minister is not to recommend the making of a regulation under subsection (3), unless:
 - (a) the Director-General has, under subsection (6), set minimum standards for requirements specified in the regulations, or in a code of practice adopted or prescribed by the regulations, and
 - (b) the Minister:
 - (i) is satisfied that the requirements specified in the recommended regulation, or in the code of practice adopted or prescribed by the recommended regulation, meet those minimum standards, and

(ii) has consulted with the Aboriginal Cultural Heritage Advisory Committee.

- (6) The Director-General may, for the purposes of subsection (5) set minimum standards for requirements specified in the regulations, or in a code of practice adopted or prescribed by the regulations, under subsection (3). The Director-General is to publish any such minimum standards in the Gazette.
- (7) The Minister is not to recommend the making of a regulation under subsection (4) unless the Minister has consulted with the Aboriginal Cultural Heritage Advisory Committee.

87A Exemptions for certain activities

Section 86 (1)-(4) do not apply in relation to the following:

- (a) work for the conservation or protection of an Aboriginal object or place that is carried out by an officer of the Service or a person under the direction of such an officer,
- (b) any emergency fire fighting act or bush fire hazard reduction work within the meaning of the *Rural Fires Act 1997* that is authorised or required to be carried out under that Act,
- (c) any thing authorised by or under the *State Emergency and Rescue Management Act 1989* in relation to an emergency (within the meaning of that Act) and that was reasonably necessary in order to avoid an actual or imminent threat to life or property,
- (d) any thing specifically required or permitted under the express terms of a conservation agreement entered into under Division 12 of Part 4 of this Act (being an agreement that was entered into or modified after the commencement of this section).

87B Exemption for traditional Aboriginal cultural activities

- (1) The object of this section is to exempt Aboriginal people from the provisions of section 86 that prohibit the harming of an Aboriginal object or place.
- (2) Aboriginal people are exempt from the provisions of section 86 (1), (2) and (4) to the extent to which those provisions would, but for this section, prohibit Aboriginal people from carrying out traditional cultural activities (except commercial activities).
- (3) This section applies to and in respect of any dependants (whether Aboriginal or not) of Aboriginal people in the same way as it applies to and in respect of Aboriginal people.

88 Australian Museum Trust to have custody of certain Aboriginal objects

- (1) Nothing in section 87 shall be construed as authorising the Director-General to permit an Aboriginal object to be removed from a national park, historic site, nature reserve, karst conservation reserve, Aboriginal area, state conservation area or regional park to the custody or control of a person other than the Australian Museum Trust, except

where:

- (a) the Aboriginal object remains in the custody or under the control of the Director-General, or
 - (b) the Aboriginal object is being moved from a national park, historic site, nature reserve, karst conservation reserve, Aboriginal area, state conservation area or regional park to any or any other national park, historic site, nature reserve, karst conservation reserve, Aboriginal area, state conservation area or regional park.
- (2) An Aboriginal object that is the property of the Crown, other than an Aboriginal object:
- (a) in a national park, historic site, nature reserve, karst conservation reserve, Aboriginal area, state conservation area or regional park,
 - (b) being moved from a national park, historic site, nature reserve, karst conservation reserve, Aboriginal area, state conservation area or regional park to any or any other national park, historic site, nature reserve, karst conservation reserve, Aboriginal area, state conservation area or regional park,
 - (c) in the custody or under the control of the Director-General, or
 - (d) acquired by the Minister or the Director-General pursuant to section 89 or by the Minister pursuant to Part 11,

shall be deemed not to be in the possession of the Crown unless it is in the custody or under the control of the Australian Museum Trust.

- (3) The Director-General may arrange with the Australian Museum Trust for the deposit or exhibition of an Aboriginal object in a building or structure in a national park, historic site, nature reserve, karst conservation reserve, Aboriginal area, state conservation area or regional park and, where an Aboriginal object is so deposited or exhibited, section 86 does not apply to the Australian Museum Trust in relation to that Aboriginal object.
- (4) Nothing in this Act shall be construed as affecting the powers, authorities, duties or functions conferred or imposed on the Australian Museum Trust by the [Australian Museum Trust Act 1975](#).

89 Preservation or exhibition of certain Aboriginal objects

- (1) Subject to this section, the Minister or the Director-General may, by agreement with a person having the ownership or possession of:
- (a) an Aboriginal object that is not the property of the Crown, or
 - (b) an Aboriginal place,
- acquire the Aboriginal object or take such other action as the Minister or the Director-

General thinks is practicable for the preservation or exhibition of the Aboriginal object or Aboriginal place.

- (2) An Aboriginal object acquired under this section shall be the property of the Crown.
- (3) An Aboriginal object that is real property shall not be acquired under this section, but nothing in this section affects anything contained in Part 11.
- (4) Any Aboriginal object acquired by the Minister or the Director-General prior to the commencement day shall be deemed to have been acquired under this section.

89A Notification of sites of Aboriginal objects

A person who is aware of the location of an Aboriginal object that is the property of the Crown or, not being the property of the Crown, is real property, and does not, in the prescribed manner, notify the Director-General thereof within a reasonable time after the person first becomes aware of that location is guilty of an offence against this Act unless the person believes on reasonable grounds that the Director-General is aware of the location of that Aboriginal object.

Maximum penalty:

- (a) in the case of an individual—100 penalty units and, in the case of a continuing offence, a further penalty of 10 penalty units for each day the offence continues, or
- (b) in the case of a corporation—200 penalty units and, in the case of a continuing offence, a further penalty of 20 penalty units for each day the offence continues.

Division 2 Aboriginal heritage impact permits

90 Aboriginal heritage impact permits

- (1) The Director-General may issue an Aboriginal heritage impact permit.
- (2) An Aboriginal heritage impact permit may be issued subject to conditions or unconditionally. However, a condition cannot be imposed on a permit if compliance with the condition would result in a breach of a requirement made by or under this Act.
- (3) An Aboriginal heritage impact permit may be issued in relation to a specified Aboriginal object, Aboriginal place, land, activity or person or specified types or classes of Aboriginal objects, Aboriginal places, land, activities or persons.

90A Application for issue of permit

- (1) An application may be made to the Director-General for the issue of an Aboriginal heritage impact permit.
- (2) An application must:

- (a) be made in or to the effect of a form approved by the Director-General, and
- (b) contain or be accompanied by such documents and information as is required by regulations or by the Director-General (as indicated in the form or in material accompanying the form).

90B Application for transfer of permit

- (1) An application may be made to the Director-General for the transfer of an Aboriginal heritage impact permit to another person.

Note—

Section 90E requires the application to be made only with the consent in writing of the holder of the permit.

- (2) An application for the transfer of a permit must:
 - (a) be made in or to the effect of a form approved by the Director-General, and
 - (b) contain or be accompanied by such documents and information as is required by the Director-General (as indicated in the form or in material accompanying the form).

90C Grant or refusal of application

- (1) The Director-General may grant or refuse an application for the issue or transfer of an Aboriginal heritage impact permit.
- (2) An application is granted by the issue or transfer of the permit concerned.
- (3) If the Director-General proposes to refuse such an application, the Director-General must before doing so:
 - (a) give notice to the applicant that the Director-General intends to do so, and
 - (b) specify in that notice the reasons for the Director-General's intention to do so, and
 - (c) give the applicant a reasonable opportunity to make submissions in relation to the matter, and
 - (d) take into consideration any such submissions by the applicant.
- (4) A permit is issued or transferred by notice in writing given to the applicant.

Note—

Section 90L enables appeals to be made in connection with permit applications within a specified period after the person is given notice of the decision concerned.

90D Variation of permits

- (1) The Director-General may vary an Aboriginal heritage impact permit (including the

conditions of such a permit).

- (2) A variation includes the imposing of a condition on a permit (whether or not any conditions have already been imposed), the substitution of a condition, the omission of a condition or the amendment of a condition.
- (3) A permit may be varied only on the application of the holder of the permit. However, the Director-General may vary a permit:
 - (a) to correct a typographical error, or
 - (b) to resolve an inconsistency between conditions to which the permit is subject.
- (4) A permit may be varied at any time during its currency, including (subject to section 90R) on its being transferred to another person.
- (5) A permit is varied by notice in writing given to the holder of the permit.

90E Restrictions on making applications to transfer permits

An application for the transfer of an Aboriginal heritage impact permit may be made only with the consent in writing of the holder of the permit.

90F Requirement for further information

- (1) If an application has been made under this Division, the Director-General may, by notice in writing given to the applicant, require the applicant to supply to the Director-General such further information as the Director-General considers necessary and relevant to the application and specifies in the notice.
- (2) In this section:

information includes plans and specifications.

90G Suspension or revocation of permit

- (1) The Director-General may suspend or revoke an Aboriginal heritage impact permit.
- (2) A suspension or revocation of a permit is effected by notice in writing given to the holder of the permit.
- (3) A suspension may be for a specified period, or until the fulfilment of specified conditions, or until further order of the Director-General.
- (4) Without limiting subsection (1), a permit may be revoked while it is suspended.
- (5) The Director-General must not suspend or revoke a permit unless before doing so the Director-General has:
 - (a) given notice to the holder of the permit that it intends to do so, and

- (b) specified in that notice the reasons for its intention to do so, and
 - (c) given the holder of the permit a reasonable opportunity to make submissions in relation to the proposed revocation or suspension, and
 - (d) taken into consideration any such submissions by the holder of the permit.
- (6) The reasons for suspending or revoking a permit may include (but are not limited to) the following:
- (a) the holder of the permit has obtained the permit improperly,
 - (b) a condition of the permit has been contravened,
 - (c) the activities covered by the permit are completed or no longer being carried on.
- (7) No fees are refundable on the suspension or revocation of a permit.

90H Surrender of permit

An Aboriginal heritage impact permit may, on the written application of the holder of the permit, be surrendered with the written approval of the Director-General.

90I Conditions of suspension, revocation or surrender

- (1) The Director-General may, by notice in writing, impose conditions on the suspension or revocation of, or the approval of the surrender of, an Aboriginal heritage impact permit.
- (2) Those conditions may include (but are not limited to) any conditions to which the permit was subject immediately before it was suspended, revoked or surrendered.
- (3) The Director-General may, by notice in writing, impose new conditions on, or vary or revoke any existing conditions of, the suspension, revocation or surrender of the permit.

Note—

Section 90J makes it an offence to breach conditions under this section.

90J Failure to comply with conditions

- (1) **Offences** If any condition of an Aboriginal heritage impact permit is contravened by any person, the holder of the permit (or, if more than one person holds the permit, each holder of the permit) is guilty of an offence.
- (2) If any condition to which a suspension or revocation of, or the approval of the surrender of, an Aboriginal heritage impact permit is subject is contravened by any person, the holder of the permit or former permit (or, if more than one person holds or held the permit or former permit, each holder of the permit or former permit) is guilty

of an offence.

Maximum penalty (subsections (1) and (2)):

- (a) in the case of an individual—1,000 penalty units or imprisonment for 6 months, or both and, in the case of a continuing offence, a further penalty of 100 penalty units for each day the offence continues, or
- (b) in the case of a corporation—2,000 penalty units and, in the case of a continuing offence, a further penalty of 200 penalty units for each day the offence continues.

(3) **Defence** The holder of an Aboriginal heritage impact permit or former Aboriginal heritage impact permit is not guilty of an offence against this section if the holder establishes that:

- (a) the contravention of the condition was caused by another person, and
- (b) that other person was not associated with the holder at the time the condition was contravened, and
- (c) the holder took all reasonable steps to prevent the contravention of the condition.

A person is associated with the holder for the purposes of paragraph (b) (but without limiting any other circumstances of association) if the person is an employee, agent, licensee, contractor or sub-contractor of the holder.

90K Factors to be considered in making determinations regarding permits

- (1) In making a decision in relation to an Aboriginal heritage impact permit, the Director-General must consider the following matters:
 - (a) the objects of this Act,
 - (b) actual or likely harm to the Aboriginal objects or Aboriginal place that are the subject of the permit,
 - (c) practical measures that may be taken to protect and conserve the Aboriginal objects or Aboriginal place that are the subject of the permit,
 - (d) practical measures that may be taken to avoid or mitigate any actual or likely harm to the Aboriginal objects or Aboriginal place that are the subject of the permit,
 - (e) the significance of the Aboriginal objects or Aboriginal place that are the subject of the permit,
 - (f) the results of any consultation by the applicant with Aboriginal people regarding the Aboriginal objects or Aboriginal place that are the subject of the permit (including any submissions made by Aboriginal people as part of a consultation

required by the regulations),

- (g) whether any such consultation substantially complied with any requirements for consultation set out in the regulations,
- (h) the social and economic consequences of making the decision,
- (i) in connection with a permit application:
 - (i) any documents accompanying the application, and
 - (ii) any public submission that has been made under the *Environmental Planning and Assessment Act 1979* in connection with the activity to which the permit application relates and that has been received by the Director-General,
- (j) any other matter prescribed by the regulations.

- (2) The Director-General, in making a decision in relation to an Aboriginal heritage impact permit, must not consider any matter other than the matters referred to in subsection (1).

90L Appeals

- (1) An applicant for, or holder or former holder of, an Aboriginal heritage impact permit may appeal to the Land and Environment Court against any of the following decisions of the Director-General:
 - (a) a decision to refuse any application in relation to an Aboriginal heritage impact permit or former permit,
 - (b) a decision in relation to any condition to which a permit or former permit (or a surrender of a permit) is subject,
 - (c) a decision to suspend or revoke a permit.
- (2) The Land and Environment Court:
 - (a) may refuse to grant the appeal, or
 - (b) may grant the appeal wholly or in part, and may give such directions in the matter as the Land and Environment Court thinks appropriate.
- (3) The decision of the Land and Environment Court on the appeal is final and is binding on the Director-General and the appellant, and is to be carried into effect accordingly.
- (4) The regulations may (but need not) prescribe the manner in which an appeal is to be made under this section.
- (5) An appeal under this section must be made within 21 days after the day the person was given notice of the decision being appealed.

- (6) For the purposes of this section, an application is taken to be refused (unless it is earlier granted or refused), and notice of that refusal is taken to have been given to the applicant, on the expiration of the period of 60 days after the date on which the application was received by the Director-General.
- (7) For the purposes of subsection (6), any period under section 90F during which an applicant is required to supply to the Director-General such further information is to be disregarded in determining whether the 60 day period referred to in that subsection has expired.

90M Date from which decision operates

A decision of the Director-General in relation to an Aboriginal heritage impact permit operates from:

- (a) the date of the decision, or
- (b) if another later date is specified by the Director-General in the decision—that other date.

90N Regulations relating to consultation

The regulations may make provision for or with respect to the following:

- (a) consultation that must be undertaken in relation to an application or proposed application that relates to an Aboriginal heritage impact permit (including the nature, extent and timing of the consultation),
- (b) the persons, or classes of persons, who must be so consulted (including but not limited to Aboriginal people with a cultural association with the object or land concerned),
- (c) the opportunity of persons, or classes of persons, so consulted to make submissions as part of the consultation.

90O Interaction between permits and stop work and interim protection orders

For the avoidance of doubt, the existence of an Aboriginal heritage impact permit does not prevent the making of an order under Division 1 of Part 6A or an interim protection order under Division 2 of Part 6A.

90P Validity of permits

The validity of the Aboriginal heritage impact permit cannot be questioned in any legal proceedings except in proceedings commenced in the Land and Environment Court before the expiration of 3 months from the date on which the issue of the permit was published on the public register.

90Q Aboriginal Heritage Information Management System

- (1) The Director-General is to establish and keep a database to be known as the Aboriginal Heritage Information Management System (***the AHIMS***).
- (2) The AHIMS is to contain:
 - (a) information and records regarding Aboriginal objects whose existence and location have been reported to the Director-General, and
 - (b) copies of any reports that have been provided to the Director-General regarding Aboriginal objects and other objects, places and features of significance to Aboriginal people, and
 - (c) any other information required by the regulations.
- (3) The purposes of the AHIMS are:
 - (a) to maintain a record of Aboriginal objects whose existence and location have been reported to the Director-General, and
 - (b) to maintain a copy of any report that has been provided to the Director-General relating to the assessment of objects, places and features that are or are likely to be of significance to Aboriginal people, and
 - (c) to maintain a record of the details of any other report (of which the Director-General is aware) relating to the assessment of objects, places and features that are or are likely to be of significance to Aboriginal people, and
 - (d) to allow access to the AHIMS:
 - (i) by Aboriginal people and organisations and by academic researchers, and
 - (ii) by or on behalf of persons exercising due diligence to determine whether an act or omission would harm an Aboriginal object for the purposes of section 87 (2), and
 - (iii) by public and local authorities in the exercise of their land management, planning and other similar functions,

but the AHIMS is not intended to be conclusive about whether any information or records contained within it is up-to-date, comprehensive or otherwise accurate.
- (4) The AHIMS is to be kept and maintained in such form as the Director-General thinks fit. Different parts of the AHIMS may be kept in different forms.
- (5) The regulations may prescribe any or all of the following:
 - (a) the persons and classes of persons who may be granted access to information and

records contained in the AHIMS,

- (b) the method of accessing the AHIMS,
- (c) the form in which access to the AHIMS is to be given (for example, whether by access to full records or summaries or through supplied maps or other forms of information),
- (d) the type of information or records that are available to be accessed from the AHIMS and any conditions or restrictions on the access to, and use of, that information or those records,
- (e) fees for access to the AHIMS and for copies or extracts of information and records kept on the AHIMS.

90R Certain Aboriginal heritage impact permit conditions to run with the land

If an Aboriginal heritage impact permit relates to a specified parcel of land and an application is made under section 90B to transfer the permit to another person, the Director-General:

- (a) must not refuse the application, and
- (b) in granting the application, must not vary any of the conditions of the permit.

91 (Renumbered as section 89A)

Part 6A Stop work orders, interim protection orders and remediation directions

Division 1 Stop work orders

91AA Director-General may make stop work order

- (1) If the Director-General is of the opinion that any action is being, or is about to be, carried out that is likely to significantly affect:
 - (a) protected fauna or native plants or their environment, or
 - (b) an Aboriginal object or Aboriginal place, or
 - (c) any other item of cultural heritage situated on land reserved under this Act,the Director-General may order that the action is to cease and that no action, other than such action as may be specified in the order, is to be carried out with respect to that environment or in the vicinity of those items within a period of 40 days after the date of the order.
- (2) An order takes effect on and from the date on which:

- (a) a copy of the order is affixed in a conspicuous place in the environment or place the subject of the order, or
 - (b) the person performing or about to perform the action is notified that the order has been made,
- whichever is the sooner.
- (3) This section does not apply in relation to anything authorised to be done by or under:
- (a) a licence granted under this Act or the *Threatened Species Conservation Act 1995*, or
 - (b) the *State Emergency and Rescue Management Act 1989* that is reasonably necessary in order to avoid a threat to life or property.
- (3A) This section does not apply in relation to any thing authorised to be done by or under the *Rural Fires Act 1997* in relation to any emergency fire fighting act within the meaning of that Act.
- (4) This section does not apply in relation to anything that is essential for the carrying out of:
- (a) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
 - (b) an activity by a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or
 - (c) an activity in accordance with an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or
 - (d) a project approved under Part 3A of the *Environmental Planning and Assessment Act 1979*, or
 - (e) State significant infrastructure approved under Part 5.1 of the *Environmental Planning and Assessment Act 1979*.
- (5) In this Division, a reference to action being, or about to be, carried out includes a reference to action that should be, but is not being, carried out and an order under this Division may be modified accordingly.
- (6) A person must not:
- (a) contravene an order under this section, or
 - (b) cause or permit another person to contravene such an order.

Maximum penalty (subsection (6)):

- (a) in the case of a corporation—10,000 penalty units and, in the case of a continuing offence, a further penalty of 1,000 penalty units for each day the offence continues, or
- (b) in the case of an individual—1,000 penalty units and, in the case of a continuing offence, a further penalty of 100 penalty units for each day the offence continues.

91BB Prior notification of making of stop work order not required

The Director-General is not required, before making an order under this Division, to notify any person who may be affected by the order.

91CC Appeal to Minister

- (1) A person against whom an order is made under this Division may appeal to the Minister against the making of the order.
- (2) After hearing an appeal, the Minister may:
 - (a) confirm the order, or
 - (b) modify or rescind the order, but only if this is consistent with the principles of ecologically sustainable development (as described in section 6 (2) of the *Protection of the Environment Administration Act 1991*).

91DD Extension of stop work order

The Director-General may extend an order under this Division for such further period or periods of 40 days as the Director-General thinks fit.

91EE Consultation about modification of proposed detrimental action

- (1) After making an order under this Division, the Director-General must immediately consult with the person proposing to perform the action to determine whether any modification of the action may be sufficient to protect the environment of any protected fauna or native plants.
- (2) If, in the opinion of the Director-General, satisfactory arrangements cannot be made to protect the environment that is the subject of an order under this Division, the Director-General must recommend the making of an interim protection order under Division 2.
- (3) The Director-General must not recommend the making of an interim protection order in relation to anything that is authorised to be done by or under an authority referred to in section 91AA (3) or that is essential for a purpose referred to in section 91AA (4).

91FF Order prevails over other instruments

- (1) If an order under this Division is in force in relation to an environment, an approval, notice or order (whether made or issued before or after the order pursuant to this Division) under any other Act that requires or permits the environment to be significantly affected is inoperative to the extent of the inconsistency with the order.
- (2) This section has effect whether the approval, notice, order or other instrument concerned was made before or after the making of the order under this Division.

Division 2 Interim protection orders

91A Interim protection of areas having significant values

The Director-General may recommend to the Minister the making of an interim protection order in respect of an area of land:

- (a) which has, in the Director-General's opinion, natural, scientific or cultural significance, or
- (b) on which the Director-General intends to exercise any of the Director-General's powers, authorities, duties or functions under this Act or the *Threatened Species Conservation Act 1995* relating to fauna, native plants, threatened species, populations or ecological communities or critical habitat of endangered species, populations or ecological communities, or
- (c) that is critical habitat or the habitat of a threatened species, population or ecological community.

91B Interim protection orders

- (1) The Minister may, after considering a recommendation made under section 91A, make an interim protection order in respect of the area of land the subject of the recommendation.
- (2) An interim protection order shall take effect on the date of its publication in the Gazette or on a later date specified in the order.
- (3) An interim protection order may contain terms of a kind set out in the regulations, being terms relating to the preservation, protection and maintenance of the area of land, its fauna, plants, threatened species, populations and ecological communities and critical habitat of endangered species, populations and ecological communities and any Aboriginal object or place subject to the order.

91C Notice of intention to make order not required

The Minister is not required, before making an interim protection order, to notify any person who will be affected by the order of the intention to make the order.

91D Duration of interim protection order

- (1) An interim protection order has effect for such period, being not longer than 2 years, as is specified in the order.
- (2) An order ceases to have effect if the area of land subject to the order is reserved or dedicated under this Act or the order is revoked.
- (3) (Repealed)

91E Revocation of interim protection order

- (1) The Minister may revoke an interim protection order by notice of revocation.
- (2) A notice of revocation shall take effect on the date of its publication in the Gazette or on a later date specified in the notice.

91F Notice of making of interim protection order

The Minister shall cause notice of an interim protection order and its terms or of the revocation of such an order to be given, as soon as practicable after its publication in the Gazette, to:

- (a) any person who appears to the Minister to be an owner or occupier of the area of land subject to the order,
- (b) the Council,
- (c) the council in whose area (within the meaning of the [Local Government Act 1993](#)) the area of land subject to the order is situated, and
- (d) any other person the Minister thinks fit,

and shall consider any advice given by the Council relating to the order.

91G Failure to comply with interim protection order

A person who is given notice of an interim protection order under section 91F must not:

- (a) contravene the terms of the order, or
- (b) cause or permit another person to contravene the terms of the order.

Maximum penalty:

- (a) in the case of a corporation—10,000 penalty units and, in the case of a continuing offence, a further penalty of 1,000 penalty units for each day the offence continues, or
- (b) in the case of an individual—1,000 penalty units and, in the case of a continuing offence, a further penalty of 100 penalty units for each day the offence continues.

91H Appeal against order

- (1) An owner or occupier of the whole or any part of an area of land subject to an interim protection order may appeal to the Land and Environment Court against the imposition of the order or any of its terms.
- (2) Such an appeal shall be made within the time and in the manner provided by the rules of the Court.
- (3) In deciding an appeal, the Court may have regard to:
 - (a) any hardship caused to the owner or occupier by the imposition of the order or any of its terms, and
 - (b) the purposes of the order.
- (4) In deciding such an appeal, the Court has all the functions and discretions of the Minister under this Part and may make such order as it thinks fit.
- (5) A decision of the Court on an appeal is final and shall be given effect to as if it were the decision of the Minister.

91I Register of orders

- (1) The Director-General shall keep a register containing copies of interim protection orders 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-General.

Division 3 Remediation directions

91J Definitions

In this Division:

damage:

- (a) in relation to land reserved under this Act or acquired under Part 11, includes:
 - (i) harming an animal, or picking a plant, that is in or on that land, or
 - (ii) damming, diverting or polluting any waters on that land, or
 - (iii) damage to anything in or on the land (such as a building, structure, pipe, sign, gate, fence etc or any object or place of cultural value), or
 - (iv) removal of anything, or part of anything, in or on the land, and

(b) in relation to a plant, includes picking the plant, and

(c) in relation to an animal, includes harming the animal.

landholder means a person who owns land or who, whether by reason of ownership or otherwise, is in lawful occupation or possession, or has lawful management or control, of land.

pollute waters has the same meaning as in the [Protection of the Environment Operations Act 1997](#).

waters includes a stream, creek, river, estuary, dam, lake or reservoir.

91K Directions for remedial work relating to damage to land, habitat and plants and animals

- (1) The Director-General may, by notice in writing, direct a person to carry out specified remediation work in a specified manner and within a specified time, if the Director-General is satisfied that:
 - (a) any land reserved under this Act or acquired under Part 11, or
 - (b) any critical habitat, or habitat of threatened species, an endangered population or an endangered ecological community, or
 - (c) any plant or animal that is of, or is part of, a threatened species, an endangered population or an endangered ecological community,has been damaged in or as a result of the commission of an offence under this Act (whether or not any person has been proceeded against or convicted for the offence).
- (2) The specified remediation work to be carried out by a person may include one or more of the following types of work:
 - (a) work to control, abate or mitigate the damage to the land, habitat, plant or animal concerned,
 - (b) work to maintain, remediate or restore the damaged land, habitat, plant or animal concerned (including replacing removed or dead plants or animals).
- (3) A direction under this section may be varied or revoked by a further notice in writing.

91L Directions for remedial work relating to harm to Aboriginal objects and places

- (1) The Director-General may, by notice in writing, direct a person to carry out specified remediation work in a specified manner and within a specified time, if the Director-General is satisfied that:
 - (a) any Aboriginal object, or

(b) any Aboriginal place,

has been harmed in or as a result of the commission of an offence under this Act (whether or not any person has been proceeded against or convicted for the offence).

(2) The specified remediation work to be carried out by a person may include one or more of the following types of work:

(a) work to control, abate or mitigate the harm to the Aboriginal object or Aboriginal place concerned,

(b) work to protect, conserve, maintain, remediate or restore the harmed Aboriginal object or Aboriginal place concerned.

(3) A direction under this section may be varied or revoked by a further notice in writing.

91M Persons to whom directions may be given

A direction under this Division may be given to any or all of the following persons:

(a) the current or former landholder of any land affected by the damage or harm referred to in section 91K or 91L or on which such damage or harm occurred,

(b) any other person the Director-General reasonably believes is responsible for that damage or harm or caused or permitted that damage or harm.

91N Other ancillary actions that may be directed to be carried out

The Director-General in a direction under this Division may also direct a person to carry out the following actions:

(a) ascertaining the nature and extent of the damage or harm concerned and furnishing the information or records obtained to other persons (including to the Director-General),

(b) preparing, furnishing and carrying out a plan of action,

(c) furnishing progress reports,

(d) monitoring, sampling and analysing anything to ascertain the nature and extent of the harm concerned or the progress in remediating the harm,

(e) vacating the land concerned (or part of it), ceasing to carry on, modifying, or not commencing, an activity on, or use of, the land (or part of it),

(f) carrying on an activity (or an aspect of it) only during particular times or in a particular manner,

(g) in relation to harm to an Aboriginal object or place, preparing a report on an activity's likely impact on the Aboriginal object or Aboriginal place concerned,

- (h) construction, installation or removal of anything (including plants and structures such as fencing, walls, bunds or other barriers),
- (i) erecting or displaying on the land concerned any sign or notice containing directions to persons not to enter the land or not to use the land in a specified manner or for a specified purpose or containing other directions of that kind or any other kind,
- (j) refraining from disturbance or further disturbance of the land concerned in a specified manner or below a specified depth,
- (k) informing the Director-General of any change in the ownership or occupancy of the land concerned, to the extent that the person subject to the requirement is aware of the change,
- (l) in relation to harm to an Aboriginal object or place, consulting with Aboriginal community groups or representatives (for example to develop a strategy or plan in relation to the remediation work),
- (m) in relation to harm to an Aboriginal object, moving the object.

91O Other person may carry out remediation work if failure to comply with direction

- (1) If a person fails to comply with a direction under section 91K or 91L, the Director-General may direct any other person to enter the land concerned and carry out all or part of the specified work.
- (2) The Director-General may recover the cost of that work from the person given the direction in any court of competent jurisdiction as a debt due by that person to the Crown.

91P Entry to land to carry out direction

- (1) A person may enter land to carry out a direction under this Division.
- (2) Nothing in this Division authorises a person to enter any part of premises used only for residential purposes except with the consent of the occupier of the premises.

91Q Failure to comply with remediation direction

- (1) A person must not, without reasonable excuse:
 - (a) contravene a direction under this Division, or
 - (b) cause or permit another person to contravene such a direction.

Maximum penalty:

- (a) in the case of a corporation—2,000 penalty units and 200 penalty units for each day the offence continues, or

(b) in any other case—1,000 penalty units and 100 penalty units for each day the offence continues.

(2) For the purposes of subsection (1), an example of a reasonable excuse is that the person was unable to enter land because of the refusal of access to the land by its occupier, but entry to that land was essential for the person to avoid committing the relevant offence.

91R Delay or obstruction of remediation direction

A person must not wilfully delay or obstruct another person:

- (a) who is carrying out any action in compliance with a direction under this Division, or
- (b) who is authorised to enter land and carry out work under this Division.

Maximum penalty:

- (a) in the case of a corporation—2,000 penalty units and 200 penalty units for each day the offence continues, or
- (b) in any other case—1,000 penalty units and 100 penalty units for each day the offence continues.

91S Recovery by person given notice

If the person given a direction under this Division complies with the direction but was not the person who caused the damage or harm concerned, the cost of complying with the direction may be recovered by the person who complied with the direction as a debt in a court of competent jurisdiction from the person who caused the damage or harm.

91T Appeals under this Division

- (1) A person given a direction under this Division may appeal against the direction to the Land and Environment Court within 30 days of the service of the notice of the direction.
- (2) The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay action on the direction appealed against.

Part 7 Fauna

92 Director-General's responsibilities as to fauna

The Director-General shall be the authority for the protection and care of fauna.

92A-92E (Repealed)

93 Amendment of Schedule 11 (unprotected fauna)

The Governor may, by order published on the NSW legislation website, amend Schedule 11 at any time by adding or omitting the name of any species of fauna.

94 Amendment of Schedule 12 (threatened interstate fauna)

The Governor may, by order published on the NSW legislation website, amend Schedule 12 at any time by adding or omitting the name of any species of protected fauna.

94A, 95 (Repealed)

96 Locally unprotected fauna

(1) The Governor may, by order published in the Gazette, declare any protected fauna within a locality specified or described in the order, being fauna of a species named in the order, to be fauna to which this section applies.

Editorial note—

For orders under this subsection, see Gazettes No 61 of 7.5.1976, p 2013; No 147 of 19.10.1984, p 5146 and No 159 of 21.10.1988, p 5499.

- (2) An order under subsection (1) does not apply, and shall be expressed so as not to apply, with respect to any lands within a national park, historic site or nature reserve.
- (3) Any protected fauna declared to be fauna to which this section applies are, for the purposes of sections 70 (5) and (6) and 98, locally unprotected fauna.
- (4) An order under subsection (1) does not apply to, and must not be expressed to apply to, any threatened species, population or ecological community.
- (5) Without affecting subsections (2) and (4), an order under subsection (1) may be subject to such conditions and restrictions as may be specified in the order.

97 Certain protected fauna to be property of the Crown

- (1) In this section, **prescribed fauna** means:
- (a) an animal that is protected fauna and that is, at the time of birth, in the lawful possession of any person other than the Crown,
 - (b) protected fauna, being fauna imported into New South Wales,
 - (b1) (Repealed)
 - (c) protected fauna that was, before the commencement day, lawfully taken or in the lawful possession of any person other than the Crown and that had not been liberated before that day, or
 - (d) any protected fauna of a class or description prescribed for the purposes of this

paragraph.

- (2) Any protected fauna, other than prescribed fauna, shall, until captured or killed in accordance with this Act, be deemed to be the property of the Crown.
- (3) Any prescribed fauna shall, when liberated in New South Wales, be deemed to be the property of the Crown.
- (4) Protected fauna which is deemed by this section to be the property of the Crown does not cease to be the property of the Crown merely because a person other than the Crown:
 - (a) takes possession of it because it is incapable of fending for itself in its natural habitat, or
 - (b) takes or obtains it under and in accordance with or by virtue of the authority conferred by a general licence under section 120 (being a general licence which declares that any animal so taken or obtained remains the property of the Crown).
- (5) The progeny of any protected fauna which was born at a time when the protected fauna was in the possession of a person in the circumstances referred to in subsection 4 (a) or (b) shall, at the time of birth, be deemed to be in the lawful possession of the Crown instead of that person.

98 Harming protected fauna, other than threatened species, endangered populations or endangered ecological communities

- (1) In this section, **protected fauna** does not include threatened interstate fauna, threatened species, endangered populations, endangered ecological communities, or locally unprotected fauna under section 96.
- (2) A person shall not:
 - (a) harm any protected fauna, or
 - (a1) harm for sporting or recreational purposes game birds that are locally unprotected fauna, or
 - (b) use any substance, animal, firearm, explosive, net, trap, hunting device or instrument or means whatever for the purpose of harming any protected fauna.

Maximum penalty:

- (a) 100 penalty units and, in a case where protected fauna is harmed, an additional 10 penalty units in respect of each animal that is harmed, or
 - (b) imprisonment for 6 months,
- or both.

- (3) A person shall not be convicted of an offence arising under subsection (2) if the person proves that the act constituting the offence was done:
- (a) under and in accordance with or by virtue of the authority conferred by a general licence under section 120, an occupier's licence under section 121, a commercial fauna harvester's licence under section 123, an emu licence under section 125A, a scientific licence under section 132C or a licence under Part 6 of the *Threatened Species Conservation Act 1995*, or
 - (b) in pursuance of a duty imposed on the person by or under any Act.
- (4) A person is not to be convicted of an offence arising under subsection (2) if the person proves that:
- (a) the act constituting the offence was authorised by, and done in accordance with, a conservation agreement, or
 - (b) the act constituting the offence was authorised by, and done in accordance with, a joint management agreement entered into under Part 7 of the *Threatened Species Conservation Act 1995*.
- (5) Subsection (2) does not apply in relation to things which are essential for the carrying out of:
- (a) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
 - (b) an activity by a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or
 - (c) an activity in accordance with an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or
 - (d) a project approved under Part 3A of the *Environmental Planning and Assessment Act 1979*, or
 - (e) State significant infrastructure approved under Part 5.1 of the *Environmental Planning and Assessment Act 1979*.
- (6) A person is not to be convicted of an offence arising under subsection (2) if the person proves that the act constituting the offence was done in the course of carrying out an activity that would constitute a defence under section 118G (Defences) to a prosecution for an offence under Part 8A.

99 Harming threatened interstate fauna

- (1) A person shall not:

- (a) harm any threatened interstate fauna, or
- (b) use any substance, animal, firearm, explosive, net, trap, hunting device or instrument or means whatever for the purpose of harming any such fauna, or
- (c) (Repealed)

Maximum penalty:

- (a) 1000 penalty units and, in a case where threatened interstate fauna is harmed, an additional 100 penalty units in respect of each animal that is harmed, or
 - (b) imprisonment for 1 year,
- or both.

(1A) (Repealed)

- (2) A person shall not be convicted of an offence arising under subsection (1) if the person proves that the act constituting the offence was done under and in accordance with or by virtue of the authority conferred by a general licence under section 120 or a scientific licence under section 132C.
- (3) Where the provisions of any other Act or instrument under any other Act authorise or require anything to be done that would constitute an offence arising under subsection (1):
 - (a) the provisions of this section prevail, except where the other Act is the *Rural Fires Act 1997*, and
 - (b) a person shall not be convicted of an offence against that other Act or instrument by reason of the person's failure to comply therewith in so far as compliance therewith would constitute an offence arising under subsection (1).
- (4)-(6) (Repealed)

99A Directions relating to protected fauna

- (1) An officer of the Service may give a direction to a person to stop feeding protected fauna.
- (2) An officer of the Service may give a direction to a person to stop any activity that is causing, or is likely to cause, distress to protected fauna.
- (3) A person must not fail to comply with a direction given to the person under this section.

Maximum penalty: 25 penalty units and, in the case of a continuing offence, a further penalty of 2.5 penalty units for each day the offence continues.

- (4) A direction given by an officer of the Service under this section has effect for such period (not exceeding 28 days) as is specified by the officer at the time the direction is given.
- (5) However, nothing in subsection (4) prevents a further direction being given under this section.
- (5A) A person who has been given a direction by an officer of the Service under this section may, within 14 days of receiving the direction, appeal to the Minister against the direction.
- (5B) In deciding the appeal, the Minister may:
- (a) confirm the direction appealed against, or
 - (b) modify or rescind the direction.
- (5C) The Minister may, by order, direct a person to stop feeding protected fauna or stop any activity that is causing, or is likely to cause, distress to protected fauna (or both).
- (5D) The Minister must not give a direction under subsection (5C) unless:
- (a) a direction in similar terms has been given to the person by an officer of the Service under this section, and
 - (b) a period of 14 days has elapsed since that direction was given and no appeal has been made against the direction or, if an appeal has been made, the direction was not substantially modified or rescinded.
- (5E) A direction given by the Minister under this section has effect for such period (not exceeding 2 years) as is specified in the direction. The Minister may extend a direction by a further period (not exceeding 2 years).
- (6) A direction may not be issued under this section:
- (a) in relation to anything done in accordance with a licence or certificate issued under this Act or under the *Threatened Species Conservation Act 1995*, or
 - (b) in relation to anything essential for the carrying out of development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
 - (c) in relation to anything essential for the carrying out of an activity, whether by a determining authority or pursuant to an approval of a determining authority, within the meaning of Part 5 of the *Environmental Planning and Assessment Act 1979*, or
 - (c1) in relation to anything essential for carrying out a project approved under Part 3A of the *Environmental Planning and Assessment Act 1979*, or

- (c2) in relation to anything essential for the carrying out of State significant infrastructure approved under Part 5.1 of the *Environmental Planning and Assessment Act 1979*, or
- (d) in relation to anything done for the purposes of the *Rural Fires Act 1997*, or
- (e) in such circumstances as are prescribed by the regulations.

100 Further provisions respecting harming protected fauna (including threatened interstate fauna)

- (1) A person shall not be convicted of an offence arising under section 98 (2), 99 (1), 112G or 118A if the person proves:
 - (a) that the animal concerned was in some person's lawful possession and that the act constituting the offence was, having regard to the circumstances of the case, reasonably necessary for promoting the welfare of the animal, or
 - (b) that the animal concerned had strayed or escaped from some person's lawful possession and that the act constituting the offence was, having regard to the circumstances of the case, reasonably necessary for securing the return of the animal.
- (2) The regulations may make provision for or with respect to exempting, subject to conditions and restrictions (if any) prescribed by the regulations, any person or class or description of persons from the provisions of section 98 (2).

101 Buying, selling or possessing protected fauna

- (1) A person shall not buy, sell or have in the person's possession or control any protected fauna.
Penalty:
 - (a) in respect of any protected fauna other than threatened interstate fauna—100 penalty units or imprisonment for 6 months or both,
 - (b) in respect of any threatened interstate fauna—1,000 penalty units or imprisonment for 1 year or both.
- (2) (Repealed)
- (3) The Governor may, by order published in the Gazette, exempt from subsection (1) protected fauna of a species named in the order, subject to such conditions and restrictions relating to the buying, selling or having in possession of any such protected fauna as may be prescribed in the order.

Editorial note—

For orders under this subsection, see Gazettes No 54 of 11.4.1975, p 1393 (revoked GG No 148 of

16.10.1998, p 8395); No 147 of 19.10.1984, p 5146; No 138 of 4.10.1985, p 5240; No 95 of 20.8.1999, p 6321 (see also No 126 of 15.8.2003, p 7995) and No 126 of 15.8.2003, p 7996.

- (4) A person shall not be convicted of an offence arising under subsection (1) in respect of the buying or selling of any protected fauna if the person satisfies the court that the person believed, on reasonable grounds, that the act constituting the offence was done, or that the state of affairs constituting the offence existed, under and in accordance with or by virtue of the authority conferred by a licence under Division 2 of Part 9.
- (5) A person shall not be convicted of an offence arising under subsection (1) in respect of the possession of any protected fauna, if the person satisfies the court:
- (a) that the person believed, on reasonable grounds, that the state of affairs constituting the offence existed under and in accordance with or by virtue of the authority conferred by a licence under Division 2 of Part 9 or that the person otherwise obtained the fauna lawfully,
 - (b) that the fauna is the progeny of any fauna which the person believed, on reasonable grounds, had been lawfully obtained by the person, being progeny born after the lastmentioned fauna was so obtained, or
 - (c) that:
 - (i) the animal concerned was incapable of fending for itself in its natural habitat,
 - (ii) the person notified the Director-General, in the prescribed manner and within the prescribed time, that the animal came into the person's possession, and
 - (iii) the person complied with any direction given to the person with respect to the animal by the Director-General.
- (6) A reference in this section to a person's having protected fauna in the person's possession includes a reference to the person's having protected fauna in a vehicle, building, lodging, apartment, field or other place whether belonging to or occupied by the person, and whether the fauna is then had or placed for the person's own use or the use of another.
- (7) In this section, **protected fauna** does not include any threatened species or endangered population.

Note—

See section 118B in relation to buying, selling or possessing an animal or plant that is of, or is part of, a threatened species or endangered population.

102 Directions respecting protected fauna in confinement

- (1) The Director-General, or an officer of the Service duly authorised by the Director-General in that behalf, may, by notice given to a person who keeps protected fauna in

confinement or in a domesticated state, give such directions respecting food, drink and shelter for, and the welfare of, the fauna as appear to the Director-General or officer to be proper.

- (2) A person shall not fail to comply with any direction given to the person under subsection (1).

Maximum penalty:

- (a) in the case of an individual—100 penalty units and, in the case of a continuing offence, a further penalty of 10 penalty units for each day the offence continues, or
- (b) in the case of a corporation—200 penalty units and, in the case of a continuing offence, a further penalty of 20 penalty units for each day the offence continues.
- (3) A person shall not be convicted of an offence arising under subsection (2) in respect of a failure to comply with a direction if the person satisfies the court that the person so failed with reasonable excuse.

103 Harming fauna for sale

- (1) A person shall not harm fauna for the purpose of sale.
- (2) A person shall not be convicted of an offence arising under subsection (1) if the person proves that the act constituting the offence was done under and in accordance with the authority conferred by a general licence under section 120, an occupier's licence under section 121, a commercial fauna harvester's licence under section 123 or an emu licence under section 125A.
- (3) A person shall not be convicted of an offence arising under subsection (1) in respect of the harming for the purposes of sale of any dingo, ferret, fox, hare or rabbit or any fauna of a species named in an order under subsection (4).
- (4) The Governor may, by order published in the Gazette, declare that subsection (1) does not apply to or in respect of any fauna of a species named in the order, not being threatened interstate fauna or threatened species, populations or ecological communities.

104 Fauna dealers

- (1) A person must not:
- (a) exercise or carry on, or
- (b) advertise, notify or state that he or she exercises or carries on or is willing to exercise or carry on, or
- (c) in any way hold himself or herself out to the public as ready to exercise or carry

on,

the business of a fauna dealer, unless the person does so under and in accordance with the authority conferred by a licence under Division 2 of Part 9.

Maximum penalty:

(a) in the case of an individual—100 penalty units and, in the case of a continuing offence, a further penalty of 10 penalty units for each day the offence continues, or

(b) in the case of a corporation—200 penalty units and, in the case of a continuing offence, a further penalty of 20 penalty units for each day the offence continues.

(1A) A person is not to be convicted of an offence arising under subsection (1) in respect of the sale by retail of meat from a game animal, but only if the meat was lawfully acquired from the holder of a licence under Division 2 of Part 9.

(2) A person shall not be convicted of an offence arising under subsection (1) in respect of any dingo, ferret, fox, hare or rabbit or any fauna of a species named in an order under subsection (3).

(3) The Governor may, by order published in the Gazette, declare that subsection (1) does not apply to or in respect of any fauna of a species named in the order.

Editorial note—

For orders under this subsection, see Gazettes No 147 of 19.10.1984, p 5146; No 138 of 4.10.1985, p 5240; No 95 of 20.8.1999, p 6319 (see also No 126 of 15.8.2003, p 7994) and No 126 of 15.8.2003, p 7995.

105 Skin dealers

A person must not:

(a) exercise or carry on, or

(b) advertise, notify or state that he or she exercises or carries on or is willing to exercise or carry on, or

(c) in any way hold himself or herself out to the public as ready to exercise or carry on,

the business of a skin dealer, unless the person does so under and in accordance with the authority conferred by a licence under Division 2 of Part 9.

Maximum penalty:

(a) in the case of an individual—100 penalty units and, in the case of a continuing offence, a further penalty of 10 penalty units for each day the offence continues, or

(b) in the case of a corporation—200 penalty units and, in the case of a continuing offence, a further penalty of 20 penalty units for each day the offence continues.

105A Emu breeders

(1) A person must not:

- (a) exercise or carry on, or
- (b) advertise, notify or state that he or she exercises or carries on or is willing to exercise or carry on, or
- (c) in any way hold himself or herself out to the public as ready to exercise or carry on,

the business of an emu breeder, unless the person does so under and in accordance with the authority conferred by a licence under Division 2 of Part 9.

Maximum penalty:

- (a) in the case of an individual—100 penalty units and, in the case of a continuing offence, a further penalty of 10 penalty units for each day the offence continues, or
 - (b) in the case of a corporation—200 penalty units and, in the case of a continuing offence, a further penalty of 20 penalty units for each day the offence continues.
- (2) A person is not to be convicted of an offence arising under subsection (1) in respect of the sale by retail of an emu product, but only if the product was lawfully acquired from:
- (a) the holder of a licence under Division 2 of Part 9, or
 - (b) a person who is authorised to sell emu products under the fauna protection legislation of another State or Territory.

106 Importing or exporting protected fauna

- (1) A person shall not import into or export from New South Wales any protected fauna.
- (2) Subsection (1) does not apply to any protected fauna of a species prescribed for the purposes of this subsection or to any emu product.
- (3) A person shall not be convicted of an offence arising under subsection (1) if the person proves that the act constituting the offence was done under and in accordance with or by virtue of the authority conferred by an import licence or an export licence under section 126.

107 Exhibiting protected fauna

A person shall not exhibit any protected fauna, unless the person does so under and in accordance with the authority conferred by a general licence under section 120.

Maximum penalty:

- (a) in the case of an individual—100 penalty units and, in the case of a continuing offence, a further penalty of 10 penalty units for each day the offence continues, or
- (b) in the case of a corporation—200 penalty units and, in the case of a continuing offence, a further penalty of 20 penalty units for each day the offence continues.

108 (Repealed)

109 Unlawful liberation of animals

- (1) A person shall not liberate, anywhere in New South Wales, any animal (other than a homing pigeon or a captured animal which is native to New South Wales) unless under and in accordance with a licence under section 127.
- (2) A person shall not liberate, elsewhere than in the locality of capture, any captured animal which is native to New South Wales unless under and in accordance with a licence under section 127.

110 Use of certain substances for harming fauna

- (1) A person shall not, without the consent in writing of the Director-General, use any prescribed substance for the harming, or attempted harming, of any protected fauna (other than birds).

Maximum penalty: 30 penalty units or imprisonment for 6 months or both.

- (2) A person shall not, without the consent in writing of the Director-General, use any prescribed substance for the harming, or attempted harming, of any bird (whether or not protected fauna and whether or not native to, or of a species that periodically or occasionally migrates to, Australia).

Maximum penalty: 30 penalty units or imprisonment for 6 months or both.

- (3) A person shall not be convicted of an offence arising under subsection (1) or (2) if the person proves that the act constituting the offence was done under and in accordance with the regulations.
- (4) The regulations may make provision for or with respect to exempting, subject to the prescribed conditions and restrictions (if any), any person or class or description of persons from the provisions of subsection (1) or (2) or both.
- (5) In this section, **substance** includes mixture or preparation.

111 Method of shooting fauna

A person shall not, for the purpose of harming any protected fauna, use any firearm of a kind other than the kind habitually raised at arm's length and fired from the shoulder

without other support.

Maximum penalty: 5 penalty units.

112 Harming snakes

A person shall not be convicted of an offence against this Act in respect of the harming of a snake unless it is proved that there were no grounds on which the person could reasonably have believed at any relevant time that the snake was endangering, or was likely to endanger, any person or property.

Part 7A Marine mammals—special provisions

112A Constitution of Marine Mammals Advisory Committee

- (1) There is constituted by this Act the Marine Mammals Advisory Committee.
- (2) The Committee shall consist of:
 - (a) the Chairperson of the Committee who shall be the Director-General or an officer of the Service nominated by the Director-General, and
 - (b) 5 other persons appointed by the Minister.
- (3) Of the members appointed by the Minister:
 - (a) one shall be a person nominated by the Minister administering the *Fisheries Management Act 1994*,
 - (b) one shall be a person nominated by the Australian Museum Trust,
 - (c) one shall be a person nominated by the Zoological Parks Board of New South Wales, and
 - (d) 2 shall be persons representing conservation organisations.
- (4) Schedule 8A has effect with respect to the members and procedure of the Committee.

112B Functions of the Marine Mammals Advisory Committee

The Marine Mammals Advisory Committee shall have the following functions:

- (a) to advise the Minister on the conservation and protection of marine mammals,
- (b) to advise the Minister in relation to plans for dealing with strandings of marine mammals,
- (c) to advise the Minister on plans of management referred to it under this Part,
- (d) to advise and make recommendations on such matters relating to the administration of this Act with respect to marine mammals as are referred to it by the Minister.

112C Preparation of plans of management for marine mammals

- (1) The Director-General may cause plans of management to be prepared for the management of populations of marine mammals.
- (2) A plan of management may deal with the following matters:
 - (a) population distribution and abundance of marine mammals,
 - (b) threats to the survival of species of marine mammals, populations of species of marine mammals or individual marine mammals,
 - (c) research and strategies related to the conservation and protection of marine mammals,
 - (d) educational activities which promote an appreciation of the value of marine mammal life or which relate to the conservation and protection of marine mammals,
 - (e) international agreements or agreements between the States and the Commonwealth relating to marine mammals.

112D Adoption etc of plan of management for marine mammals

- (1) Where a plan of management has been prepared for marine mammals under section 112C, the Director-General shall give notice as prescribed that the plan of management has been prepared and shall, in that notice:
 - (a) specify the address of the place at which copies of the plan of management may be inspected, and
 - (b) specify the address to which representations in connection with the plan of management may be forwarded.
- (2) Any person interested may, within one month or such longer period as may be specified in the notice, make representations to the Director-General in connection with the plan of management.
- (3) The Director-General shall, upon the expiration of the period referred to in subsection (2), refer the plan of management, and any representations forwarded to the Director-General, to the Marine Mammals Advisory Committee for its consideration and advice.
- (4) The Director-General shall thereupon submit the plan of management to the Minister together with any comments or suggestions of the Marine Mammals Advisory Committee.
- (5) The Minister shall, before adopting the plan of management, consider the comments and suggestions of the Marine Mammals Advisory Committee.

- (6) The Minister may adopt the plan of management without alteration or with such alterations as the Minister may think fit or may refer it back to the Director-General and the Marine Mammals Advisory Committee for further consideration.
- (7) The Minister may:
 - (a) amend or alter a plan of management from time to time, or
 - (b) cancel the plan and substitute a new plan.
- (8) Where the Minister proposes to amend or alter a plan of management or to cancel a plan of management and substitute a new plan of management, the Minister shall instruct the Director-General to cause the amendment or alteration or the new plan of management to be prepared, and the Director-General shall proceed to do so as soon as practicable after being so instructed.
- (9) Subsections (1) to (6), inclusive, apply to and in respect of an amendment or alteration referred to in subsection (8) in the same way as they apply to and in respect of a plan of management.

112E Carrying out of plan of management

Where the Minister has adopted a plan of management, it shall be carried out and given effect to by the Director-General.

112F Restriction on issue of licences to take marine mammals for exhibition etc

A licence is not to be issued under section 120 or section 132C to authorise a person to harm or obtain a marine mammal for exhibition or other purposes unless the authorised officer who issues the licence is satisfied that the marine mammal is required for genuine scientific or educational purposes or any other purpose connected with the conservation or protection of marine mammals.

112G Approaching marine mammal

- (1) A person must not approach a marine mammal any closer than such distance as may be prescribed by the regulations or interfere with a marine mammal.

Penalty: 1,000 penalty units or imprisonment for 2 years or both.

- (2) If:

- (a) a person is convicted by the Land and Environment Court of an offence arising under this section, and

- (b) the Court is satisfied that the person committed the offence in the course of commercial operations relating to the killing of marine mammals,

the maximum penalty that the Court may impose in respect of the offence is 2,000

penalty units.

- (3) A person must not be convicted of an offence under this section if the person proves that the act constituting the offence was done under and in accordance with or by virtue of the authority conferred by a general licence under section 120, a scientific licence under section 132C or a licence under Part 6 of the *Threatened Species Conservation Act 1995*.
- (4) If the provisions of any other Act or instrument made under any other Act authorise or require anything to be done that would constitute an offence under this section:
 - (a) the provisions of this section prevail, except if the other Act is the *Rural Fires Act 1997* or the *State Emergency and Rescue Management Act 1989*, and
 - (b) a person must not to be convicted of an offence against the other Act or instrument because of the person's failure to comply with the other Act or instrument if compliance with the other Act or instrument would constitute an offence under this section.
- (5) A reference in section 112F, 120, 129, 132C, 132D or 171 to harming any fauna includes, so far as is applicable in relation to a marine mammal, approaching or interfering with the marine mammal as referred to in subsection (1).
- (6) In this section, **interfere with** includes harass, chase, herd, tag, mark and brand.

Part 8 Native plants

113 Definitions

In this Part:

Christmas Bush means the native plant named *Ceratopetalum gummiferum*.

private land includes land leased from the Crown, or which is in the course of alienation by the Crown under any Act.

114 Director-General's responsibilities as to native plants

The Director-General shall be the authority for the protection of native plants.

115 Amendment of Schedule 13 (protected native plants)

- (1) The Governor may, by order published on the NSW legislation website, amend Schedule 13:
 - (a) by omitting therefrom the name of any species of native plant, or
 - (b) by inserting therein the name of any species of native plant, or
 - (c) by inserting a new part or group, or removing a part or group, or combining any

parts or groups.

- (2) The Governor may, by order published on the NSW legislation website, amend this Act by omitting Schedule 13 and by inserting instead a Schedule containing the names of species of native plants.

115A Management plans for protected native plants

- (1) The Director-General may cause a flora plan of management to be prepared for any commercial activity relating to a species or group of species of protected native plant if the Director-General is of the opinion that the activity has the potential to affect adversely the conservation of the species or group.
- (2) The Director-General may require consultation with the Scientific Committee established under Part 8 of the *Threatened Species Conservation Act 1995* in the preparation of a flora plan of management.
- (3) In the preparation of a flora plan of management for a species of protected native plant the following matters are to be considered:
 - (a) the ecology of the species,
 - (b) the sustainability of the proposed management regime,
 - (c) Aboriginal cultural practices,
 - (d) standards to be adhered to in the picking or growing of plants,
 - (e) whether limits need to be imposed on the number of licences that may be issued for a commercial activity if a licence is required to carry out the activity,
 - (f) protocols for the extraction of plant material from the wild,
 - (g) consistency with any threat abatement plan, or recovery plan, within the meaning of the *Threatened Species Conservation Act 1995*,
 - (h) monitoring of the activity,
 - (i) any other matters that the Director-General considers relevant.
- (4) Before a flora plan of management is adopted by the Director-General, the Director-General is to ensure that a draft of the plan is publicly exhibited and that a period of at least 30 days is given for the making of representations on the draft plan.
- (5) The Director-General is to consider any representations made within that period before adopting the flora plan of management.
- (6) The Director-General may amend or revoke a flora plan of management.

- (7) Subsections (2)–(5) apply to an amendment of a flora plan of management in the same way as they apply to the preparation and adoption of a flora plan of management.
- (8) The regulations may make provision for or with respect to treating flora plans of management (however described) prepared for the purposes of other legislation, including legislation of the Commonwealth, as flora plans of management for the purposes of this Act.
- (9) If a flora plan of management adopted by the Director-General provides that no protected native plant (or part of such a plant) is to be sold unless it is tagged in accordance with the flora plan of management, a person must not sell a protected native plant (or a part of such a plant) unless it is so tagged.

Maximum penalty: 100 penalty units and an additional 10 penalty units in respect of each whole plant that was affected by or concerned in the action that constituted the offence.

Note—

The term **sell** is defined by section 5 to include:

- (a) auction, barter, exchange or supply,
- (b) offer, expose, supply or receive for sale,
- (c) send, forward or deliver for sale or on sale,
- (d) dispose of under a hire-purchase agreement,
- (e) cause, permit or suffer the doing of an act referred to in paragraph (a), (b), (c) or (d),
- (f) offer or attempt to do an act so referred to,
- (g) cause, permit or suffer to be sold,
- (h) attempt to sell or offer to sell, or
- (i) have in possession for sale.

116 Restriction as to licences under [Forestry Act 1916](#)

- (1) Notwithstanding anything in this Act or the [Forestry Act 1916](#), but subject to subsection (2):
 - (a) the Forestry Commission shall not issue a licence for the removal of any protected native plant from any State forest, timber reserve or Crown land, and
 - (b) any such licence shall cease to be operative while it relates to any protected native plant.
- (2) The Forestry Commission may, in accordance with the [Forestry Act 1916](#), authorise

the removal of any protected native plant from a State forest, timber reserve or Crown land if:

- (a) the authorisation is subject to a condition that the removal is to be undertaken in accordance with any relevant flora plan of management in force under section 115A of this Act, or
- (b) the Forestry Commission is of the opinion that the plant would be damaged or destroyed in the taking of timber, products or forest materials under, or in the carrying out of any activity authorised by, the *Forestry Act 1916*.

117 Restriction on picking or possession of native plant

- (1) A person shall not pick or have in the person's possession a protected native plant.

Maximum penalty:

- (a) 100 penalty units and an additional 10 penalty units in respect of each whole plant that was affected by or concerned in the action that constituted the offence, or
 - (b) imprisonment for 6 months,
- or both.
- (2) Without affecting the operation of section 57 or 71, subsection (1) does not apply in relation to the picking or possession of a protected native plant in a nature reserve or wildlife refuge or in lands reserved or dedicated under Part 4A by an Aboriginal owner on whose behalf the lands are vested in an Aboriginal Land Council or Councils under that Part or any other Aboriginal person who has the consent of the Aboriginal owner board members for the lands for purposes referred to in section 57 (7).
- (3) A person shall not be convicted of an offence arising under subsection (1) if the person proves that:
- (a) the protected native plant was grown upon private land and was picked by or with the consent of the owner, lessee or occupier of that land, or
 - (a1) the act constituting the offence was authorised by, and done in accordance with, a conservation agreement, or
 - (a2) the act constituting the offence was authorised by, and done in accordance with, a joint management agreement entered into under Part 7 of the *Threatened Species Conservation Act 1995*, or
 - (b) the protected native plant was picked by the person:
 - (i) under and in accordance with or by virtue of the authority conferred by a licence issued under section 131 or 132C or a licence issued under the

Forestry Act 1916, or

- (ia) under and in accordance with or by virtue of the authority conferred by a licence issued under Part 6 of the *Threatened Species Conservation Act 1995*, or
- (ii) in pursuance of a duty imposed on the person by or under any Act, or was in the person's possession after having been so picked, or
- (c) the protected native plant was in the person's possession in accordance with a licence issued under section 132A, or
- (d) the protected native plant that was picked or in the person's possession was cultivated by the person as a hobby and not for commercial purposes or was cultivated by another person as a hobby and not for commercial purposes, or
- (e) the protected native plant was obtained from a person who was authorised to grow and sell it by a licence issued under section 132, or
- (f) the act constituting the offence was essential for the carrying out of:
 - (i) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
 - (ii) an activity by a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or
 - (iii) an activity in accordance with an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or
 - (iv) a project approved under Part 3A of that Act, or
 - (v) State significant infrastructure approved under Part 5.1 of that Act.
- (4) In any prosecution for an offence arising under subsection (1), proof that a protected native plant was found in the possession of the defendant shall be prima facie evidence that the defendant picked the native plant or had the native plant in the defendant's possession in contravention of this section and the onus of proof to the contrary shall be upon the defendant.
- (5) The regulations may make provision for or with respect to exempting, subject to the prescribed conditions and restrictions (if any), any person or class or description of persons from the provisions of subsection (1).
- (6) A reference in this section to a person's having a protected native plant in the person's possession includes a reference to the person's having a protected native

plant in a vehicle, building, lodging, apartment, field or other place whether belonging to or occupied by the person, and whether the plant is then had or placed for the person's own use or the use of another.

118 Restriction on selling of native plant

(1) A person shall not sell a protected native plant.

Maximum penalty:

(a) 100 penalty units and an additional 10 penalty units in respect of each whole plant that was affected by or concerned in the action that constituted the offence, or

(b) imprisonment for 6 months,

or both.

(2) A person shall not be convicted of an offence arising under subsection (1) in respect of:

(a) any protected native plant that is of a class exempted from the operation of this section by the regulations, or

(b) any protected native plant that has been picked for commercial purposes in pursuance of a licence issued under section 131, or

(c) any protected native plant that has been grown in pursuance of a licence issued under section 132 and picked by or with the consent of the holder of the licence, or

(d) the sale of any protected native plant in accordance with a licence under section 132A.

(3) A person is not to be convicted of an offence arising under subsection (1) in respect of the supply of a protected native plant to another person if the person proves that the act constituting the alleged offence was not done for commercial purposes and:

(a) was done in relation to a plant that was cultivated by a person as a hobby, and

(b) both the person who supplied the plant, and the person to whom it was supplied, are persons who cultivate plants as a hobby.

Part 8A Threatened species, populations and ecological communities, and their habitats, and critical habitat

118A Harming or picking threatened species, endangered populations or endangered

ecological communities

(1) A person must not:

- (a) harm any animal that is of, or is part of, a threatened species, an endangered population or an endangered ecological community, or
- (b) use any substance, animal, firearm, explosive, net, trap, hunting device or instrument or means whatever for the purpose of harming any such animal.

Penalty:

- (a) in respect of any species presumed extinct, any critically endangered species or any endangered species, population or ecological community—2,000 penalty units or imprisonment for 2 years or both, and, in a case where an animal of any species presumed extinct, any critically endangered species or any endangered species, population or ecological community is harmed, an additional 100 penalty units in respect of each animal that is harmed,
- (b) in respect of any vulnerable species—500 penalty units or imprisonment for 1 year or both, and, in a case where an animal of any vulnerable species is harmed, an additional 50 penalty units in respect of each animal that is harmed.

(2) A person must not pick any plant that is of, or is part of, a threatened species, an endangered population or an endangered ecological community.

Penalty:

- (a) in respect of any species presumed extinct, any critically endangered species or any endangered species, population or ecological community—2,000 penalty units or imprisonment for 2 years or both, and an additional 100 penalty units in respect of each whole plant that was affected by or concerned in the action that constituted the offence,
- (b) in respect of any vulnerable species—500 penalty units or imprisonment for 1 year or both, and an additional 50 penalty units in respect of each whole plant that was affected by or concerned in the action that constituted the offence.

(3) It is a defence to a prosecution for an offence against this section if the accused proves that the act constituting the alleged offence:

- (a) was authorised to be done, and was done in accordance with, a general licence under section 120, a licence under section 131, 132 or 132A, a scientific licence under section 132C or a licence granted under Part 6 of the *Threatened Species Conservation Act 1995*, or
- (a1) was the subject of a certificate issued under section 95 (2) of the *Threatened Species Conservation Act 1995*, or

(a2) was authorised by a property vegetation plan approved under the *Native Vegetation Act 2003*, being an act that had the benefit of biodiversity certification of the native vegetation reform package under Division 4 of Part 7 of the *Threatened Species Conservation Act 1995* when the plan was approved, or

Note—

See also the defences under section 118G.

(b) was essential for the carrying out of:

- (i) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
- (ii) an activity by a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or
- (iii) an activity in accordance with an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or
- (iv) a project approved under Part 3A of the *Environmental Planning and Assessment Act 1979*, or
- (v) State significant infrastructure approved under Part 5.1 of the *Environmental Planning and Assessment Act 1979*, or

(b1) was authorised by, and done in accordance with, a conservation agreement, or

(b2) was authorised by, and done in accordance with, a joint management agreement entered into under Part 7 of the *Threatened Species Conservation Act 1995*, or

(c) was authorised to be done by or under the *State Emergency and Rescue Management Act 1989* or the *State Emergency Service Act 1989* and was reasonably necessary in order to avoid a threat to life or property, or

(d) was not done for commercial purposes and was done in relation to a plant that was cultivated by the person as a hobby or was cultivated by another person as a hobby, or

(e) was done in relation to a plant that was obtained from a person who was authorised to grow and sell it by a licence issued under section 132.

(3A) This section does not apply in relation to any thing authorised to be done by or under the *Rural Fires Act 1997* in relation to any emergency fire fighting act within the meaning of that Act.

(4) If the provisions of any other Act or law or of any instrument made under any other Act or law authorise or require anything to be done that would constitute an offence

under this section:

- (a) this section prevails (except in relation to a matter referred to in subsection (3) (b) or (c)), and
- (b) a person is not to be convicted of an offence against the other Act, law or instrument because of the person's failure to comply with the other Act, law or instrument if compliance with the other Act, law or instrument would constitute an offence under this section.

118B Buying, selling or possessing threatened species or endangered population

- (1) A person must not buy, sell or have in possession or control any animal or plant that is of, or is part of, a threatened species or an endangered population.

Penalty:

- (a) in respect of any species presumed extinct, any critically endangered species or any endangered species or endangered population—2,000 penalty units or imprisonment for 2 years or both,
 - (b) in respect of any vulnerable species—500 penalty units or imprisonment for 1 year or both.
- (2) The Governor may, by order published in the Gazette, exempt from subsection (1) threatened species named in the order, subject to such conditions and restrictions relating to the buying, selling or having in possession of any such threatened species as may be prescribed in the order.
 - (3) A person must not to be convicted of an offence against this section of having in the person's possession or control a plant of any threatened species if the plant is naturally occurring on land that the person owns or of which the person is the lessee or lawful owner.
 - (4) It is a defence to a prosecution for an offence against this section if the accused proves that the act constituting the alleged offence:
 - (a) was authorised to be done, and was done in accordance with, a general licence under section 120, a licence under section 131, 132 or 132A, a scientific licence under section 132C or a licence granted under Part 6 of the *Threatened Species Conservation Act 1995*, or
 - (b) was the subject of a certificate issued under section 95 (2) of the *Threatened Species Conservation Act 1995*.
 - (5) A person must not be convicted of an offence under this section in respect of the possession of any threatened species if the person satisfies the court that:
 - (a) the species, being an animal, is the progeny of any animal lawfully in the

possession of the person pursuant to a licence granted under this Act or under Part 6 of the *Threatened Species Conservation Act 1995* and that progeny is less than 6 months old, or

- (a1) the act constituting the offence was authorised by, and done in accordance with, a conservation agreement, or
 - (a2) the act constituting the offence was authorised by, and done in accordance with, a joint management agreement entered into under Part 7 of the *Threatened Species Conservation Act 1995*, or
 - (b) the species, being an animal:
 - (i) was incapable of fending for itself in its natural habitat, and
 - (ii) the person notified the Director-General, in the manner and within the time prescribed by the regulations, that the animal came into the person's possession, and
 - (iii) the person complied with any direction given to the person about the animal by the Director-General, or
 - (c) the species, being a plant, was propagated from a plant lawfully in the possession of a person pursuant to a licence granted under this Act or under Part 6 of the *Threatened Species Conservation Act 1995*, or
 - (d) the act constituting the alleged offence was not done for commercial purposes and was done in relation to a plant that was cultivated by the person as a hobby or was cultivated by another person as a hobby, or
 - (e) the act constituting the alleged offence was done in relation to a plant that was obtained from a person who was authorised to grow and sell it by a licence issued under section 132.
- (6) A reference in this section to a person's having threatened species in the person's possession includes a reference to the person having threatened species in a vehicle, building, lodging, apartment, field or other place whether belonging to or occupied by the person, and whether the species is then had or placed for the person's own use or the use of another person.

118C Damage to critical habitat

- (1) A person must not damage any critical habitat.

Maximum penalty: 2,000 penalty units or imprisonment for 2 years or both.

- (2) If a map of the critical habitat was published in the Gazette before the offence was committed, it is not necessary for the prosecution to prove that the person knew that

the habitat was declared as critical habitat or that the person knew that it was habitat of an endangered species, population or ecological community.

- (3) If a map of the critical habitat was not published in the Gazette before the offence was committed, the prosecution must prove that the person knew that the habitat was declared as critical habitat or that the person knew, or ought to have known, that it was critical habitat.
- (4) It is a defence to a prosecution for an offence against this section in relation to an area of critical habitat that the Director-General has declined to publicly notify under section 146 of the *Threatened Species Conservation Act 1995* that the accused did not know and could not reasonably be expected to have known that the area was critical habitat.
- (5) It is a defence to a prosecution for an offence against this section if the accused proves that the damage resulted from an act that:
 - (a) was authorised to be done, and was done in accordance with, a licence granted under this Act or under Part 6 of the *Threatened Species Conservation Act 1995*, or
 - (a1) was the subject of a certificate issued under section 95 (2) of the *Threatened Species Conservation Act 1995*, or
 - (b) was essential for the carrying out of:
 - (i) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
 - (ii) an activity by a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or
 - (iii) an activity in accordance with an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or
 - (iv) a project approved under Part 3A of the *Environmental Planning and Assessment Act 1979*, or
 - (v) State significant infrastructure approved under Part 5.1 of the *Environmental Planning and Assessment Act 1979*, or
 - (c) was authorised to be done by or under Part 2 of the *Rural Fires Act 1997*, the *State Emergency and Rescue Management Act 1989* or the *State Emergency Service Act 1989* and was reasonably necessary in order to avoid a threat to life or property, or
 - (d) was authorised by, and done in accordance with, a conservation agreement, or

- (e) was authorised by, and done in accordance with, a joint management agreement entered into under Part 7 of the *Threatened Species Conservation Act 1995*.
- (6) If the provisions of any other Act or law or of any instrument made under any other Act or law authorise or require anything to be done that would constitute an offence under this section:
 - (a) this section prevails (except in relation to a matter referred to in subsection (5) (b) or (c), and
 - (b) a person is not to be convicted of an offence against the other Act, law or instrument because of the person's failure to comply with the other Act, law or instrument if compliance with the other Act, law or instrument would constitute an offence under this section.
- (7) In this section, **damage** includes cause or permit damage.

118D Damage to habitat of threatened species, endangered populations or endangered ecological communities

- (1) A person must not damage any habitat of a threatened species, an endangered population or an endangered ecological community if the person knows that the habitat concerned is habitat of that kind.

Penalty: 1,000 penalty units or imprisonment for 1 year or both.

- (2) It is a defence to a prosecution for an offence against this section if the accused proves that the damage resulted from an act that:
 - (a) was authorised to be done, and was done in accordance with, a licence granted under this Act or under Part 6 of the *Threatened Species Conservation Act 1995*, or
 - (a1) was the subject of a certificate issued under section 95 (2) of the *Threatened Species Conservation Act 1995*, or
 - (a2) was authorised by a property vegetation plan approved under the *Native Vegetation Act 2003*, being an act that had the benefit of biodiversity certification of the native vegetation reform package under Division 4 of Part 7 of the *Threatened Species Conservation Act 1995* when the plan was approved, or

Note—

See also the defences under section 118G.

- (b) was essential for the carrying out of:
 - (i) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
 - (ii) an activity by a determining authority within the meaning of Part 5 of that Act

- if the determining authority has complied with that Part, or
- (iii) an activity in accordance with an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or
 - (iv) a project approved under Part 3A of the *Environmental Planning and Assessment Act 1979*, or
 - (v) State significant infrastructure approved under Part 5.1 of the *Environmental Planning and Assessment Act 1979*, or
- (c) was authorised to be done by or under the *State Emergency and Rescue Management Act 1989* or the *State Emergency Service Act 1989* and was reasonably necessary in order to avoid a threat to life or property, or
- (d) was authorised by, and done in accordance with, a conservation agreement, or
- (e) was authorised by, and done in accordance with, a joint management agreement entered into under Part 7 of the *Threatened Species Conservation Act 1995*.
- (2A) This section does not apply in relation to any thing authorised to be done by or under the *Rural Fires Act 1997* in relation to any emergency fire fighting act within the meaning of that Act.
- (3) If the provisions of any other Act or law or of any instrument made under any other Act or law authorise or require anything to be done that would constitute an offence under this section:
- (a) this section prevails (except in relation to a matter referred to in subsection (2) (b) or (c)), and
 - (b) a person is not to be convicted of an offence against the other Act, law or instrument because of the person's failure to comply with the other Act, law or instrument if compliance with the other Act, law or instrument would constitute an offence under this section.
- (4) In proceedings for an offence under this section in respect of damage to any habitat of a threatened species, an endangered population or an endangered ecological community, it is to be conclusively presumed that the person knew that the habitat concerned was habitat of that kind if it is established that the damage resulted from an act that:
- (a) occurred in the course of the carrying out of development or an activity for which development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*, or an approval to which Part 5 of that Act applies, was required but not obtained, or

(b) constituted a failure to comply with any such development consent or approval.

(5) If an act is an offence against both this section and section 118C, the offender is not liable to be punished twice in respect of the offence.

(6) In this section, **damage** includes cause or permit damage.

118E (Repealed)

118F Definitions

In this Part:

animal has the same meaning as in the [Threatened Species Conservation Act 1995](#).

Note—

The definition of **animal** in the [Threatened Species Conservation Act 1995](#) may include some types of fish.

plant has the same meaning as in the [Threatened Species Conservation Act 1995](#).

118G Defences

(1) It is a defence to a prosecution for an offence under this Part if the accused proves that the act constituting the alleged offence was any of the following activities:

(a) clearing of native vegetation that constitutes a routine agricultural management activity,

(b) a routine farming practice activity (other than clearing of native vegetation),

Note—

Both (a) and (b) must be read subject to subsection (3).

(c) an activity that is permitted under any of the following provisions of the [Native Vegetation Act 2003](#):

(i) section 19 (Clearing of non-protected regrowth permitted),

(ii) section 23 (Continuation of existing farming activities),

(iii) 24 (Sustainable grazing),

(d) any other activity prescribed by the regulations for the purposes of this section.

(2) Each of the following is a **routine agricultural management activity** for the purposes of this section:

(a) the construction, operation and maintenance of rural infrastructure:

(i) including (subject to the regulations) dams, permanent fences, buildings, windmills, bores, air strips (in the Western Division), stockyards, and farm roads, but

- (ii) not including rural infrastructure in areas zoned as rural-residential under environmental planning instruments or on small holdings (as defined in the regulations),
 - (b) the removal of noxious weeds under the *Noxious Weeds Act 1993*,
 - (c) the control of noxious animals under the *Rural Lands Protection Act 1998*,
 - (d) the collection of firewood (except for commercial purposes),
 - (e) the harvesting or other clearing of native vegetation planted for commercial purposes,
 - (f) the lopping of native vegetation for stock fodder (including uprooting mulga in the Western Division in areas officially declared to be drought affected),
 - (g) traditional Aboriginal cultural activities (except commercial activities),
 - (h) the maintenance of public utilities (such as those associated with the transmission of electricity, the supply of water, the supply of gas and electronic communication),
 - (i) any activity reasonably considered necessary to remove or reduce an imminent risk of serious personal injury or damage to property.
- (3) This section does not authorise the doing of an act:
- (a) if it exceeds the minimum extent reasonably necessary for carrying out the routine agricultural management activity or routine farming practice activity, or
 - (b) if it is done for a work, building or structure before the grant of any statutory approval or other authority required for the work, building or structure.
- (4) This section does not apply to land described or referred to in Part 3 (Urban areas) of Schedule 1 to the *Native Vegetation Act 2003*.
- (5) The regulations may make provision for or with respect to:
- (a) extending, limiting or varying the activities referred to in subsection (1) (and that subsection is to be construed accordingly), or
 - (b) excluding any specified land or class of land from the operation of subsection (1), or
 - (c) including any specified land or class of land in the operation of subsection (1) that would otherwise be excluded from its operation by subsection (4).
- (6) Until regulations under subsection (5) otherwise provide, any regulations in force under section 11 (2) of the *Native Vegetation Act 2003* apply for the purposes of

extending, limiting or varying the activities referred to in subsection (2) in the same way as those regulations apply for the purposes of extending, limiting or varying the activities referred to in section 11 (1) of that Act.

Part 9 Licensing in respect of fauna, native plants and threatened species

Division 1 Preliminary

119 Definition

In this Part:

private land includes land leased from the Crown, or which is in the course of alienation by the Crown under any Act.

Division 2 Fauna

120 General licence

- (1) The Director-General may issue a licence (in this Act referred to as a **general licence**), authorising a person to do any or all of the following:
 - (a) to harm or obtain any protected fauna for any specified purpose,
 - (a1) to hold or keep in possession or under control any protected fauna for any specified purpose,
 - (b) to exhibit protected fauna,
 - (c) to dispose of, whether by sale or otherwise, any fauna harmed, obtained, held, kept or exhibited under the authority of the licence,
 - (d) to sell any fauna in the person's lawful possession, otherwise than as a fauna dealer or skin dealer,
 - (e) to harm any protected fauna (other than a threatened species, population or ecological community) in the course of carrying out specified development or specified activities.
- (2) A general licence does not, except in so far as the terms of the licence otherwise expressly provide, authorise the harming of fauna in a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve, wildlife refuge, conservation area, wilderness area or area subject to a wilderness protection agreement.
- (2A) A general licence does not authorise the harming of game birds for sporting or recreational purposes. However, a licence can authorise a sporting or recreational

shooter to harm game birds for any other specified lawful purpose.

(2B) A general licence is not to be issued to authorise the harming of protected fauna solely for scientific, educational or conservation purposes. A licence may be issued under section 132C for those purposes.

Note—

Section 91 of the *Threatened Species Conservation Act 1995* further provides that a general licence is not to be issued to authorise a person to harm any animal that is of, or part of, a threatened species, population or ecological community except:

- (a) for the welfare of an animal, or
- (b) if there is a threat to life or property.

(3) A general licence may be issued without conditions or limitations or may be issued subject to specified conditions or limitations.

(4) Without affecting the generality of subsection (3):

(a) a general licence may but need not specify the species of protected fauna that may be harmed under its authority, and

(b) a general licence may but need not be limited to specified areas.

(5) A general licence may authorise any specified persons in addition to the person to whom the licence is issued to do the things authorised by the licence. In any such case, the specified persons are taken to be holders of the licence for the purposes of this Act.

(6) To avoid doubt, the Director-General is not a determining authority for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979* when issuing a general licence.

121 Occupier's licence

(1) The Director-General may issue a licence (in this Act referred to as an **occupier's licence**), authorising an owner or occupier of specified lands:

- (a) to harm, or
- (b) to permit a person, holding a general licence issued to the person under section 120 or a commercial fauna harvester's licence issued to the person under section 123, to harm,

a specified number of fauna of a specified class found on those lands and the licence may authorise the disposal, whether by sale or otherwise, of fauna harmed under the authority of the licence.

(2) If an occupier's licence is proposed to be subject to a condition requiring labels, tags,

slips or other objects to be affixed or attached to the skin or carcase of fauna harmed under the authority of the licence, the licence must not be issued unless the licensee has been supplied by the Service with sufficient labels, tags, slips or other objects to enable the licensee to comply with the relevant condition.

- (3) An occupier's licence shall not be issued with respect to threatened species, populations or ecological communities or to authorise game birds to be harmed for sporting or recreational purposes. However, a licence can authorise a sporting or recreational shooter to harm game birds for any other specified lawful purpose.

122 (Repealed)

123 Commercial fauna harvester's licence

- (1) The Director-General may issue a licence (in this Act referred to as a **commercial fauna harvester's licence**), authorising a person to harm fauna of a species named therein for the purposes of sale.
- (2) A commercial fauna harvester's licence does not, except in so far as the terms of the licence otherwise expressly provide, authorise the harming of fauna in a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve, wildlife refuge, conservation area, wilderness area or area subject to a wilderness protection agreement.
- (3) A commercial fauna harvester's licence must not be issued with respect to threatened species, populations or ecological communities.
- (4) A person licensed under subsection (1) must not, in connection with harming fauna for the purposes of sale, use any carcass chiller unless the chiller is:
 - (a) registered under this section, or
 - (b) on premises registered under section 124.
- (5) The Director-General may issue registration certificates in respect of each carcass chiller that a person licensed under subsection (1) uses in connection with harming fauna for the purposes of sale.
- (6) In this section, **carcass chiller** means any refrigeration container used for the storage of animal carcasses, and includes a refrigerated shipping container and a refrigerated truck or vehicle.

124 Fauna dealer's licence

- (1) The Director-General may issue a licence (in this Act referred to as a **fauna dealer's licence**), authorising a person to buy or sell fauna as a fauna dealer and otherwise to exercise or carry on the business of a fauna dealer.

- (2) A person licensed under subsection (1) shall not exercise or carry on business as a fauna dealer in New South Wales at or on any premises that are not registered under this section.
- (3) The Director-General may issue registration certificates in respect of each of the premises at or on which a person licensed under subsection (1) exercises or carries on business as a fauna dealer in New South Wales.

125 Skin dealer's licence

- (1) The Director-General may issue a licence (in this Act referred to as a **skin dealer's licence**), authorising a person to buy or sell skins as a skin dealer and otherwise to exercise or carry on the business of a skin dealer.
- (2) A person licensed under subsection (1) shall not exercise or carry on business as a skin dealer in New South Wales at or on any premises that are not registered under this section.
- (3) The Director-General may issue registration certificates in respect of each of the premises at or on which a person licensed under subsection (1) exercises or carries on business as a skin dealer in New South Wales.

125A Emu licence

The Director-General may issue a licence (in this Act referred to as an **emu licence**), authorising a person to do any one or more of the following:

- (a) to buy or sell live emus, whole emu eggs or other emu products,
- (b) to kill emus reared or bred under and in accordance with the authority conferred by such a licence,
- (c) otherwise to exercise or carry on the business of an emu breeder.

126 Import and export licences

- (1) The Director-General may issue a licence (in this Act referred to as an **import licence**), authorising a person to import protected fauna into New South Wales.
- (2) The Director-General may issue a licence (in this Act referred to as an **export licence**), authorising a person to export protected fauna from New South Wales.
- (3) Where an application for an import licence or an export licence has been made in accordance with the regulations, the application shall not be refused except on one or more of such grounds (if any) as are prescribed for the purposes of this subsection.

127 Licence to liberate animals

The Director-General may issue a licence authorising a person to liberate an animal

anywhere, or in a specified locality or specified localities, within New South Wales.

128 (Repealed)

129 Certain licences authorising shooting etc in national parks etc

Except in so far as the conditions and restrictions attaching thereto otherwise provide:

- (a) a licence, being a general licence under section 120, an occupier's licence under section 121 or a commercial fauna harvester's licence under section 123, that authorises a person to harm any animal in a national park, historic site, state conservation area, regional park, nature reserve or karst conservation reserve, also authorises that person to do, in connection with the harming of any such animal, any act referred to in section 45 (1) or 56 (1), and
- (b) a licence, being a general licence under section 120, an occupier's licence under section 121 or a commercial fauna harvester's licence under section 123, that authorises a person to harm any fauna in a wildlife refuge, conservation area or area subject to a wilderness protection agreement, also authorises that person to do, in connection with the harming of any such fauna, any act referred to in section 70 (1) or (2).

130 Certain licences and certificates deemed to authorise possession

Except in so far as the licence or certificate otherwise provides, a licence or certificate under this Division that authorises a person to harm or to obtain any fauna also authorises the person to keep and have the fauna in the person's possession.

Division 3 Native plants

131 Licence to pick protected native plants

- (1) The Director-General may issue a licence authorising a person to pick the protected native plants specified therein.
- (2) Despite subsection (1), a licence must not be issued under this section that authorises the picking of a plant of a threatened species unless the plant has been grown in accordance with a licence issued in under section 132.
- (2A) A licence is not to be issued under this section to authorise the picking of native plants solely for scientific, educational or conservation purposes. A licence may be issued under section 132C for those purposes.

132 Licence to grow native plants for sale

The Director-General may issue a licence authorising an owner or occupier of private land to grow upon that private land, or part thereof specified in the licence, protected native plants for the purposes of sale.

132A Import and export licences for protected native plants

- (1) The Director-General may issue a licence authorising a person to import protected native plants into New South Wales.
- (2) The Director-General may issue a licence authorising a person to export protected native plants from New South Wales.
- (3) If an application for a licence under this section has been made in accordance with the regulations, the application must not be refused except on one or more of such grounds (if any) as are prescribed for the purposes of this subsection.

132B Classes of licences

- (1) The regulations may provide for different classes of licences to be issued under section 131, 132 or 132A.
- (2) Without limiting subsection (1), the regulations may provide for different classes of licences under section 131, 132 or 132A to be issued in respect of different groupings of protected native plants within Schedule 13.

Division 3A Scientific licences

132C Scientific licences

- (1) The Director-General may issue a licence (in this Act referred to as a **scientific licence**) authorising a person to take action, for scientific, educational or conservation purposes, that is likely to result in one or more of the following:
 - (a) harm to any protected fauna, or to an animal that is of, or is part of, a threatened species, an endangered population or an endangered ecological community,
 - (b) the picking of any protected native plant or of any plant that is of, or is part of, a threatened species, an endangered population or an endangered ecological community,
 - (c) damage to critical habitat,
 - (d) damage to a habitat of a threatened species, an endangered population or an endangered ecological community.
- (2) A scientific licence does not, except in so far as the terms of the licence otherwise expressly provide, authorise the harming of fauna, or the picking of any native plant, in a national park, historic site, state conservation area, regional park, karst conservation reserve, nature reserve, Aboriginal area, wildlife refuge, conservation area, wilderness area or area subject to a wilderness protection agreement.
- (3) A scientific licence may be issued without conditions or limitations or may be issued

subject to specified conditions or limitations.

(4) In particular:

(a) a scientific licence may but need not specify the animal or plant that may be harmed or picked under its authority, and

(b) a scientific licence may but need not be limited to specified areas.

(5) A scientific licence may authorise any specified persons, or class of persons, in addition to the person to whom the licence is issued to do the things authorised by the licence. In such a case, the specified persons or class of persons are taken to be holders of the licence for the purposes of this Act.

(6) To avoid doubt, the Director-General is not a determining authority for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979* when issuing a scientific licence.

132D Licence authorises certain actions

Except in so far as any conditions or restrictions attached to a scientific licence otherwise provide:

(a) a scientific licence that authorises a person to harm any animal in a national park, historic site, state conservation area, regional park, karst conservation reserve, nature reserve or Aboriginal area also authorises that person to do, in connection with the harming of any such animal, any act referred to in section 45 (1) or 56 (1), and

(b) a scientific licence that authorises a person to harm any fauna in a wildlife refuge, conservation area or area subject to a wilderness protection agreement also authorises that person to do, in connection with the harming of any such fauna, any act referred to in section 70 (1) or (2), and

(c) a scientific licence that authorises a person to harm any animal or pick any plant also authorises the person to keep and have the animal or plant in the person's possession.

132E Definitions

In this Division:

animal has the same meaning as in the *Threatened Species Conservation Act 1995*.

Note—

The definition of **animal** in the *Threatened Species Conservation Act 1995* may include some types of fish.

plant has the same meaning as in the *Threatened Species Conservation Act 1995*.

Division 4 General

133 Conditions and restrictions attaching to licences and certificates and variation of licences and certificates

- (1) A licence or certificate issued under this Part shall be subject to such conditions and restrictions (if any) as are for the time being prescribed in relation to licences or certificates of the class to which the licence or certificate belongs.
- (1A) It is a condition of a licence issued under section 131 authorising the picking of a protected native plant in the wild that the picking be carried out in accordance with any relevant flora plan of management for the protected native plant adopted under section 115A.
- (2) The Director-General may, if the Director-General thinks fit, attach any conditions or restrictions to a licence or certificate upon its issue.
- (3) The Director-General may, by notice in writing served on the holder of a licence or certificate:
 - (a) attach any conditions or restrictions to the licence or certificate after its issue,
 - (b) vary or remove any conditions or restrictions attached to the licence or certificate, or
 - (c) otherwise vary the licence or certificate.
- (4) The holder of a licence or certificate (whether issued under this Act or under Part 6 of the *Threatened Species Conservation Act 1995*) shall not contravene or fail to comply with any condition or restriction attached to the licence or certificate under this Act or Part 6 of the *Threatened Species Conservation Act 1995*.

Maximum penalty:

- (a) in the case of an individual—100 penalty units and, in the case of a continuing offence, a further penalty of 10 penalty units for each day the offence continues, or
 - (b) in the case of a corporation—200 penalty units and, in the case of a continuing offence, a further penalty of 20 penalty units for each day the offence continues.
- (5) Subsections (2) and (3) do not apply to an import licence or export licence under section 126.

134 Cancellation of licence or certificate

- (1) Subject to subsection (2), a licence or certificate issued under this Part may be cancelled by the Minister or the Director-General.

- (2) An import licence or export licence under section 126 shall not be cancelled under this section except on one or more of such grounds (if any) as are prescribed for the purposes of this subsection.

135 Appeal

- (1) A person whose application for a licence or certificate under this Part is refused, or whose licence or certificate has been cancelled by the Director-General, or who is dissatisfied with any condition or restriction which the Director-General has attached to the person's licence or certificate, may appeal to the Minister.
- (2) The Minister:
- (a) may refuse to grant the appeal, or
 - (b) may grant the appeal wholly or in part, and may give such directions in the matter as seem proper.
- (3) The decision of the Minister on the appeal is final and is binding on the Director-General and the appellant, and shall be carried into effect accordingly.
- (4) Where the regulations prescribe:
- (a) the manner in which an appeal is to be made under this section—the appeal shall be made in that manner, or
 - (b) the period within which an appeal is to be made under this section—the appeal shall be made within that period.
- (5) Where the Director-General fails to grant an application for a licence or certificate under this Part, the application shall, for the purposes of this section, be deemed to be refused upon the expiration of:
- (a) subject to paragraph (b)—1 month after the application was received by the Director-General, or
 - (b) where the regulations prescribe some other period—that other period.

136 Licences do not authorise entry etc

Where, had this Act not been enacted:

- (a) the consent or permission of any person would have been required for entering any lands or doing any act on or in respect of any lands, the issue of a licence under this Part does not authorise the entering of those lands, or the doing of that act on those lands, without that consent or permission, or
- (b) the doing of an act on or in respect of any lands would have been unlawful, the issue of a licence under this Part does not authorise the doing of that act.

Part 10 Finance

137 National Parks and Wildlife Fund

The National Parks and Wildlife Fund established under the Act of 1967 shall continue in existence and shall be kept at the Treasury in the Special Deposits Account.

138 Payments into Fund

(1) There shall be paid into the Fund:

- (a) all money provided by Parliament for the purposes of this Act (including money provided for the expenses incurred or likely to be incurred by boards of management in connection with the preparation of plans of management for, and the care, control and management of, lands reserved or dedicated under Part 4A), the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995* (except any money provided by Parliament for the purposes of the Biodiversity Banking Account or Biobanking Trust Fund under Part 7A of the *Threatened Species Conservation Act 1995*),
 - (a1) all money provided by Parliament for the management of any land for which the National Parks and Wildlife Reserve Trust is trustee,
- (b) all money received in respect of:
 - (i) leases, licences, permits or occupancies within a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve, Aboriginal area or land for which the National Parks and Wildlife Reserve Trust is trustee,
 - (ii) leases and licences granted under section 149 (4),
 - (iii) royalties, fees and charges under this Act or the regulations, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995* or the regulations made under those Acts, except those that are required to be paid into the Biodiversity Banking Account or Biobanking Trust Fund under Part 7A of the *Threatened Species Conservation Act 1995*,
 - (iiia) despite the provisions of any other Act, royalties, fees and charges in respect of land for which the National Parks and Wildlife Reserve Trust is trustee,
 - (iv) franchises granted under section 152,
 - (v) easements or rights of way granted under section 153,
 - (vi) community service contributions,
 - (vii) penalties recovered pursuant to this Act or the *Threatened Species*

Conservation Act 1995 or the regulations made under those Acts, or (despite the provisions of any other Act) under another Act in respect of land for which the National Parks and Wildlife Reserve Trust is trustee, except penalties recovered pursuant to Part 7A of the *Threatened Species Conservation Act 1995* or the regulations under that Part,

- (viii) property forfeited pursuant to this Act or the regulations,
 - (ix) costs paid pursuant to an order under section 176 (3),
 - (x) amounts paid pursuant to an order under section 177, and
 - (xi) policies of insurance under which money is paid to the Minister or the Director-General with respect to any national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area, or any property in the custody or under the control of the Director-General,
- (b1) all money received in respect of:
- (i) rent paid by the Minister in respect of lands leased under Part 4A, and
 - (ii) matters of a kind referred to in paragraph (b) in respect of those lands,
- (c) any money acquired by the Minister pursuant to section 148, except money required to be paid into the Biodiversity Banking Account under Part 7A of the *Threatened Species Conservation Act 1995*,
- (d) any money received by the Minister pursuant to section 149, except money required to be paid into the Biodiversity Banking Account under Part 7A of the *Threatened Species Conservation Act 1995*,
- (e) any other money received in connection with any national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area or any proposed national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area,
- (e1) any money received from the Sydney Catchment Authority in connection with carrying out and giving effect to a plan of management adopted under the *Sydney Water Catchment Management Act 1998*,
- (e2) any money received by the Director-General or a board of management in connection with an order of a court under section 201, 203 or 204 of this Act or section 141J, 141L or 141M of the *Threatened Species Conservation Act 1995*,
- (f) any money received in connection with any wildlife refuge or conservation area, and

(g) any other money received in connection with the administration of this Act, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*, other than money received in the prescribed circumstances (if any) or money payable into the Biodiversity Banking Account or Biobanking Trust Fund under Part 7A of the *Threatened Species Conservation Act 1995*.

- (1A) Within the Fund there is to be a separate account for each area of lands leased under Part 4A.
- (1B) Subject to subsections (2) and (3), any money paid into the Fund, including rent paid by the Minister, in respect of an area of lands leased under Part 4A is to be carried into the separate account in the Fund that relates to that area.
- (1C) Any money referred to in subsection (1B) may, pending its application in accordance with this Act, be invested by the Minister with the Treasurer or in any manner in which trustees are for the time being authorised to invest trust funds.
- (2) Where any money acquired by the Minister pursuant to section 148 is subject to any condition to which the Minister has agreed, the money shall be carried to a separate account in the Fund and shall be applied in accordance with the condition.
- (3) Any money referred to in subsection (2) may, pending application in accordance with the condition so referred to, be invested by the Minister with the Treasurer or in any manner in which trustees are for the time being authorised to invest trust funds.
- (4) A reference in subsection (1) (b) (i) or (e) to a regional park does not include a reference to a regional park that is, or is proposed to be, under the care, control and management of a local council.
- (5) Money received in connection with the administration of the biodiversity certification scheme (including any fees paid under the scheme or any monetary contributions made for the purposes of the scheme) is not to be paid into the National Parks and Wildlife Fund.
- (6) In this section:

biodiversity certification scheme means:

- (a) the provisions of Part 7AA of the *Threatened Species Conservation Act 1995* and any regulations made for the purposes of that Part, and
- (b) the provisions of Parts 7 and 8 of Schedule 7 to that Act (which relate to biodiversity certification of environmental planning instruments).

139 Payments out of Fund

- (1) No money shall be paid out of the Fund except under the authority of this Act or in accordance with section 52 (2) (b) of the *Fire Brigades Act 1989*.

(2) There may be paid out of the Fund:

- (a) all charges, costs and expenses incurred by the Minister or the Director-General in exercising and performing the Minister's or the Director-General's powers, authorities, duties and functions under this Act, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*, except those incurred under the biodiversity certification scheme and the biobanking scheme,
- (b) all money allocated by the Minister for expenditure by a state conservation area trust in connection with a state conservation area or by a regional park trust in connection with a regional park,
- (b1) all charges, costs and expenses incurred by the National Parks and Wildlife Reserve Trust in exercising its functions in relation to land for which it is trustee,
- (c) the fees and travelling and other expenses payable to the members of the Council or any committee under this Act, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*,
- (d) the cost of acquiring land for the purposes of this Act, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*,
- (e) the cost of improvement of any land adjoining or in the vicinity of a national park, historic site, regional park, nature reserve, karst conservation reserve, Aboriginal area or state conservation area, where in the opinion of the Minister this is desirable to provide or improve access to the park, site, reserve or area, or to provide or improve facilities or amenities for persons visiting the park, site, reserve or area,
- (f) all money which the Minister directs shall be set aside to provide a reserve for insurance,
- (g) all money allocated by the Minister for expenditure on Aboriginal areas,
- (h) the cost of acquiring Aboriginal objects or land in which Aboriginal objects or Aboriginal places are situated,
- (i) the cost of erecting and maintaining buildings or structures for the safe custody, storage or exhibition of any Aboriginal object,
- (j) the cost of entering into, and giving effect to, agreements under sections 145 and 146,
- (k) the cost of carrying out the purposes for which land is acquired or occupied under section 146,
- (l) all costs incurred under sections 147 and 149 (except in relation to a dealing in land or other property, or an interest in property, the proceeds of which are

payable into the Biodiversity Banking Account under Part 7A of the *Threatened Species Conservation Act 1995*),

(m1) charges, costs and expenses incurred in the administration of the *Marine Parks Act 1997*,

(m2) the cost of carrying out and giving effect to a plan of management adopted under the *Sydney Water Catchment Management Act 1998*,

(m) all money allocated by the Minister for use in connection with a wildlife refuge or conservation area, and

(n) all money to be paid to a livestock health and pest authority under section 141.

(3) Any money set aside, as referred to in subsection (2) (f), may be invested by the Minister with the Treasurer or in any manner in which trustees are for the time being authorised to invest trust funds.

(4) Where:

(a) any lands are acquired under Part 11 out of money wholly or partly provided by Parliament, and

(b) those lands, or any part thereof, are sold under section 149,

there shall be paid from the Fund to the Treasurer, out of the proceeds of the sale referred to in paragraph (b), such amount as the Treasurer may determine.

(5) Any money in a separate account kept under section 138 (1B) in respect of lands reserved or dedicated under Part 4A must be applied:

(a) for the management of the lands (including the preparation of a plan of management for the lands), and

(b) in accordance with the provisions of any plan of management for the lands.

(6) In this section:

biobanking scheme means the provisions of Part 7A of the *Threatened Species Conservation Act 1995* and any regulations made for the purposes of that Part.

biodiversity certification scheme means:

(a) the provisions of Part 7AA of the *Threatened Species Conservation Act 1995* and any regulations made for the purposes of that Part, and

(b) the provisions of Parts 7 and 8 of Schedule 7 to that Act (which relate to biodiversity certification of environmental planning instruments).

140 Community service contribution

- (1) The Director-General shall from time to time assess the amount of the contribution to be paid by the holder of a lease of or licence to occupy or use lands within a national park, historic site, state conservation area, regional park, nature reserve or karst conservation reserve for the cost of providing or maintaining any community service in the park, site, area or reserve.
- (2) The Director-General may levy the contribution payable by the holder of the lease or licence by serving on the holder a written notice of the contribution payable.
- (3) The notice referred to in subsection (2) may:
 - (a) relate to one or more types of community service, and
 - (b) specify a date by which the contribution must be paid.
- (3A) The amount of the contribution is due and payable to, and is recoverable by, the Director-General:
 - (a) if a date is specified in the notice referred to in subsection (2)—on that date, or
 - (b) if no such date is specified—on the expiration of one month from the service of the notice.
- (3B) Nothing in this section prevents the Director-General from issuing separate notices to the same holder of a lease or licence for different types of community service.
- (4) The Minister, on the recommendation of the Director-General, may for any reason which to the Minister seems sufficient exempt any such holder from the payment of such a contribution or part thereof.
- (5) In this section, **community service** includes the following actions or services when undertaken or provided in connection with public health or building safety:
 - (a) making an inspection,
 - (b) conducting an audit,
 - (c) receiving an application,
 - (d) granting an approval.

141 Payment of rates to livestock health and pest authorities in Western Division

- (1) In this section, **authority** means a livestock health and pest authority for a livestock health and pest district within the meaning of the [Rural Lands Protection Act 1998](#).
- (2) There shall, subject to this section, be payable to an authority an amount equal to the amount that would have been payable to the authority under Part 7 of the [Rural Lands](#)

Protection Act 1998 by way of rates for any period, in respect of all lands within its district reserved as national parks or historic sites or dedicated as nature reserves or karst conservation reserves, had those lands been ratable lands under that Act at all relevant times after they were so reserved or dedicated.

- (3) No amount is payable under subsection (2) except upon an application:
 - (a) made to the Director-General in the prescribed manner and within the prescribed time, and
 - (b) containing the prescribed particulars.
- (4) Any dispute between the Director-General and an authority with respect to the particulars contained in an application or the amount payable under this section shall be determined in accordance with such directions as the Minister, after consultation with the Minister for Agriculture, may give.
- (5) Nothing in this section requires or authorises the payment of an amount in relation to any period before the commencement day.

142 Royalty

- (1) Royalty shall, in accordance with the regulations, be payable to the Crown at the prescribed rates upon such species of fauna and the skins of such species of fauna as may be prescribed.
- (2) Notwithstanding subsection (1), royalty shall not be payable under this section in respect of a skin or carcase to which there has been affixed or attached in compliance with a condition of a licence issued under Division 2 of Part 9 a label, tag, slip or other object for which a charge or fee has been paid pursuant to regulations made under section 154 (e).

143 Charges and fees

- (1) Where the Minister, the Director-General or an officer of the Service:
 - (a) supplies any service, product or commodity,
 - (b) grants any licence to carry on a trade, business or occupation,
 - (c) gives, varies or transfers any permission, consent or approval or issues any licence, registration certificate or permit,
 - (d) furnishes any information,
 - (e) processes an application for any permission, consent, approval, licence, registration certificate or permit (including by making an inspection or conducting an audit in connection with the application),

(f) provides advice on request (including by way of lecture or seminar), or

(g) provides administrative services on request (including photocopying and the like),

under this Act or the regulations, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995* or the regulations under those Acts or in connection with any national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area, the Director-General or an officer of the Service may make, demand, levy and recover such charges and fees as may be prescribed or where no charge or fee is prescribed such charges and fees as may be fixed by the Director-General, subject to the maximum (if any) prescribed.

- (2) Nothing in this section prevents the Director-General or an officer of the Service making, demanding, levying or recovering separate charges or fees in respect of the same person for the supply of different things or carrying out of different activities.
- (3) The services referred to in subsection (1) include, but are not limited to, health or building services provided or maintained by the Director-General in a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area.

144 (Repealed)

144A Overdue community service contributions, charges, fees and other money

- (1) Interest on overdue money payable in respect of:
- (a) leases, licences, permits or occupancies within reserved or dedicated lands, and
 - (b) leases and licences granted under section 149 (4), and
 - (c) royalties, fees and charges under this Act, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*, and
 - (d) franchises granted under section 152, and
 - (e) easements or rights of way granted under section 153, and
 - (f) community service contributions under section 140,
- shall be payable in accordance with this section.
- (2) If payment of the whole or any part of an amount payable in respect of a matter referred to in subsection (1) has not been made at the date when the amount was due, the balance due from time to time after that date is to attract interest:
- (a) except as provided by paragraph (b)—calculated at the prescribed rate, or
 - (b) in the case of interest payable under a lease, agreement or other instrument the

terms of which fix a rate of interest that is higher than the prescribed rate—calculated at that higher rate.

- (3) If the Minister, on the recommendation of the Director-General, is satisfied that circumstances warrant it, the Minister may:
 - (a) direct that an amount due shall not attract interest in accordance with this section, or
 - (b) grant an extension of time after the due date during which the amount payable or due for the time being will not attract interest, or
 - (c) remit the payment of the whole or any part of any interest payable under this section.
- (4) No refund shall be made as a consequence of a remission under subsection (3) (c).
- (5) This section applies to overdue money payable before, as well as on or after, the commencement of this section, in so far as it is due on and after that commencement, and so applies notwithstanding the terms of any lease, agreement or other instrument under which the money is payable.
- (6) Interest payable under this section may be recovered in the same way as the money in respect of which it is payable.

144B Annual report

The Service is to include a statement of its operations and expenditure in connection with lands reserved or dedicated under Part 4A in each report it makes under the [Annual Reports \(Departments\) Act 1985](#).

Part 11 Acquisition and disposal of property

145 Acquisition of land for reservation or other purposes

The Minister may, for the purpose of obtaining land for reservation under Part 4 or Part 4A, of conserving threatened species, populations or ecological communities, or their habitats or of preserving, protecting and preventing damage to Aboriginal objects or Aboriginal places:

- (a) on behalf of Her Majesty, enter into and give effect to an agreement for the vesting in, or surrender to, Her Majesty of any land, or
- (b) acquire land by agreement or by compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).

146 Acquisition or occupation of lands for certain purposes

- (1) For the purpose of:

- (a) improving access to any land reserved or dedicated or acquired under this Act,
- (b) the management, maintenance or improvement of any such land, or
- (c) carrying out works for any of those purposes,

the Minister may:

- (d) on behalf of Her Majesty, enter into, and give effect to, an agreement for the vesting in, surrender to, or leasing to, Her Majesty, or for the occupation under licence, of any land adjoining or in the vicinity of the land so reserved or dedicated, or

- (e) acquire any land (including an interest in land) adjoining or in the vicinity of the land so reserved or dedicated by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.

- (2) For the purpose of obtaining lands for use in connection with the administration of this Act, the *Wilderness Act 1987* or the *Threatened Species Conservation Act 1995*, the Minister may:

- (a) on behalf of Her Majesty, enter into, and give effect to, an agreement for the vesting in, surrender to, or leasing to, Her Majesty, or for the occupation under licence, of any land, or

- (b) acquire land (including an interest in land) by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.

- (2A) The Minister may, on behalf of the Crown, acquire land (including an interest in land) for the purpose of a future lease grant or dealing by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.

- (2B) An acquisition for a future lease grant or dealing is an acquisition:

- (a) to enable the reservation or dedication of land under this Act and the exercise of powers, authorities, duties and functions conferred or imposed by or under this Act in relation to the land, or

- (b) to enable the exercise of powers, authorities, duties and functions conferred or imposed by or under this Act in relation to land already reserved or dedicated under this Act.

- (2C) The publication in the Gazette of an acquisition notice under section 19 of the *Land Acquisition (Just Terms Compensation) Act 1991* for a purpose that is described as a future lease grant or dealing does not:

- (a) to the extent to which the land referred to in the acquisition notice was Crown

land immediately before the publication of the acquisition notice, affect the status of the land as Crown land, or

(b) operate to revoke any reservation as national park, historic site, state conservation area, regional park, nature reserve or karst conservation reserve of the land referred to in the acquisition notice.

(2D) Nothing in this section is taken to mean that the Minister cannot exercise functions in relation to land under this Act unless the Minister first compulsorily acquires the land concerned.

(2E) Subsection (2A) does not limit the purposes for which land may be acquired under section 145 or any other provision of this Act.

(3) The Minister or Director-General may, for the purpose of the management, maintenance or improvement of any land reserved or dedicated under this Act, enter into and give effect to an agreement with the owner or lessee of the land, as the case requires, concerning the management or care of any land adjoining or in the vicinity of land so reserved or dedicated.

(4) (Repealed)

147 Application of [Public Works Act 1912](#)

(1) For the purposes of the [Public Works Act 1912](#), any acquisition of land under section 145 or 146 is taken to be for an authorised work and the Minister is, in relation to that authorised work, taken to be the Constructing Authority.

(2) Sections 34, 35, 36 and 37 of the [Public Works Act 1912](#) do not apply in respect of works constructed under this Act.

148 Power of Minister to accept gifts

(1) The Minister may acquire, by gift inter vivos, devise or bequest, any property for the purposes of this Act, the [Wilderness Act 1987](#) or the [Threatened Species Conservation Act 1995](#) and may agree to the condition of any such gift, devise or bequest.

(2) The rule of law against remoteness of vesting shall not apply to any such condition to which the Minister has agreed.

(3) Where the Minister acquires property under subsection (1):

(a) neither an instrument that effects the acquisition nor any agreement pursuant to which the property is acquired is chargeable with duty under the [Stamp Duties Act 1920](#), and

(b) the property, or the value of property, shall not be included in the dutiable estate of the donor or testator for the purposes of assessing death duty under that Act.

- (4) Notwithstanding anything in Part 4 or Part 4A, lands acquired under this section must not be reserved as, or as part of, a national park, historic site, state conservation area, regional park, nature reserve or karst conservation reserve in contravention of any such condition to which the Minister has agreed.

149 Disposal of property

- (1) Subject to any conditions of a gift or an agreement by or under which any such property may have been acquired, the Minister may sell, grant leases of, dispose of or otherwise deal with any lands or other property:
 - (a) acquired by the Minister, otherwise than on behalf of Her Majesty, under this Part, or
 - (b) acquired by the Minister on behalf of Her Majesty for the purposes of this Act or the *Threatened Species Conservation Act 1995* by purchase with money from the Fund, by exchange of any property so purchased or by gift,or any interest in any such lands or other property.
- (2) Nothing in this section applies to or in respect of lands while reserved as, or as part of, a national park, historic site, state conservation area, regional park, nature reserve or karst conservation reserve.
- (3) Nothing in this section affects the operation of Part 4A.
- (4) Without limiting subsection (1), the Minister may:
 - (a) for any purpose specified in section 146 (1) (a), (b) or (c) grant a lease of, or a licence with respect to, lands acquired or occupied under section 146 (1), or
 - (b) for use in connection with the administration of this Act grant a lease of, or a licence with respect to, lands referred to in section 146 (2).

150 Minister to be corporation sole for certain purposes

- (1) For the purposes of the exercise and performance of the Minister's authorities, duties and functions under Part 4A and this Part and under any other provisions of this or any other Act that are identified (by those provisions) for the purposes of this section, the Minister is hereby constituted a corporation sole under the name of "Minister administering the *National Parks and Wildlife Act 1974*".
- (2) The corporation sole constituted by this section:
 - (a) has perpetual succession,
 - (b) shall have an official seal,
 - (c) may take proceedings and be proceeded against in the corporate name,

- (d) may, in accordance with this Act (or with such provisions of any other Act as are identified as referred to in subsection (1)), purchase, exchange, hold, dispose of and otherwise deal with property, and
 - (e) may do and suffer all other things that a body corporate generally may, by law, do and suffer and that are necessary for or incidental to the purposes for which the corporation sole is constituted.
- (3) The seal of the corporation sole so constituted shall not be affixed to any instrument or document except in the presence of the Minister, and the Minister shall attest by the Minister's signature the fact and date of the affixing of the seal.
- (4) All courts and persons acting judicially:
- (a) shall take judicial notice of the seal of the corporation sole so constituted that has been affixed to any instrument or document, and
 - (b) shall until the contrary is proved presume that seal was properly affixed.

Part 12 Leases, licences, easements etc

Division 1 Preliminary

150A Definitions

In this Part:

existing building or structure means:

- (a) in relation to land reserved under this Act before the commencement of this section, a building or structure in existence on the land at that commencement, or
- (b) in relation to land that becomes reserved under this Act on or after the commencement of this section, a building or structure in existence on the land at the time of that reservation.

reserve means a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area (and includes any such land reserved under Part 4A).

Division 2 Granting of leases and licences

151 Leases and licences of reserved lands

- (1) The Minister may grant a lease or licence of land within a reserve (including any buildings or structures on the land).
- (2) A lease or licence granted under this section may authorise any one or more of the following:

- (a) the exclusive use of the land, buildings and structures concerned,
 - (b) the erection of a new building or structure on the land concerned,
 - (c) the modification of an existing building or structure on the land concerned.
- (3) Without limiting section 2A, in determining whether to grant a lease or licence of land under this section, the Minister is to give effect to the objects of this Act.

Note—

Section 2A (1) (d) provides that it is an object of this Act that the management of reserved land be in accordance with the applicable management principles.

Section 81A makes it clear that Part 5 (Plans of management) has effect in any part of a reserve that is the subject of a lease or licence under this Part. Section 151C also provides that it is a condition of every lease or licence of land granted under this section that the lessee or licensee must ensure that the provisions of this Act, the regulations and the relevant plan of management are complied with.

151A Purposes for which a lease or licence may be granted

- (1) A lease or licence of land (other than a nature reserve) may only be granted under section 151 for one or more of the following purposes:
- (a) **General purposes**
 - (i) the provision of buildings for use in connection with any of the following:
 - (A) the protection or preservation of land from fire,
 - (B) the provision of services relating to the work of rendering first aid to, and the transport of, sick and injured persons,
 - (C) a surf life-saving club,
 - (D) any purpose of a similar nature,
 - (ii) the provision of research facilities or activities for natural heritage (including natural phenomena) and cultural heritage,
 - (iii) to enable activities of a recreational, educational or cultural nature to be carried out and the provision of facilities for that purpose,
 - (iv) to enable sporting activities to be carried out and the provision of temporary facilities for that purpose,
 - (v) to enable activities for natural heritage management, cultural heritage management, park management or fire management to be carried out and the provision of facilities for that purpose,
 - (vi) to enable Aboriginal cultural activities to be carried out and the provision of facilities for that purpose,

(vii) subject to section 151I (Restrictions on grant of lease for residential accommodation), the provision of residential accommodation,

(viii) any other purpose that is:

(A) consistent with the relevant management principles for the land set out in Division 2 of Part 4, and

(B) identified in the relevant plan of management as being a permissible purpose for the land concerned,

(b) Purposes related to the sustainable visitor or tourist use and enjoyment of reserved land

(i) the provision of accommodation for visitors and tourists,

(ii) the provision of the following facilities if the facilities are ancillary to accommodation facilities for visitors or tourists:

(A) retail outlets,

(B) facilities to enable the hosting of conferences or functions,

(C) facilities to enable activities of a sporting nature to be carried out,

(iii) the provision of facilities and amenities for visitors and tourists, including the following facilities:

(A) information centres and booking outlets,

(B) restaurants, cafes, kiosks and other food outlets,

(iv) the provision of the following facilities if the facilities are ancillary to facilities and amenities for visitors and tourists:

(A) retail outlets,

(B) facilities to enable the hosting of conferences or functions,

(c) Adaptive reuse and use of modified natural areas

any purpose that enables the adaptive reuse of an existing building or structure or the use of a modified natural area.

Note—

See section 5 (1) for the definitions of “adaptive reuse” and “modified natural area”.

(2) A lease or licence of land within a nature reserve may only be granted under section 151 for a purpose that is consistent with the relevant management principles for nature reserves set out in section 30J.

- (3) In addition to the purposes set out in subsection (1), a lease or licence of land (other than a nature reserve) may be granted under section 151 to enable any activity or development in a ski resort area (within the meaning of Part 8A of Schedule 6 to the *Environmental Planning and Assessment Act 1979*) that is permitted by an environmental planning instrument specifically applying to ski resort areas.
- (4) A licence of land under section 151 for the purpose of a conference, function or event must not be granted if the licence authorises the use of the land for a cumulative period that exceeds 3 months in any 12 month period.
- (5) The Minister must not grant a lease of land under section 151 for any purpose referred to in subsection (1) (b) that authorises the erection of a new building or structure on the land unless:
 - (a) the purpose for which the lease is to be granted is identified in the relevant plan of management as being a permissible purpose for the land concerned, and
 - (b) the general location for any such new building or structure is identified in that plan of management.

151AA (Repealed)

151B Matters that Minister must consider before granting lease or licence

- (1) The Minister must not grant a lease or licence of land (including any buildings or structures on the land) under section 151 unless the Minister is satisfied that:
 - (a) the purpose for which the lease or licence is granted is compatible with the natural and cultural values of:
 - (i) the land to be leased or licensed, and
 - (ii) land reserved under this Act in the vicinity of that land, and
 - (b) the lease or licence provides for the sustainable and efficient use of natural resources, energy and water, and
 - (c) in relation to any lease or licence that authorises the erection of a new building or structure on the land or the modification of an existing building or structure on the land—the authorised development or activity is appropriate in relation to the built form and scale of the building or structure, including its bulk, height, footprint, setbacks and density.
- (2) In determining whether the Minister is satisfied in relation to any of the matters referred to in subsection (1), the Minister is to have regard to:
 - (a) the assessment criteria adopted by the Director-General under subsection (3), and
 - (b) in relation to a proposal to grant a lease of land—a report prepared by the

Director-General that addresses the relevant matters referred to in subsection (1) in light of those assessment criteria.

(3) The Director-General:

(a) must adopt assessment criteria relating to the matters referred to in subsection (1), and

(b) may vary those criteria, but only if:

(i) the Director-General has consulted with the Council, and

(ii) the Council has advised the Director-General that the proposed variation, on balance, improves or maintains the environmental outcomes provided for under the existing criteria.

(4) The assessment criteria are to be published on the Department's website.

(5) This section does not apply to the following:

(a) a lease or licence of land within a ski resort area within the meaning of Part 8A of Schedule 6 to the *Environmental Planning and Assessment Act 1979*,

(b) a renewal of a lease of land granted in accordance with an option to renew a current lease,

(c) a renewal of a lease of land (otherwise than in accordance with an option to renew), but only if:

(i) the renewed lease is on substantially the same terms and conditions as the current lease, and

(ii) the term of the lease (including any options to renew) does not exceed 10 years, and

(iii) there have been no significant breaches of the current lease, this Act or the regulations during the term of the current lease.

151C Leases and licences subject to conditions

(1) A lease or licence under section 149, 151 or 151H may be granted subject to conditions.

(2) It is a condition of every lease or licence of land granted under section 151 that the lessee or licensee must ensure that the provisions of this Act, the regulations and the plan of management for the reserve in which the land is situated are complied with in relation to the land.

151D Special provisions relating to leases and licences of karst conservation reserves

- (1) The Minister is to include in every lease or licence of land within a karst conservation reserve granted under section 151 a condition requiring:
 - (a) 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
 - (b) 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.
- (2) The Director-General is (in relation to a lease or licence to which subsection (1) 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
 - (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 151J, and
 - (ii) placing the results on the Department's website.

151E Special provisions relating to leases and licences of Aboriginal land

- (1) The Minister may only grant a lease or licence under section 151 of land reserved under Part 4A with the concurrence of the relevant board of management for the land concerned.
- (2) The Minister must not grant a lease or licence under section 151 of land reserved under Part 4A contrary to the terms of the lease of the land to the Minister under that Part.

Division 3 Miscellaneous

151F Public consultation regarding grant of leases and licences

- (1) Before granting a lease or licence under section 151 or 151H, the Minister must cause notice of the proposed lease or licence to be published:
 - (a) in a newspaper circulating in the area in which the land is located and on the Department's website if the proposed lease or licence:

- (i) is for a purpose for which the land (including any buildings or structures on the land) has previously not been used or occupied, or
 - (ii) authorises the erection of a temporary building or structure on the land concerned, and
 - (b) in a newspaper circulating throughout New South Wales, in a newspaper circulating in the area in which the land is located and on the Department's website if the proposed lease or licence:
 - (i) authorises the erection of a new permanent building or structure on the land concerned, or
 - (ii) authorises a significant modification of an existing building or structure on the land concerned or any other significant permanent physical change to the land concerned.
- (2) A notice under subsection (1) must contain the following:
- (a) sufficient information to identify the land concerned,
 - (b) the purposes for which the land and any building or structure on the land is proposed to be used,
 - (c) the term of the proposed lease or licence (taking into account any option to renew),
 - (d) the name of the person to whom the lease or licence is proposed to be granted,
 - (e) the closing date for making submissions on the proposal, being a date not earlier than:
 - (i) in relation to a notice under subsection (1) (a)—14 days after the date on which the notice was first published, or
 - (ii) in relation to a notice under subsection (1) (b)—28 days after the date on which the notice was first published,
 - (f) the address to which submissions are to be sent,
 - (g) any other information that the Minister considers relevant to the consideration of the proposal.
- (3) The Minister, on request, is to provide such further information, as the Minister considers reasonably practicable, describing the proposed lease or licence. The information provided must not include any commercial in confidence information.

Note—

Further information provided under this subsection could include drawings or diagrams describing the

proposed lease or licence.

- (4) The Minister may hold a public hearing into any proposed lease or licence under this Part if the Minister thinks it appropriate to do so.
- (5) Before determining whether or not to grant a lease or licence under section 151 or 151H, the Minister must take into account:
 - (a) any submissions received before the notified closing date for submissions under subsection (2) (e), and
 - (b) if relevant, any report from, or submissions received at, a public hearing.
- (6) This section does not apply to a proposal to grant a lease or licence of land if:
 - (a) the proposed lease or licence authorises the land concerned to be used or occupied for a total period that does not exceed 31 days, or
 - (b) the proposed lease or licence relates to land reserved under Part 4A and authorises the land concerned to be used or occupied for any community development purpose prescribed by the regulations under section 72AA (6) (c), or
 - (c) within the 2 years prior to the proposed grant of the lease or licence, a public consultation has occurred in relation to development or an activity that is substantially the same as the use of the land that is to be authorised by the proposed lease or licence.

Note—

For example, a public consultation may have been undertaken under the [Environmental Planning and Assessment Act 1979](#) for approval or consent to the erection and use of a building for a cafe. In that case, public consultation is not necessary under this section in relation to a proposed lease of the building to operate that cafe.

151G Reference of certain proposed leases and licences for advice

- (1) The Minister:
 - (a) must refer a proposal to lease or licence land under section 151 to the Council for advice if the proposed lease or licence:
 - (i) authorises the erection of a new permanent building or structure on the land concerned, or
 - (ii) authorises a significant modification of an existing building or structure on the land concerned or any other significant permanent physical change to the land concerned, or
 - (iii) is for a term that exceeds 10 years (including any option to renew), and
 - (b) must refer a proposal to lease land under section 151H to the Council for advice,

and

(c) may refer any other proposal to lease or licence land under this Part to the Council for advice if the Minister thinks it appropriate to do so.

(2) The Minister may refer a proposal to lease or licence land under this Part to the Aboriginal Cultural Heritage Advisory Committee for advice if the Minister thinks it appropriate to do so.

(3) The Minister may refer a proposal to lease or licence land within a karst conservation reserve under this Part to the Karst Management Advisory Committee for advice if the Minister thinks it appropriate to do so.

(4) Before determining whether or not to grant a lease or licence under this Part, the Minister must, if the Minister referred the proposal to the Council, the Aboriginal Cultural Heritage Advisory Committee or the Karst Management Advisory Committee, take into account any advice received from the body concerned within 28 days of the reference.

151H New head leases for certain lands

(1) The Minister may grant leases (in this section referred to as **head leases**) in respect of the lands the subject of any or all of the leases mentioned in Schedule 15, whether or not those lands are still the subject of the leases so mentioned.

(2) On the granting of a head lease, the following provisions have effect with respect to such of the leases mentioned in Schedule 15 as apply to the land the subject of the head lease:

(a) the lease is taken to be varied by substituting the name of the head lessee for that of the lessor,

(b) the lease is taken to become a sublease (in this section referred to as a **statutory sublease**) of the head lease,

(c) except as otherwise provided by the regulations—the lease continues to have effect according to its tenor,

(d) any proceedings under the lease in relation to any matter arising before the head lease was granted are to be commenced or maintained by or against the lessor as if the lease had not been varied as referred to in paragraph (a).

(3) If a head lease is granted to a person in respect of land the subject of a lease mentioned in Schedule 15 of which the person is the sole lessee, the lease so mentioned is, by virtue of the granting of the head lease, extinguished.

(4) A head lease is taken to include a condition to the effect that the head lessee must not:

- (a) assign or mortgage the head lessee's interest in the lease to any other person, or
- (b) exercise any right of forfeiture or termination in respect of any statutory sublease of the lease, or
- (c) vary any rent payable under any statutory sublease of the lease,

except with the prior consent in writing of the Minister, and that any purported assignment, mortgage, forfeiture, termination or variation of rent that does not have such consent is void.

- (5) A head lease is not affected merely because a lease mentioned in Schedule 15 ceases to have effect (whether by reason of expiry, surrender, termination, forfeiture or otherwise) while the head lease is in force.
- (6) If a head lease ceases to have effect (whether by reason of expiry, surrender, termination, forfeiture or otherwise) the following provisions have effect with respect to any statutory sublease of the head lease:
 - (a) the sublease is taken to be varied by substituting the title of the Minister for the name of the head lessee,
 - (b) the sublease is taken to cease to be a statutory sublease and to become a lease granted under section 151,
 - (c) the lease continues to have effect according to its tenor,
 - (d) any proceedings under the sublease in relation to any matter arising before the head lease ceased to have effect are to be commenced or maintained against the head lessee as if the lease had not been varied as referred to in paragraph (a).
- (7) No duty is payable under the *Stamp Duties Act 1920* in respect of a variation referred to in subsection (2) (a) or (6) (a).
- (8) The operation of this section 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 a contractual provision prohibiting, restricting or regulating the assignment or transfer of a lease or statutory sublease, 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 variation referred to in subsection (2) (a) or (6) (a).
- (9) No attornment to a head lessee by a statutory sublessee is required.
- (10) The regulations may amend Schedule 15:

- (a) by omitting the matter relating to any lease mentioned in that Schedule, or
- (b) by varying the matter relating to any lease mentioned in that Schedule, or
- (c) by inserting matter relating to any other lease (not being a head lease) in relation to land in, or in the vicinity of, Perisher Valley, Smiggin Holes or Guthega.

(11) A head lease granted in respect of land the subject of a lease mentioned in Schedule 15 is not affected merely because the matter relating to the lease so mentioned is omitted from that Schedule, or is varied, while the head lease is in force.

151I Restrictions on grant of lease for residential accommodation

- (1) The Minister must not grant a lease under section 151 or 151H for the purpose of permanent residential occupation unless the lease:
 - (a) provides accommodation to an officer of the Service in the vicinity of the officer's place of employment, or
 - (b) facilitates:
 - (i) the maintenance and security of the reserve, and buildings and facilities on or in the reserve, or facilities passing through the reserve such as a road, transmission lines and pipelines, or
 - (ii) the provision of services to tourists and visitors to the reserve,
 - (iii) the provision of educational and research facilities in the reserve, or
 - (c) is for the occupation of buildings in an historic site or land reserved under Part 4A, or
 - (d) is of a class prescribed for the purposes of this section.
- (2) A regulation must not be made for the purposes of subsection (1) (d) (not being a principal statutory rule within the meaning of the *Subordinate Legislation Act 1989*) unless the Minister has:
 - (a) caused notice of the draft regulation to be published in a newspaper circulating throughout New South Wales, and
 - (b) invited the public and the Council to comment on the draft regulation with the closing date for the making of submissions being not earlier than 45 days after the date of publication of the notice, and
 - (c) taken into account any submissions from the Council or the public received before the notified closing date for submissions.
- (3) The validity of a regulation made for the purposes of subsection (1) (d) is not affected

by a failure of the Minister to comply with subsection (2) (c).

151J Register of certain interests to be publicly available

- (1) Information on leases granted under this Act, licences granted under section 153D and every easement or right of way granted under this Act:
 - (a) is to be recorded in a register that is to be kept in the head office of the Service and made available to the public, free of charge, during ordinary office hours, and
 - (b) is to be placed on the Service's website.
- (2) Information to be included on the register and website is to include the following:
 - (a) the name of the person to whom the lease, licence, easement or right of way has been granted,
 - (b) the term of years of the lease, licence, easement or right of way (including any option to renew),
 - (c) the location of the land to which the lease, licence, easement or right of way relates,
 - (d) the purpose for which the lease, licence, easement or right of way has been granted,
 - (e) information as to the terms and conditions of the lease, licence, easement or right of way, except information that the Director-General would be prevented from disclosing under the [Government Information \(Public Access\) Act 2009](#) or the [Privacy and Personal Information Protection Act 1998](#).

152 Trade within certain reserved lands

- (1) The Director-General may grant licences to carry on trades, businesses or occupations within a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area.
- (2) Subject to any regulations, the Minister may prohibit the carrying on of any trade, business or occupation within a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area otherwise than by some person licensed by the Director-General.
- (3) The Minister may grant a franchise to any person, on such terms and conditions as the Minister may determine, for the sale of goods and services, the provision of public transportation or the supply of other facilities and amenities within a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area.
- (4) Any franchise granted by the trustees of the whole or part of lands reserved after the

commencement day as a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area, and in force immediately before the lands were so reserved, shall be deemed to be a franchise granted by the Minister under this section and to be as valid and effectual as it would have been if this Act had been in force when the franchise was granted.

153 Easements

- (1) The Minister may upon such terms and conditions as the Minister thinks fit grant for joint or several use easements or rights of way through, upon or in a national park, historic site, state conservation area, regional park, nature reserve or karst conservation reserve for the purpose of providing access to any area included in any lease or licence within the park, site, area or reserve, or for the construction of pipelines, or for the erection of standards, posts, wires and appliances for the conveyance or transmission of electricity, or for any other purpose deemed necessary.
- (2) The Minister may from time to time revoke or vary any grant under this section.
- (3) Any easement or right of way over lands in a national park, historic site, state conservation area or regional park reserved under this Act, which was in force immediately before the lands were reserved as, or as part of, the park, site or area, as the case may be, shall continue in force and shall be deemed to have been granted under this section.
- (4) Any easement or right of way over lands in a nature reserve or karst conservation reserve dedicated under this Act, which was in force immediately before the land was dedicated as, or as part of, the nature reserve or karst conservation reserve shall continue in force and shall be deemed to have been granted under this section.

153A Leases etc relating to wilderness areas

The Minister shall not:

- (a) grant a lease or licence under section 151, or
 - (b) (Repealed)
 - (c) grant a lease, licence, easement or right of way under section 153D,
- in respect of land that is within a wilderness area.

153B Granting of interests in respect of reserved or dedicated lands that are also water catchment special areas

- (1) This section applies to lands reserved or dedicated under this Act that are also within a special area within the meaning of the *Sydney Water Catchment Management Act 1998* or the *Hunter Water Act 1991*.

- (2) The Minister may grant leases of, or licences to occupy or use, or easements or rights of way through, on or in, lands to which this section applies for the purpose of enabling the Sydney Catchment Authority, the Sydney Water Corporation or the Hunter Water Corporation to exercise its functions in relation to water or wastewater infrastructure on the lands concerned.
- (3) Subsection (2) does not authorise the granting of a lease, licence, easement or right of way for the purpose of enabling any of the following functions to be exercised in relation to the land concerned:
 - (a) the impoundment of water on the land,
 - (b) the permanent inundation of the land,
 - (c) the construction of flood mitigation structures on the land.
- (4) For the purposes of subsection (3) (b), **permanent inundation** includes any flooding additional to the temporary flooding that already occurs due to natural rainfall.
- (5) The Minister must not grant a lease, licence, easement or right of way under subsection (2) unless a plan of management for the lands concerned identifies:
 - (a) the person to whom, and
 - (b) the lands in respect of which, and
 - (c) the purpose and term for which,the lease, licence, easement or right of way is to be granted.
- (6) Subsection (5) does not limit the operation of Part 5.
- (7) A lease, licence, easement or right of way under subsection (2) may be granted subject to such terms and conditions as the Minister may determine.
- (8) The Minister may from time to time revoke or vary any grant under subsection (2) of an easement or right of way.
- (9) Subsection (2) does not authorise the granting of a lease or licence in relation to land that is within a wilderness area.
- (10) The Minister must cause a register to be kept of each lease, licence, easement or right of way that is granted under subsection (2).
- (11) The register must be kept available for inspection by the public free of charge, during ordinary office hours, at the Head Office of the Service.

153C Easements, rights of way and licences for landlocked areas

- (1) The Minister may, on such terms and conditions as the Minister thinks fit, grant an

easement, right of way or licence through or over land reserved under this Act for the purposes of enabling access to other land if:

- (a) the other land is completely or partially surrounded by land reserved under this Act, and
- (b) the Minister:
 - (i) is satisfied that it is not practical for the owner (or any occupier) of the other land to obtain an alternative means of access (whether by land or water) because it is not legally or physically available, or
 - (ii) while satisfied that it is practical for the owner (or any occupier) of the other land to obtain an alternative means of access, considers that the proposed means of access will have a lesser environmental impact than that alternative means of access to the land concerned, or
 - (iii) while satisfied that it is practical for the owner (or any occupier) of the other land to obtain an alternative means of access, considers that the proposed means of access will assist in more efficient management of the reserved land and will have no greater environmental impact than that alternative means of access to the land concerned.

(2) The Minister must not grant an easement, right of way or licence under subsection (1) unless the Minister is satisfied that:

- (a) the access proposed to be granted under the easement, right of way or licence will not have a significant impact on the environment of the area adjacent to the proposed access, and
- (b) the access proposed to be granted under the easement, right of way or licence is consistent with the relevant plan of management.

(3) The Minister must not grant an easement, right of way or licence under subsection (1) unless the Minister has considered:

- (a) the extent of, and legality of, any access that the owner (or any occupier) had to the land before that access became unavailable, and
- (b) any guidelines (as referred to in subsection (4)) in relation to access to land.

(4) The Director-General must prepare and adopt, after consulting with the Council, guidelines relating to the provision of access to land under this section, and may, from time to time, vary those guidelines after further consultation with the Council.

153D Leases, licences and easements for broadcasting or telecommunications facilities

(1) For the purpose of the erection, use or maintenance of broadcasting or

telecommunications facilities, the Minister may grant leases of, or licences to occupy or use, or easements or rights of way through, on or in, any land reserved under this Act.

- (2) A lease, licence, easement or right of way under this section may be granted subject to such terms and conditions as the Minister may determine.
- (3) The Minister may from time to time revoke or vary any grant under this section of an easement or right of way.
- (4) The Minister must not grant a lease, licence, easement or right of way under this section unless the Minister is satisfied that:
 - (a) there is no feasible alternative site for the proposed broadcasting or telecommunications facility concerned on land that is not reserved under this Act, and
 - (b) the site of any proposed above ground broadcasting or telecommunications facility covers the minimum area possible, and
 - (c) the proposed broadcasting or telecommunications facility is to be designed and constructed in such a manner as to minimise risk of damage to the facility from bushfires, and
 - (d) the site and construction of the proposed broadcasting or telecommunications facility have been selected, as far as is practicable, to minimise the visual impact of the facility, and
 - (e) if feasible, an existing means of access to the proposed site of the lease, licence, easement or right of way is to be used, and
 - (f) the proposed broadcasting or telecommunications facility is essential for the provision of broadcasting or telecommunications services for land reserved under this Act or for surrounding areas to be served by the facility, and
 - (g) the broadcasting or telecommunications facility is to be removed and the site of the facility is to be restored as soon as possible after the facility becomes redundant (for example, due to advances in technology), and
 - (h) the site of the proposed broadcasting or telecommunications facility has been selected after taking into account the objectives set out in any plan of management relating to the land concerned, and
 - (i) the proposed broadcasting or telecommunications facility is, if feasible, to be co-located with an existing structure or located at a site that is already disturbed by an existing lease, licence, easement or right of way on the land concerned.
- (5) The Minister must not grant a lease, licence, easement or right of way under this

section in respect of land that is within an area designated as a remote natural area in a plan of management or an Aboriginal area.

(6) In this section:

broadcasting or telecommunications facility means:

(a) a facility used for the purpose of providing broadcasting services within the meaning of the [Broadcasting Services Act 1992](#) of the Commonwealth, or

(b) a facility within the meaning of the [Telecommunications Act 1997](#) of the Commonwealth.

153E Easements to repair and maintain the Border Fence

(1) For the purpose of the repair and maintenance of the Border Fence, the Minister may grant easements or rights of way in favour of the Wild Dog Destruction Board through, on or in any land reserved under this Act.

(2) An easement or right of way under this section may be granted subject to such terms and conditions as the Minister may determine.

(3) The Minister may from time to time revoke or vary any grant under this section of an easement or right of way.

(4) The Minister is required to consult the Minister administering the [Western Lands Act 1901](#) before exercising a power conferred by this section.

(5) This section does not operate to limit a power under any other section of this Part to grant easements or rights of way through, on or in any land reserved under this Act.

(6) In this section:

Border Fence means the Queensland Border Fence, or the South Australian Border Fence, within the meaning of the [Wild Dog Destruction Act 1921](#).

Wild Dog Destruction Board means the Wild Dog Destruction Board constituted under the [Wild Dog Destruction Act 1921](#).

Part 13 Regulations

154 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that, by this Act, is required or permitted to be prescribed by regulations or that is necessary or convenient to be prescribed by regulations for carrying out or giving effect to this Act and, in particular, for or with respect to:

(a) the powers, authorities, duties and functions of the Director-General, the officers of

the Service, ex-officio rangers, honorary rangers, the Council, advisory committees or the Aboriginal Cultural Heritage Advisory Committee,

- (b) the procedure for the calling of meetings of the Council, advisory committees or the Aboriginal Cultural Heritage Advisory Committee and the conduct of business at those meetings,
- (c) licences and registration certificates under Part 9, including the classification thereof, applications therefor and the issue and expiry thereof,
- (d) the records to be kept and returns to be furnished by persons holding licences or registration certificates under Part 9 and the inspection of those records by officers of the Service,
- (d1) the records to be kept and returns to be furnished by persons engaged in the sale by retail of meat from a game animal, as referred to in section 104 (1A), and the inspection of those records by officers of the Service,
- (d2) the records to be kept and returns to be furnished by persons engaged in the sale by retail of emu products, as referred to in section 105A (2), and the inspection of those records by officers of the Service,
- (e) the issuing and the making of a charge or fee for supplying a label, tag, slip or object for affixing or attaching to the skin or carcass of any fauna in compliance with any condition of a licence under Part 9,
- (f) the issuing and the making of a charge for supplying a label, tag, slip or object for affixing or attaching to any protected native plant or packages or bundles thereof in compliance with any condition of a licence under Part 9,
- (g) the protection, care, preservation and propagation of any fauna or native plants,
- (h) prescribing the conditions under which any fauna, whether protected or unprotected, may be consigned or offered for sale or transported or caged or housed,
- (i) the inspection of premises registered under section 124, 125 or 128 and the inspection of premises in which fauna are housed or caged in pursuance of a licence issued under section 120 or 125A,
- (j) the entry upon and inspection of any lands upon which protected native plants are grown by a person in pursuance of a licence issued under section 132 and the requiring of the doing of any thing or things designed to prevent the lands from being stripped of protected native plants,
- (k) the records to be kept and returns to be furnished by persons holding permits issued under section 87,
- (l) tendering for leases and licences under Part 11 or 12,

- (m) the form and design of signs, symbols, emblems, insignia and uniforms for use in connection with the administration of this Act and the regulations, and the regulation, control or prohibition of the making, reproducing or using of those signs, symbols, emblems, insignia and uniforms, and
- (n) the forms or other documents to be used for the purposes of this Act and the regulations.

155 Regulations relating to parks

- (1) In this section, ***park*** means national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area.
- (2) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that, by this Act, is required or permitted to be prescribed by regulations or that is necessary or convenient to be prescribed by regulations for carrying out or giving effect to this Act and, in particular, for or with respect to:
 - (a) the regulation of the use and enjoyment of parks,
 - (b) the securing of decency and order in parks,
 - (c) the removal of trespassers and other persons causing annoyance or inconvenience in parks,
 - (d) the regulation or prevention of the taking of intoxicants into, and the consuming thereof in, parks,
 - (e) the regulation, control or prohibition of the taking of animals on or into parks and public and other roads traversing parks or the permitting or suffering of animals to be on or in parks and any such roads,
 - (f) the regulation, control or prohibition of mooring, parking, camping or residing in parks, the making of charges for mooring, parking, camping or residing in parks and the collecting and receiving of those charges by the Minister or by other persons,
 - (g) the preservation or protection of, or prevention of damage to, trees, shrubs, ferns, creepers, vines, palms, plants, flowers, herbage or other vegetative cover in parks,
 - (h) the conditions under which trees or timber may be cut or removed from parks and the amount of royalties, fees and charges payable in respect thereof,
 - (i) the preservation or protection of any rocks, soil, sand, stone, or other similar substance on or under or comprising part of a park, or the removal of any such substance from a park and the amount of royalties, fees and charges payable in respect thereof,

- (j) the preservation or protection of any animals in parks,
- (k) the preservation or protection of, or prevention of damage to, any Aboriginal object or Aboriginal place in a park,
- (l) the regulation, control or prohibition of the use of any Aboriginal object or Aboriginal place for commercial purposes in a park,
- (m) the making of charges or entrance fees for persons, clubs or associations or for vehicles using or entering a park, or any specified part of a park, or any public or other road traversing or bounding a park or such a part, and the collecting, receiving and waiving of those charges and fees by the Director-General or by other persons,
- (n) the reservation of any portion of a park for such separate or exclusive use as the regulations may prescribe,
- (o) the closing of, or the regulation, control or prohibition of the entry of any person or class of persons into, a park or parts of a park and the conditions to be observed with regard thereto,
- (p) the regulation, control or prohibition of private trading in a park,
- (q) the use of roads, tracks, trails and other ways within a park and the circumstances under which roads, tracks, trails and other ways therein shall be open or may be closed to public traffic or use,
- (r) the powers and duties of any officer of the Service appointed in respect of a park,
- (s) the regulation of the use of vehicles and the conditions under which they may be used in a park,
- (t) the regulation of the speed of vehicles in a park,
- (u) the regulation of the use of chair lifts, surface tows and ski jumps and the conditions under which they may be used in a park,
- (v) the regulation, control or prohibition of the erection of buildings, marinas, structures, signs or other improvements in a park,
- (w) the protection of buildings, marinas, structures, signs and other improvements in parks,
- (x) the regulation, control or prohibition of exotic plants in parks,
- (y) the collection of scientific specimens, the preservation or protection of marine life (other than fish within the meaning of the *Fisheries Management Act 1994*), and the pursuit of research in parks,

- (z) the regulation, control or prohibition of the use of firearms or other weapons and the carrying of firearms or other weapons in parks,
 - (aa) the management and maintenance of pounds within a park,
 - (bb) the procedure for the impounding of cattle, horses, asses, mules, sheep, goats, swine and dogs within a park and for their subsequent disposal, sale or destruction,
 - (cc) the damage fees, driving charges, sustenance charges, deterrent fees and pound fees chargeable in respect of the impounding of cattle, horses, asses, mules, sheep, goats, swine and dogs within a park,
 - (dd) the fees chargeable in respect of the sale or offering for sale and in respect of the destruction of cattle, horses, asses, mules, sheep, goats, swine and dogs impounded within a park, and
 - (ee) (Repealed)
- (2A) Without affecting the generality of subsection (2), a regulation made in pursuance of subsection (2) (v):
- (a) may include provisions for or with respect to site, design, methods of construction and any matters which a council under the [Local Government Act 1993](#) may take into consideration in exercising its functions under that Act.
 - (b) (Repealed)
- (2B) Where any lands, not being a park or part of a park, are acquired or occupied by the Minister under Part 11, the Governor may, in relation to any such lands, make regulations not inconsistent with this Act or with any reservation or condition subject to which the lands were acquired or occupied, for or with respect to any matter specified in subsection (2) in relation to a park.
- (2C) Without limiting the generality of subsection (2), the Governor may, in relation to any state conservation area or regional park, make regulations for or with respect to any matter for or with respect to which a by-law might be made under the [Crown Lands Act 1989](#) in relation to a reserve within the meaning of Part 5 of that Act.
- (2D) If an agreement under section 146 relates to land adjoining or in the vicinity of lands reserved or dedicated under this Act, the Governor may make regulations for or with respect to that land, not inconsistent with this Act or with any Act affecting the land:
- (a) for the purpose of giving effect to the agreement, and
 - (b) for or in respect of a matter (not relating to the imposition of fees, charges or royalties) for which regulations may be made under subsection (2) in relation to a park.

(3) Without affecting the generality of section 156 (2) or (3), regulations:

- (a) made under subsection (2) for or with respect to parks, or
- (b) made under subsection (2B) for or with respect to other lands acquired or occupied by the Minister,

may be made to apply generally to all parks or to all such other lands so acquired or occupied or may be limited to any park or any particular lands so acquired or occupied, or any specified part of any such park or other lands, and unless so limited shall be taken to apply generally to all parks or to all such other lands, as the case may be.

(4) Where any provision of a regulation made to apply to any specified park or any particular lands acquired or occupied by the Minister, or any part thereof, is inconsistent with a provision of any regulation relating to parks or to any such lands generally, the firstmentioned provision shall prevail.

155A Kosciuszko National Park

The regulations may confer or impose on the Director-General, with any necessary modifications, any function relating to the health of the public in Kosciuszko National Park that is, or but for being modified would be, the same as a function conferred or imposed on a council constituted by the [Local Government Act 1993](#) in relation to the health of the public in its area.

156 General provisions

(1) A regulation may:

- (a) impose a penalty for any breach thereof and also distinct penalties in case of successive breaches thereof but no such penalty shall exceed 50 penalty units, and
- (b) impose also a daily penalty for any continuing breach thereof not exceeding 2 penalty units per day.

(2) A regulation may be made so as to apply differently according to such factors as may be specified therein.

(3) A regulation may be made so as to apply to or in respect of:

- (a) any matter, or all matters, or any class of matters specified or described therein, or
- (b) all matters, or any class of matters, so specified or described other than:
 - (i) any matter so specified or described that is expressed to be excluded, or

(ii) any class of matters so specified or described that is expressed to be excluded.

(4) A regulation may authorise any matter or thing to be from time to time determined, applied or regulated by any person or body specified therein.

Part 14 Miscellaneous

156A Offence of damaging reserved land

(1) A person must not, on or in land reserved under this Act or acquired under Part 11:

- (a) remove any water other than for purposes authorised by or under any Act or for the purposes of personal use on the land, or
- (b) damage or remove any vegetation, rock, soil, sand, stone or similar substance, or
- (c) damage any object or place of cultural value, or
- (d) cause or permit any removal or damage referred to in paragraph (a), (b) or (c).

Maximum penalty:

- (a) in the case of a corporation—10,000 penalty units, or
- (b) in the case of an individual—1,000 penalty units or 6 months imprisonment, or both.

(2) It is a defence to a prosecution for an offence under subsection (1) if the accused proves that the removal or damage concerned:

- (a) was done in accordance with the consent of the Director-General or of a person or body that has the care, control and management of the land concerned under this Act, or
- (b) was authorised to be done, and was done in accordance with, a licence under this Act or a licence granted under the *Threatened Species Conservation Act 1995*, or
- (c) was essential for the carrying out of:
 - (i) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
 - (ii) an activity, whether by a determining authority or pursuant to an approval of a determining authority within the meaning of Part 5 of that Act if the determining authority has complied with that Part, or
 - (iii) a project approved under Part 3A of the *Environmental Planning and Assessment Act 1979*, or

- (iv) State significant infrastructure approved under Part 5.1 of the *Environmental Planning and Assessment Act 1979*, or
- (d) was authorised to be done by or under Part 2 of the *Rural Fires Act 1997*, the *State Emergency and Rescue Management Act 1989* or the *State Emergency Service Act 1989* and was reasonably necessary in order to avoid a threat to life or property.
- (3) It is a defence to a prosecution for an offence under subsection (1) if the offence relates to the damage of an object or place of cultural value and the accused proves that he or she did not know, and could not reasonably have known, that the object or place concerned had cultural value.
- (4), (5) (Repealed)

156B Powers of authorised officers

- (1) The Director-General may appoint any person (including a class of persons) to be an authorised officer for the purposes of national parks legislation. Such an appointment is to be made under Chapter 7 of the *Protection of the Environment Operations Act 1997* (the **POEO Act**) as applied under this section.
- (2) An authorised officer has and may exercise the functions of an authorised officer under Chapter 7 (except Part 7.6) of the POEO Act for the following purposes:
 - (a) for determining whether there has been compliance with or a contravention of national parks legislation,
 - (b) for obtaining information or records for purposes connected with the administration of national parks legislation,
 - (c) generally for administering national parks legislation.
- (3) The provisions of Chapter 7 of the POEO Act apply to and in respect of national parks legislation as if those provisions were part of this Act, but modified so that:
 - (a) references in those provisions to an authorised officer were references to authorised officers appointed as referred to in this section, and
 - (b) references in those provisions to “this Act” were references to an Act or regulation forming part of the national parks legislation, and
 - (c) references in those provisions to the EPA were references to the Director-General, and
 - (d) the Director-General were the appropriate regulatory authority for matters concerning national parks legislation.
- (3A) Section 319A of the POEO Act applies in respect of notices given by an authorised

officer pursuant to subsection (2) in the same way as it applies to notices given under that Act or the regulations under that Act, except that in so applying that section a reference to a regulatory authority is to be read as a reference to the Director-General.

- (3B) For the avoidance of doubt, a prosecution of a person for an offence against a provision of Chapter 7 of the POEO Act (as applying under this section) is to be taken as if the offence were an offence under this Act.
- (4) The functions that an authorised officer has under Chapter 7 of the POEO Act are, for the purposes of any provision of national parks legislation, taken to be functions under national parks legislation.
- (5) If an authorised officer has functions in respect of a matter under both Chapter 7 of the POEO Act (as applying under this section) and under any other provision of national parks legislation, the fact that there is a restriction on the exercise of a function under national parks legislation does not of itself operate to restrict the exercise by an authorised officer of any similar or the same function under Chapter 7 of the POEO Act.
- (6) (Repealed)

156C Exclusion of personal liability

- (1) Anything done or omitted to be done by:
 - (a) the Minister, or
 - (b) the Director-General or a person acting under the direction of the Director-General, or
 - (c) an officer of the Service, or
 - (d) an ex-officio ranger, or
 - (e) an honorary ranger, or
 - (f) a member of the Council or a person acting under the direction of the Council or a member of the Council, or
 - (g) an advisory committee, a member of such a committee or a person acting under the direction of any such committee or member of such a committee,

does not subject the Minister, Director-General, officer, ranger, member of the Council or of the advisory committee, or person so acting, personally to any action, liability, claim or demand if the thing was done, or omitted to be done, in good faith for the purpose of exercising functions under the national parks legislation.

- (2) However, any such liability attaches instead to the Crown.

157 Requirement to state name and address

- (1) The Director-General or any officer of the Service, or any person duly authorised by the Minister in that behalf, may require a person whom he or she suspects on reasonable grounds to be offending against this Act or the regulations to state the person's full name and residential address.
- (2) The Director-General, any officer of the Service duly authorised by the Director-General in that behalf or any person duly authorised by the Minister in that behalf may require the driver of a motor vehicle in a national park, historic site, state conservation area, regional park, nature reserve or Aboriginal area to produce his or her driver licence and to state his or her full name and residential address.
- (3) A person shall not:
 - (a) fail or refuse to comply with a requirement under subsection (1) or (2), or
 - (b) in purported compliance with such a requirement, state a name that is not the person's name or an address that is not the person's residential address.

Penalty for an offence against this subsection: 10 penalty units.

158 Requirement for owner of motor vehicle and others to give information

- (1) Where the driver of a motor vehicle is alleged to be guilty of an offence against this Act or the regulations, the Director-General or any other officer of the Service, or any person duly authorised by the Minister in that behalf, may:
 - (a) require the owner of the vehicle, or the person in whose name it is registered, or the person having the custody of the vehicle, to give forthwith information (which shall, if so required, be given in the form of a statement in writing, signed by that owner or person) as to the name and residential address of the driver, or
 - (b) require any other person to give any information which it is in that other person's power to give and which may lead to the identification of the driver.
- (2) A person shall not:
 - (a) fail or refuse to comply with a requirement under subsection (1), or
 - (b) in purported compliance with such a requirement, give any information that is false or misleading in a material particular.

Penalty: 10 penalty units.

- (3) In a prosecution for an offence in respect of a failure or refusal to comply with a requirement under subsection (1) (a), it is a defence if the defendant proves to the satisfaction of the court that the defendant did not know and could not with reasonable diligence have ascertained the name or residential address of the driver

concerned or both, as the case may require.

- (4) Where a statement in writing purporting to be furnished under subsection (1) (a) and to contain particulars of the name and residential address of the driver of a motor vehicle at the time of commission of an alleged offence against this Act or the regulations is produced in any court in proceedings against the person named therein as the driver for the offence, the statement shall, if that person does not appear before the court, be evidence without proof of signature that the person was the driver of the vehicle at that time.

159 Liability of vehicle owner for parking offences

- (1) In this section:

owner of a vehicle includes the responsible person for the vehicle within the meaning of the *Road Transport (General) Act 2005*.

parking offence means the offence committed by a person who, in contravention of the regulations made under this Act:

- (a) moors or parks a vehicle, or
- (b) causes or permits a vehicle to be moored or parked or to stand or wait.
- (2) Where a parking offence occurs, the person who, at the time of the occurrence of the offence, is the owner of the vehicle to which the offence relates is, by virtue of this section, guilty of an offence under the regulation relating to the parking offence in all respects as if the owner were the actual offender guilty of the parking offence unless:
- (a) in any case where the parking offence is dealt with under section 160, the owner satisfies the prescribed person referred to in that section that the vehicle was, at the relevant time, a stolen vehicle or a vehicle illegally taken or used, or
- (b) in any other case, the court is satisfied that the vehicle was, at the relevant time, a stolen vehicle or a vehicle illegally taken or used.
- (3) Nothing in this section affects the liability of an actual offender in respect of a parking offence but, where a penalty has been imposed on, or recovered from, any person in relation to any parking offence, no further penalty shall be imposed on or recovered from any other person in relation thereto.
- (4) Notwithstanding anything in subsection (2) or (3), no owner of a vehicle is, by virtue of this section, guilty of an offence if:
- (a) in any case where the offence is dealt with under section 160, the owner:
- (i) within 21 days after service on the owner of a notice under that section alleging that the owner has been guilty of that offence, supplies by statutory declaration to the prescribed person referred to in that section the name and

address of the person who was in charge of the vehicle at all relevant times relating to the parking offence concerned, or

- (ii) satisfies the prescribed person so referred to that the owner does not know, and cannot with reasonable diligence ascertain, that name and address, or

(b) in any other case, the owner:

- (i) within 21 days after service on the owner of a summons in respect of that offence, supplies by statutory declaration to the informant the name and address of the person who was in charge of the vehicle at all relevant times relating to the parking offence concerned, or

- (ii) satisfies the court that the owner did not know and could not with reasonable diligence have ascertained that name and address.

(5) A statutory declaration that relates to more than one parking offence shall be deemed not to be a statutory declaration supplying a name and address for the purposes of subsection (4).

(6) Where a statutory declaration supplying the name and address of a person for the purposes of subsection (4) is produced in any proceedings against that person in respect of the parking offence to which the statutory declaration relates, the statutory declaration is prima facie evidence that that person was, at all relevant times relating to that parking offence, in charge of the vehicle to which the parking offence relates.

(7) The provisions of this section shall be construed as supplementing, and not as derogating from, any other provision of this Act or the regulations or any other Act or regulation, by-law or ordinance under any other Act.

159A Liability of landholder for certain harming and picking offences

In any criminal proceedings for an offence under section 98 or Part 8A, the landholder of any land on which the offence is alleged to have occurred is taken to have carried out the activity constituting the alleged offence unless it is established that:

- (a) the activity was carried out by another person, and
- (b) the landholder did not cause or permit the other person to carry out the activity.

This section does not prevent proceedings being taken against the person who actually carried out the activity.

159B Causing or permitting certain harming and picking offences

A person who causes or permits, by act or omission, another person to commit an offence under section 98 or a provision of Part 8A is guilty of an offence under the provision and is liable on conviction to the same penalty applicable to an offence under that provision.

160 (Renumbered as sec 192)

160A Removal of unauthorised structures and occupiers

(1) In sections 160A–160F:

prescribed land means:

- (a) a national park, historic site, nature reserve, karst conservation reserve, Aboriginal area, state conservation area or regional park, or
- (b) land acquired or occupied under Part 11.

structure includes a part of a structure.

- (2) The Minister may cause any structure that is on prescribed land without lawful authority and its contents (if any) to be removed from the land or to another place on prescribed land.
- (3) The Minister may cause any person making use without lawful authority of a structure that is on prescribed land to be removed from the structure or from the immediate vicinity of the structure.
- (4) For the purpose of removing a person under this section:
 - (a) reasonable force may be used, and
 - (b) the assistance of the police may be requested.
- (5) This section does not affect any other power to remove structures or persons from prescribed land.
- (6) It is not necessary for a notice under section 160D, 160E or 160F to have been served, displayed or published before the Minister causes a structure or person to be removed under this section.

160B Forfeiture of unauthorised structures and their contents

- (1) Any property removed under section 160A is forfeited to the Crown on its being so removed.
- (2) The Minister may cause anything so forfeited:
 - (a) to be destroyed, sold or stored, or
 - (b) to be returned to any person considered by the Minister to have been entitled to possess it immediately before it was forfeited.

160C Cost of removing structures and contents

The Minister may recover as a debt due to the Crown any expense incurred under section

160A or 160B:

- (a) from any person who without lawful authority erected or placed or was, immediately before its removal, maintaining the structure concerned on prescribed land or who caused it to be so erected, placed or maintained, or
- (b) from any person who has made use of the structure after the expiration of the period specified in a notice prohibiting use of the structure:
 - (i) served on the person under section 160F, or
 - (ii) displayed on or adjacent to the structure under that section (but, in such a case, only if it is proved that the person knew, or ought reasonably to have known, about the notice).

160D Notice to state interest in structure or contents

- (1) The Minister may cause to be displayed or published a notice requiring any person:
 - (a) who claims to have been authorised to erect, place or maintain a structure that is on prescribed land, or
 - (b) who claims any other interest in such a structure or an interest in its contents,to deliver to the Minister a written statement signed by the person setting out by what authority the person erected or placed, or is entitled to maintain, the structure or by what authority the person claims any other interest in the structure, or an interest in its contents.
- (2) Any such notice shall be:
 - (a) displayed on or adjacent to the structure, or
 - (b) published in a local newspaper or such other newspaper (if any) as the Minister may determine.
- (3) A person who has not delivered such a statement to the Minister within one month after display or publication of the notice has no claim against the Minister or any other person if the structure and its contents (if any) are dealt with under section 160A or 160B.

160E Notice to remove structure

- (1) If the Minister believes on reasonable grounds that a person, without lawful authority, has erected or placed, or is maintaining, a structure that is on prescribed land, the Minister may cause a notice:
 - (a) to be served on the person, or
 - (b) to be displayed on or adjacent to the structure,

requiring the person to remove the structure and its contents (if any) and to rehabilitate within a specified period the land on which the structure is situated.

- (2) A notice relating to a structure may be served or displayed under this section whether or not a notice under section 160D relating to the same structure has been displayed or published.
- (3) A notice under this section may be served:
 - (a) in any case, personally on the person to whom it is directed, or
 - (b) if that person has delivered a statement under section 160D relating to the structure, by post to any address for contacting the person that is provided in the statement.
- (4) The person to whom a notice served or displayed under this section is directed shall, unless the structure to which the notice relates was erected or placed, or is being maintained, with lawful authority by the person:
 - (a) remove the structure and its contents (if any), and
 - (b) rehabilitate the land on which the structure is situated,within such period and in such manner (if any) as are specified in the notice.

Maximum penalty: 20 penalty units and, in the case of a continuing offence, a further penalty of 2 penalty units for each day the offence continues.
- (5) The defendant has the onus of establishing the existence of lawful authority in any proceedings for an offence against this section.

160F Notice prohibiting use of structure

- (1) If the Minister believes on reasonable grounds that a structure that is on prescribed land is being used without lawful authority, the Minister may cause a notice:
 - (a) to be served on the person, prohibiting use after a specified period of the structure by the person, or
 - (b) to be displayed on or adjacent to the structure, prohibiting use after a specified period of the structure by any person.
- (2) Any such notice may be served:
 - (a) in any case, personally on the person to whom it is directed, or
 - (b) if that person has delivered a statement under section 160D relating to the structure, by post to any address for contacting the person that is provided in the statement.

- (3) A person who is prohibited from using a structure by a notice that has been served or displayed under this section shall not, without lawful authority, use the structure after the expiration of the period specified in the notice.

Maximum penalty: 20 penalty units and, in the case of a continuing offence, a further penalty of 2 penalty units for each day the offence continues.

- (4) The defendant has the onus of establishing the existence of lawful authority in any proceedings for an offence against this section.

161 Restriction on release of certain information

- (1) The Director-General may, by notice in writing, advise the Minister that the Director-General is of the opinion that specified documents in the possession of the Service relating to:

(a) the location of threatened species, populations or ecological communities or Aboriginal objects, or

(b) the cultural values of an Aboriginal place or Aboriginal object,

should be withheld in the public interest.

- (2) The Director-General may declare in the notice that information contained in the documents concerned is information for which there is a conclusive presumption of overriding public interest against disclosure for the purposes of the [Government Information \(Public Access\) Act 2009](#).

- (3) The Director-General must not give a notice under this section in relation to documents relating to the location of Aboriginal objects or the cultural values of an Aboriginal place or Aboriginal object unless the Director-General has consulted with the Aboriginal people who the Director-General is aware have an interest in the documents concerned.

161A-162 (Repealed)

163 Application of [Companion Animals Act 1998](#)

Part 7 (Procedures for dealing with seized animals) of the [Companion Animals Act 1998](#) does not apply in respect of an animal seized in a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area by an officer of the Service unless the officer causes the animal to be delivered as provided by section 62 (Seized animals to be returned to owner or taken to council pound) of that Act.

163A (Repealed)

163B Application of certain Acts

- (1) Division 2A (Orders) of Part 6 of the *Environmental Planning and Assessment Act 1979* and Chapter 7 (What are the regulatory functions of councils?) of the *Local Government Act 1993* do not apply to lands reserved or dedicated (other than lands dedicated under section 58U) under this Act.
- (2) This section (except to the extent that it relates to anything authorised by or under the *Snowy Hydro Corporatisation Act 1997*) does not apply to a ski resort area, within the meaning of Part 8A of Schedule 6 to the *Environmental Planning and Assessment Act 1979*.
- (3) An order may not be made under Division 2A of Part 6 of the *Environmental Planning and Assessment Act 1979*, or under Chapter 7 of the *Local Government Act 1993*, that would prevent or hinder the Director-General from or in carrying out any power, authority, duty, function or responsibility conferred or imposed on the Director-General by or under this Act.

164 Powers of entry and seizure

- (1) An authorised officer:
 - (a) may at all times, if he or she suspects on reasonable grounds that an offence against any of the provisions of this Act or the regulations has been or is being committed and that any animal, native plant, Aboriginal object or article in respect of which the suspected offence has been or is being committed or which has been or is being used in connection with the suspected offence is likely to be in or upon any premises or vehicle, on production of the prescribed evidence of his or her authority:
 - (i) stop any such vehicle,
 - (ii) enter and search any such premises or vehicle, and
 - (iii) subject to his or her giving a receipt in the prescribed form seize any such animal, native plant, Aboriginal object (not being real property) or article found therein or thereon together with any books, papers or records relating to the suspected offence and make copies of, or take extracts from, any such papers, books or records,
 - (b) may at all times, on production of the prescribed evidence of his or her authority, enter any premises or vehicle for the purpose of:
 - (i) inspecting any premises registered under section 124, 125 or 128,
 - (ii) inspecting any premises in which fauna are housed or caged under the authority of a licence under section 120 or 125A,

- (iii) inspecting any lands on which protected native plants are grown under the authority of a licence under section 132, or
 - (iv) searching for and inspecting any articles that are being or could be used in contravention of this Act or the regulations, and
 - (b1) may, at all times, on production of the prescribed evidence of authority, enter any premises for the purposes of:
 - (i) identifying and mapping critical habitat, and
 - (ii) inspecting any lands that are the subject of an application for a licence under Part 6 of the *Threatened Species Conservation Act 1995*, and
 - (iii) inspecting any lands that are the subject of proposed development or an activity (within the meaning of the *Environmental Planning and Assessment Act 1979*) and in respect of the grant of development consent or approval to which the Minister or the Director-General has been consulted or is (or is acting as) a concurrence authority in accordance with that Act, and
 - (iv) inspecting any lands for the purpose of investigating the presence or condition of threatened species, populations or ecological communities, and their habitats, for the purposes of the *Threatened Species Conservation Act 1995* or this Act,
 - (c) may, for the enforcement of the provisions of this Act or the regulations, exercise the powers and authority of a constable.
- (2) Subsection (1) does not:
- (a) apply in relation to an offence of a class or description prescribed for the purposes of this subsection,
 - (b) authorise the seizure of a vehicle within the meaning of paragraph (a), (b), (c) or (e) of the definition of **vehicle** in section 5 (1) or any prescribed article, or
 - (c) authorise any person to enter in or upon that portion of a building that is used for residential purposes except with the permission of the occupier or under the authority of a search warrant issued under this section.
- (3) For the purposes of subsection (1) (a) (iii), the authorised officer may direct the occupier of the premises where, or owner of the vehicle on or in which, the animal, native plant, Aboriginal object or article is seized:
- (a) for a specified period (not exceeding 28 days):
 - (i) to retain the animal, native plant, Aboriginal object or article in or on those premises, that vehicle or at another place under the control of the occupier or

owner, and

- (ii) to feed, house or maintain (as appropriate) the animal, native plant, Aboriginal object or article, and
 - (b) on a specified day within that period, deliver to the authorised officer the animal, native plant, Aboriginal object or article.
- (4) The power of seizure under subsection (1) (a) may be exercised without exercising any of the other powers under subsection (1) (a).
- (5) An authorised officer or a police officer may apply to an issuing officer for a search warrant if the authorised officer or police officer believes on reasonable grounds:
- (a) that an offence against a provision of this Act or the regulations has been committed, and
 - (b) that there may be an animal, native plant, Aboriginal object or article in respect of which any such offence has been committed, or which has been used in connection with any such offence, on any premises or vehicle.
- (6) An issuing officer to whom an application is made under subsection (5) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the applicant to enter and search the premises or vehicle.
- (7) A person executing a search warrant issued under this section may exercise the power of seizure under subsection (1) (a).
- (8) Division 4 of Part 5 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) applies to a search warrant issued under this section.
- (9) In this section:

issuing officer means an authorised officer within the meaning of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

165 Persons to deliver up fauna etc when required

- (1) Where an authorised officer suspects on reasonable grounds any person to be committing an offence against any of the provisions of this Act or the regulations, he or she may, on production of the prescribed evidence of his or her authority, require that person to deliver up:
- (a) any animal, native plant, Aboriginal object (not being real property) or article in that person's possession, or which it is within that person's power to deliver up, in respect of which the suspected offence is being committed or which is being used in connection with the suspected offence, or
 - (b) any books, papers or records in that person's possession, or which it is within that

person's power to deliver up, relating to the suspected offence.

- (2) Any such person after being so required shall not fail to deliver up forthwith any animal, native plant, Aboriginal object (not being real property), article, books, papers or records to the Director-General or person requiring him or her so to do.

166 Definition of "article" for secs 164 and 165

- (1) In sections 164 and 165, **article** means prohibited weapon, firearm, explosive, net, trap, hunting device, substance, mixture, preparation, instrument, implement or any other thing.
- (2) A reference in this section to a firearm includes a reference to an imitation firearm within the meaning of the [Firearms Act 1996](#).

167 Disposal of fauna and perishable goods when seized or delivered up

- (1) Where any property seized under section 164 or delivered up under section 165 is fauna or is perishable, it may forthwith be disposed of, by way of sale or otherwise, by an authorised officer.
- (2) The proceeds of any sale under subsection (1) shall be paid into the Fund.
- (3) The payment to a person from the Fund of an amount equal to the proceeds of the sale of any property under subsection (1) operates as a discharge of any obligation to deliver up that property to that person and such a payment in discharge of any such obligation imposed by an order of the court prescribed in relation to the property under section 168 is hereby authorised.
- (4) Without affecting the generality of subsection (1), fauna may be disposed of under subsection (1) by being destroyed or returned to its natural environment.
- (5) When any fauna or perishable property is sold or otherwise disposed of under subsection (1):
 - (a) the buyer obtains the ownership of the fauna or property freed and discharged from any right, interest, trust or obligation to which it was subject immediately before its sale or disposal, and
 - (b) the person who was the owner of the fauna or property immediately before its sale or disposal ceases to have any claim in respect of the fauna or property or any right of action in respect of the sale or disposal except as specifically provided by this Act.
- (6) A person is not prevented from recovering damages from the Crown in respect of the sale or disposal of any fauna or perishable property under subsection (1) if the person establishes that the authorised officer who effected the sale or disposal did not act in good faith or acted without reasonable care.

168 Disposal of property seized or delivered up

(1) Subject to this section, where:

- (a) a person is convicted of an offence against this Act or the regulations,
- (b) property relating to the offence, or in the possession of the offender at the time of the commission of the offence, has been seized under section 164 or delivered up under section 165, and
- (c) any person applies to the court prescribed in relation to the property for an order that the property be delivered to a specified person,

that court may, whether or not it is the court making the conviction, make such an order.

(2) Subject to this section, where:

- (a) property has been seized under section 164 or delivered up under section 165, and
- (b) proceedings for an offence (being an offence on or after a conviction for which an order could be made under subsection (1) in respect of the property):
 - (i) have not been commenced within 2 years after the seizure or delivering up of the property, or
 - (ii) have been dismissed by a court,

the court prescribed in relation to the property (whether or not it is the court dismissing the proceedings in the case of property relating to proceedings referred to in paragraph (b) (ii)) may, on the application of any person, order that the property be delivered to a specified person.

(3) An application for an order under subsection (1) may be made at the time of the conviction referred to in that subsection if the court making the conviction is the court prescribed in relation to the property to which the application relates.

(4) An application for an order under subsection (1) or (2) may not be made:

- (a) in the case of an application for an order under subsection (1)—later than 1 month after the conviction referred to in that subsection, or
- (b) in the case of an application for an order under subsection (2) (b) (i)—later than 3 months after the expiration of the period of 2 years referred to in that subparagraph, or
- (c) in the case of an application for an order under subsection (2) (b) (ii)—later than 1 month after the date on which the proceedings were dismissed.

- (5) Where property has been seized under section 164 or delivered up under section 165 and:
- (a) no application for an order under subsection (1) or (2) has been duly made, or
 - (b) such an application has been duly made and such an order has been refused,
- the property the subject of the application and, where the property has been sold under section 167, the proceeds of the sale, shall be deemed to have been forfeited.
- (6) For the purposes of this section:
- (a) the value of any property sold under section 167 is an amount equal to the amount of the net proceeds of sale, and
 - (b) the court prescribed in relation to any property is such court as would, if the value of the property were the amount of a debt, be a court of competent jurisdiction for the recovery of that debt.
- (7) An order shall not be made by a court under this section in relation to fauna seized or delivered up in connection with an offence under section 102 unless the court is satisfied that the fauna will be adequately cared for by the person to whom the fauna is to be delivered under the order.
- (8) An order shall not be made by a court under this section in relation to fauna that has been destroyed or returned to its natural environment under section 167, but if the order is nevertheless made, it does not have any effect.

169 Impersonating, assaulting, resisting or obstructing an officer etc

- (1) A person shall not impersonate the Director-General, any other officer of the Service, an ex-officio ranger, honorary ranger or officer of the Jenolan Caves Reserve Trust.
- (2) A person shall not:
- (a) assault, threaten, resist, delay, hinder, obstruct or use abusive language to, or
 - (b) incite or encourage any other person to assault, threaten, resist, delay, hinder, obstruct or use abusive language to,
- the Director-General, any other officer of the Service, an ex-officio ranger, honorary ranger or officer of the Jenolan Caves Reserve Trust, in the exercise of any of his or her powers, authorities, duties or functions under this Act or the regulations, the [Wilderness Act 1987](#) or regulations under that Act or the [Threatened Species Conservation Act 1995](#) or the regulations under that Act.
- Maximum penalty: 200 penalty units or 3 months imprisonment, or both.
- (3) Without affecting the generality of subsection (2) (a), a person shall not, upon a

request for information or other reasonable assistance being made by the Director-General, any other officer of the Service, an ex-officio ranger, honorary ranger or officer of the Jenolan Caves Reserve Trust in the exercise of any powers, authorities, duties or functions under this Act or the regulations, the *Wilderness Act 1987* or regulations under that Act or the *Threatened Species Conservation Act 1995* or the regulations under that Act, refuse to give the information or other assistance requested or knowingly give any information that is false or misleading in a material particular.

(4) A person shall not incite or encourage another person to contravene subsection (3).

170 Corruption

A person shall not, without lawful authority, offer, make or give to an officer of the Service, an ex-officio ranger, honorary ranger or officer of the Jenolan Caves Reserve Trust any payment, gratuity or present in consideration that the officer or ranger will do or omit to do any act or thing pertaining to his or her powers, authorities, duties or functions as such an officer or ranger.

Maximum penalty: 10 penalty units or imprisonment for 1 year or both.

171 Authority to harm or pick

(1) The Director-General may authorise any person:

(a) to harm:

- (i) animals within a national park, historic site, nature reserve, karst conservation reserve, state conservation area, regional park, Aboriginal area, wildlife refuge or conservation area, or
- (ii) protected fauna outside a park, site, reserve, area or refuge referred to in subparagraph (i), other than fauna that are not the property of the Crown,

(b) to fell, cut, destroy, injure, remove or set fire to any tree, timber or vegetation within a nature reserve or karst conservation reserve, or

(c) to pick or have in the person's possession any native plant within a nature reserve or karst conservation reserve.

(1A) The Director-General may, in an authority given under subsection (1) or in another instrument served on the person to whom the authority is given, limit the kinds or numbers of animals, trees, timber, vegetation or native plants with respect to which an authority has effect.

(1B) An authority under subsection (1) authorising game birds to be harmed does not extend to the harming of game birds for sporting or recreational purposes. However, an authority can authorise a sporting or recreational shooter to harm game birds for

any other specified lawful purpose.

- (2) A person shall not be convicted of an offence against this Act if the person proves that the act constituting the offence was done, or the state of affairs constituting the offence existed, under the authority of the Director-General under this section.
- (3) For the purposes of this Act, the Director-General shall be deemed to be authorised under subsection (1) with respect to all animals, and all trees, timber, vegetation and native plants, to which that subsection relates or may relate.
- (4) Except in so far as the Director-General otherwise directs, the Director-General's authorisation of a person under subsection (1) also authorises that person to do, in connection with the authorised activity, any act referred to in section 45 (1) or 56 (1).
- (5) Subsection (1) (a) (i) does not apply with respect to an animal that is not the property of the Crown unless the animal apparently has no owner and is not under control or unless an officer of the Service believes on reasonable grounds that the animal is endangering, or likely to endanger, any other animals or any persons or property within the park, site, reserve, area or refuge referred to in subsection (1) (a) (i).
- (6) Nothing in this section affects the provisions of section 155 (2) (bb).

172 Police officers

A police officer shall not be convicted of an offence against this Act in respect of an act done in pursuance of or as part of his or her duties as a police officer.

173 (Repealed)

174 Service of notices

Any notice given under or for the purposes of this Act or the regulations may, unless otherwise specially provided, be given in any one of the following ways:

- (a) personally to the person to whom the notice is addressed, or
- (b) by letter sent through the post by mail and directed to the last known residential or business address of the person to whom the notice is addressed, or
- (c) by sending it by facsimile or electronic transmission (including for example the Internet) to the person in accordance with arrangements indicated by the person as appropriate for transmitting documents to the person.

175 General offence and penalties

- (1) A person who:
 - (a) does that which by this Act (Parts 2, 3 and 5 excepted) the person is forbidden to do, or

(b) fails or neglects to do that which by this Act (Parts 2, 3 and 5 excepted) the person is required or directed to do,

is guilty of an offence against this Act.

- (2) A person guilty of an offence against this Act, whether pursuant to subsection (1) or otherwise, is, where no other penalty is prescribed, liable to a penalty not exceeding 100 penalty units, in the case of an individual, or 200 penalty units in the case of a corporation.

175A Offences by directors or managers of corporations

- (1) If a person contravenes any provision of this Act or the regulations:
- (a) while acting in the capacity of a director, a person concerned in the management, or an employee or an agent, of a corporation, or
 - (b) at the direction or with the consent or agreement (whether express or implied) of such a director, person, employee or agent,
- the corporation shall be taken to have contravened the same provision.
- (2) A corporation may be proceeded against and convicted under a provision pursuant to subsection (1), whether or not the director, person, employee or agent has been proceeded against or convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a person for an offence committed by the person against this Act or the regulations.

175B Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision, unless the person satisfies the court that:
- (a) (Repealed)
 - (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
 - (c) the person, if in such a position, used all due diligence to prevent the contravention by the corporation.
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence

committed by the corporation against this Act or the regulations.

- (4) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.
- (5) In this section, the **state of mind** of a person includes:
 - (a) the knowledge, intention, opinion, belief or purpose of the person, and
 - (b) the person's reasons for the intention, opinion, belief or purpose.

176 (Renumbered as sec 189)

176A (Renumbered as sec 193)

176B Ancillary offences

A person who:

- (a) aids, abets, counsels or procures another person to commit, or
- (b) attempts to commit, or
- (c) conspires to commit,

an offence under another provision of this Act or the regulations is guilty of an offence under that other provision and is liable, on conviction, to the same penalty applicable to an offence under that other provision.

177 (Repealed)

178 Recovery of charges

- (1) Any charge, fee or money recoverable by the Director-General or an officer of the Service under the provisions of this Act or the regulations may be recovered as a debt or liquidated demand in a court of competent jurisdiction.
- (2) The amount of any royalty due and payable under this Act or the regulations and unpaid may be recovered as a debt due to the Director-General from the person liable to pay that amount in a court of competent jurisdiction.
- (3) (Repealed)

179 (Renumbered as sec 191)

180 Continuance of authority

Any person duly authorised by the Director-General under any section of this Act to do any act or thing or take any proceedings shall continue to be so authorised notwithstanding

that the Director-General who authorised that person has ceased to hold office as Director-General, but any such authority may be cancelled at any time by the person for the time being occupying the office of Director-General.

181 (Renumbered as sec 197)

182 Morton National Park

(1) In this section:

Authority means the Sydney Catchment Authority.

Park means Morton National Park.

(2) The following provisions shall apply to and in respect of the Park:

(a) the Authority may continue and complete surveys and investigations for determining the location of a dam for water supply purposes and of a reservoir and ancillary works in connection therewith including pipelines and power lines, situated wholly or partly within the Park,

(b) the site of the dam and of the reservoir and ancillary works shall be determined by agreement between the Minister and the Authority,

(c) where the site has been so determined, the Governor may, notwithstanding section 37, by notification published in the Gazette:

(i) revoke the reservation of the Park as to so much of the lands reserved as are within that site, and

(ii) declare those lands to be vested in the Authority,

and thereupon those lands shall vest in the Authority, and

(d) the Minister may, from time to time, grant to the Authority such easements and licences over lands within the Park for pipelines, power lines and other purposes as may be necessary for or in connection with the use and operation of the dam and reservoir and ancillary works.

(3) Anything done under or for the purposes of section 21 (2) of the Act of 1967 shall be deemed to have been done under or for the purposes of this section.

183 Macquarie Pass National Park

(1) In this section:

Commission means the Water Resources Commission.

Park means Macquarie Pass National Park.

- (2) The following provisions shall apply to and in respect of the Park:
- (a) the Commission may continue and complete surveys and investigations for determining the location of a dam for domestic, stock and irrigation purposes and ancillary works in connection therewith including pipelines and power lines, situated wholly or partly within the Park,
 - (b) the site of the dam and ancillary works shall be determined by agreement between the Minister and the Commission, and
 - (c) the Minister may, from time to time, upon such terms as the Minister thinks fit grant to the Commission such easements and licences over lands within the Park for pipelines, power lines and other purposes as may be necessary for or in connection with the use and operation of the dam and ancillary works.
- (3) Anything done under or for the purposes of section 21 (3) of the Act of 1967 shall be deemed to have been done under or for the purposes of this section.

184 Bouddi National Park

- (1) The Governor may, by proclamation published in the Gazette, declare that this section applies to such of the lands comprised in Bouddi National Park as are described in the proclamation.
- (2) Upon the publication of the proclamation under subsection (1), the lands described in the proclamation shall cease to be part of Bouddi National Park and shall be deemed to have been reserved as a national park.
- (3) Without affecting the generality of section 36, a reference in that section to a proclamation includes a reference to the proclamation under subsection (1).

184A RMS roads within Kosciuszko National Park

- (1) In this section:

RMS means Roads and Maritime Services constituted under the [Transport Administration Act 1988](#).

the excised land means land in the lots described in Schedule 16.

Note—

The plans referred to in Schedule 16 were, when this section commenced, held at the RTA Property and Land Information Branch, Centennial Plaza, Elizabeth Street, Sydney. It is intended that the plans will be registered as deposited plans.

- (2) On the commencement of this section:
- (a) the reservation under this Act of the excised land as part of Kosciuszko National Park is revoked, and

- (b) the excised land vests in RMS for an estate in fee simple, freed and discharged from any trusts, obligations, estates, interests and rights-of-way or other easements existing immediately before its vesting.
- (3) Without affecting the generality of subsection (2), any lease or sublease of, or licence relating to, any land that consisted of or included excised land immediately before the vesting of the excised land by this section does not apply to the excised land after the vesting, but is not otherwise affected by the vesting.
- (4) Persons authorised in that behalf by RMS may enter (and remain for as long as may reasonably be necessary on) land adjoining or adjacent to excised land, with or without vehicles, plant and equipment, after giving reasonable notice to the Director-General and any lessee or sublessee (or, in an emergency, without notice), for the purpose of:
 - (a) inspecting, building, rebuilding, repairing or maintaining roads on the excised land and ancillary infrastructure (such as drainage works) on the excised land or the adjoining or adjacent land, or
 - (b) inspecting, placing, replacing, removing, repairing, maintaining or augmenting devices on the adjoining or adjacent land that measure hydrological features or land movement relating to use of the excised land for the purpose of roads.
- (5) Despite any lease or licence entered into before or after the commencement of this section, any such ancillary infrastructure or device (whether or not a fixture) placed on the adjoining or adjacent land before or after the commencement of this section by a person authorised by RMS:
 - (a) is the property of RMS, and
 - (b) without giving rise to an action in nuisance, may remain and be used on that land.
- (6) No compensation is payable by the Minister, RMS or any lessee, sublessee or licensee, or by any person claiming through any lessee, sublessee or licensee, as a consequence of the operation of subsection (2), (3), (4) or (5).
- (7) For the purposes only of provisions of this Act and the regulations (including provisions relating to the control of traffic) that are necessary for park management purposes and the collection of fees for park use, the excised land is taken to be reserved as part of Kosciuszko National Park.
- (8) Subsection (7) does not have the effect of:
 - (a) preventing or restricting the carrying out of development for the purpose of roads on the excised land by or on behalf of RMS, or
 - (b) restricting the operation of the road transport legislation with respect to roads or road related areas within the meaning of the [Road Transport \(General\) Act 2005](#) or

the operation of the *Roads Act 1993* with respect to public roads, or

- (c) authorising the erection of any device if the erection of the device is inconsistent with a function exercisable under the *Road Transport (Safety and Traffic Management) Act 1999* with respect to roads or road related areas within the meaning of that Act or under the *Roads Act 1993* with respect to public roads.
- (9) This section does not operate to extinguish any native title rights and interests, within the meaning of the *Native Title Act 1993* of the Commonwealth, existing in relation to the excised land before its vesting by this section.
- (10) However, this section does not affect any extinguishment of native title rights and interests by the operation of the *Native Title Act 1993* of the Commonwealth or the *Native Title (New South Wales) Act 1994*.

185 Catchment areas and special areas

- (1) In this section, **the Acts** means the *Sydney Water Act 1994*, the *Sydney Water Catchment Management Act 1998*, the *Hunter Water Act 1991* and the *Water Management Act 2000*.
- (2) Nothing in this Act affects the operation of any of the provisions of any of the Acts in relation to lands within a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area, in so far as those provisions relate to catchment areas or special areas.
- (3) Without affecting the generality of subsection (2), nothing in this Act:
 - (a) affects, or affects the operation of, any order or regulation under any of the Acts relating to a catchment area or special area and in force at the time of the reservation of any lands as, or as part of, a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area, being lands to which the order or regulation relates, or
 - (b) affects the power of the Governor to make any order or regulation under any of the Acts in relation to any lands within a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area.
- (4) Despite any other provision of this Act, a lease, licence, easement or right of way must not be granted under this Act in respect of any land within a special area within the meaning of:
 - (a) the *Sydney Water Catchment Management Act 1998*, except with the concurrence of the Sydney Catchment Authority, or
 - (b) the *Hunter Water Act 1991*, except with the concurrence of the Hunter Water Corporation and the Director-General.

- (5) Notwithstanding subsection (2) or (3) or any provision of any of the Acts, neither the Sydney Water Corporation nor the Sydney Catchment Authority nor the Hunter Water Corporation nor the Director-General of the Department of Land and Water Conservation shall, except with the concurrence in writing of the Director-General, undertake or arrange for the cutting and marketing of timber of commercial value on lands within a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area that are also lands within a catchment area or special area.

185A Special areas under the [Hunter Water Act 1991](#)

- (1) This section applies to land that:
- (a) is reserved as a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area, and
 - (b) is wholly or partly within a special area within the meaning of the [Hunter Water Act 1991](#).
- (2) Except as provided by this section, nothing in any provision of, or made under, this Act prevents or prohibits, or requires authorisation for, development for the purpose of the extraction, treatment, reticulation or replenishment of groundwater if the development is:
- (a) carried out, by or on behalf of the Hunter Water Corporation, on land to which this section applies, and
 - (b) authorised or permitted under the [Environmental Planning and Assessment Act 1979](#) (whether before, on or after the commencement of this section).
- (3) Subsection (2) extends to:
- (a) development for the purpose of any pumping station, or other infrastructure, that is connected with or incidental to the extraction, treatment, reticulation or replenishment of groundwater, or
 - (b) development for the purpose of the installation, replacement or maintenance of sealed sewerage pipes and of pumps, and the use of those pipes and pumps for conveying sewage (but not any other development for the purpose of sewage discharge or treatment).
- (4) For the avoidance of doubt, a lease, licence to occupy or use, or an easement or right of way through, on or in, land to which this section applies is not required to enable development to be carried out in accordance with this section.
- (5) Development carried out in accordance with this section may be carried out despite any plan of management applying to the land to which this section applies. However, no operations (including any development) are to be carried out on that land, on or

after the adoption of any such plan prepared by the Director-General (or a local council) and the Chief Executive Officer of the Hunter Water Corporation as referred to in section 75, unless the operations are in accordance with the plan.

- (6) If an environmental planning instrument provides that development referred to in subsection (2) is permitted on the land to which this section applies if it is authorised under this Act, the development is taken to be authorised under this Act if it is otherwise authorised or permitted under the *Environmental Planning and Assessment Act 1979*.
- (7) Without affecting the generality of section 185, nothing in any provision of, or made under, this Act affects a prohibition or restriction imposed by or under the *Hunter Water Act 1991* or the *Water Management Act 2000* in its application to the land to which this section applies.
- (8) For the avoidance of doubt, this section prevails over section 47I.
- (9) In this section:

development has the same meaning as it has in the *Environmental Planning and Assessment Act 1979* and includes an activity within the meaning of Part 5 of that Act.

environmental planning instrument has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*.

186 Requirement for examination

- (1) The Minister shall not grant:
 - (a) an approval under section 39 (3) or 47H (3),
 - (b) a concurrence under section 40 (2), 41 (4), 44 (2) or 47J (3) or (4),
 - (c) a lease of lands or licence under section 151 (1) or 153B (2),
 - (d) a franchise under section 152 (3), or
 - (e) an easement or right of way under section 153 (1) or 153B (2),except after the fullest examination.
- (2) The Director-General shall not grant:
 - (a) a concurrence under section 53 (2) or 185 (5), or
 - (b) a licence under section 152 (1),except after the fullest examination.
- (3) Subsection (1) extends to:

- (a) an approval under section 39 (3), and
- (b) a concurrence under section 41 (4) or 44 (2),

as applied by this Act to state conservation areas, regional parks, nature reserves, karst conservation reserves or Aboriginal areas.

187 Administration of existing interests in reserved land

- (1) In this section, **existing interest** means a lease, licence, permit, authority, authorisation or occupancy under the *Forestry Act 1916*, the *Crown Lands Act 1989*, the *Crown Lands (Continued Tenures) Act 1989* or the *Western Lands Act 1901*:
 - (a) in relation to land reserved under this Act immediately before the commencement of this section—in force on that commencement, or
 - (b) in relation to land reserved under this Act on or after the commencement of this section—in force at the date on which the land was so reserved.
- (2) The administration of matters relating to existing interests, to the extent that those interests affect any land reserved under this Act, is vested in the Minister.
- (3) For the purposes of subsection (2), the Minister has:
 - (a) in respect of existing interests under the *Forestry Act 1916*, the powers of the Minister administering that Act and of the Forestry Commission, and
 - (b) in respect of existing interests under the *Crown Lands Act 1989*, the powers of the Minister administering that Act, and
 - (c) in respect of existing interests under the *Crown Lands (Continued Tenures) Act 1989*, the powers of the Minister administering that Act, and
 - (d) in respect of existing interests under the *Western Lands Act 1901*, the powers of the Minister administering that Act and of the Western Lands Commissioner.

188 Administration of existing telecommunications interests

- (1) In this section:

broadcasting or telecommunications facility means a facility used for the purpose of providing broadcasting services within the meaning of the *Broadcasting Services Act 1992* of the Commonwealth, or a facility within the meaning of the *Telecommunications Act 1997* of the Commonwealth:

- (a) the use of which is authorised under the *Forestry Act 1916*, the *Crown Lands Act 1989*, the *Crown Lands (Continued Tenures) Act 1989* or the *Western Lands Act 1901*, or
- (b) that was lawfully constructed under Commonwealth legislation and exempted at

the time of construction under that legislation from the requirement for authorisation under State legislation.

existing facility means a broadcasting or telecommunications facility situated on land reserved under this Act and in existence on the relevant date.

relevant date means, in relation to a broadcasting or telecommunications facility:

(a) if the land on which the facility is situated was reserved under this Act immediately before the commencement of this section—the date of that commencement, or

(b) if the land on which the facility is situated is reserved under this Act on or after the commencement of this section—the date on which the land was so reserved.

- (2) At the request of a person who is the owner of an existing facility, the Minister may grant the person a lease or licence under this section for the purposes of enabling the facility to be used and maintained.
- (3) The Minister may grant a lease or licence under this section in respect of an existing facility to which paragraph (b) of the definition of **broadcasting or telecommunications facility** in subsection (1) applies only if the facility is no longer exempt from the requirement to be authorised under State legislation at the date of the grant of the lease or licence.
- (4) On the grant of a lease or licence under this section in respect of an existing facility, any authorisation referred to in paragraph (a) of the definition of **broadcasting or telecommunications facility** in subsection (1) in respect of the facility is revoked.
- (5) Any lease or licence granted under this section is subject to such terms and conditions as the Minister may determine.
- (6) This section does not limit section 187.

188A General exemption for officers enforcing the Act or the regulations

The following persons are not guilty of an offence under this Act or the regulations only because of something done by the person while exercising a function in relation to determining whether there has been compliance with or a contravention of this Act or the regulations:

- (a) an authorised officer,
- (b) an officer of the Service.

188B Non-application of section 138 of [Roads Act 1993](#)

Section 138 of the [Roads Act 1993](#) does not apply to anything done under a provision of this Act in relation to a road that is, or is on, land reserved under this Act.

188C Adjustment of boundaries of reserved and acquired lands

- (1) This section applies to the following land:
 - (a) land reserved under this Act,
 - (b) land acquired under Part 11.
- (2) The boundary of any land to which this section applies that adjoins a public road may be adjusted from time to time to enable the boundary to follow the formed path of the road or to provide an appropriate set back from the carriageway of the formed path of the road.
- (3) An adjustment of the boundary of land is to be made by the Director-General by a notice published in the Gazette.
- (4) A notice under this section may only be published with the approval of:
 - (a) the Minister, and
 - (b) to the extent that the notice applies to any Crown road—the Minister administering the *Crown Lands Act 1989*, and
 - (c) to the extent that the notice applies to a classified road—the Minister administering the provisions of the *Roads Act 1993* relating to classified roads, and
 - (d) to the extent that the notice applies to land that is reserved under Part 4A—the relevant board of management.
- (5) The Director-General is required to certify in any notice under this section that the adjustments effected by the notice will not result in any significant reduction in the size or value of land reserved under this Act.
- (6) The Director-General may, in a notice published under this section, declare that:
 - (a) any such land (described in the notice) is part of the public road concerned and, accordingly, is vested in the roads authority for that public road under the *Roads Act 1993*, or
 - (b) any such land (described in the notice) ceases to be part of that public road and, accordingly, is divested from the relevant roads authority and becomes part of the land subject to the provisions of this Act that adjoins that land.

A declaration under this subsection has effect according to its tenor, despite anything to the contrary in the *Roads Act 1993*.
- (7) Nothing in this section permits the adjustment of the boundary of any land acquired under Part 11 if it would contravene any condition of a gift or an agreement by or under which the land had been acquired.

(8) In this section:

appropriate set back, in relation to a carriageway of a road, includes a set back that allows for drainage, signposts, traffic control devices, lighting and other supporting infrastructure for the road.

classified road, **Crown road** and **public road** have the same meanings as in the [Roads Act 1993](#).

land adjoining a public road includes land in the vicinity of a public road.

188D Provisions relating to certain existing access roads on National Park Estate lands

- (1) **Maintenance and improvement works** The Director-General may authorise work to be carried out for the maintenance or improvement of an access road.
- (2) Work authorised under this section may only be carried out to enable the access road to continue to be used for the purposes for which the road was used before land on which the road is situated was vested in the Minister.
- (3) Such maintenance and improvement work may be carried out even if it involves ancillary work on reserved land that adjoins the land on which the access road is situated.
- (4) The carrying out of work authorised under this section is not a contravention of this Act or the regulations.
- (5) **Determination of width of existing access roads** At the time an exclusion order is made, the Minister may, by order published in the Gazette, determine a width (not being a width greater than 30 metres) for an access road that is to be excluded from reservation under this Act by the exclusion order.

Note—

Under the various provisions relating to access roads on National Park Estate lands, certain access roads were vested in the Minister as land acquired under Part 11 and not reserved under this Act. These provisions require the Minister to determine within specified times whether those access roads are to be excluded from reservation (and remain as land acquired under Part 11) or included in the reserved lands surrounding them.

- (6) An order under subsection (5) may:
 - (a) be made only with the concurrence of the Minister administering the [Forestry Act 1916](#), and
 - (b) be made by the same order that constitutes the exclusion order concerned, and
 - (c) only be made if the Minister has determined it is appropriate after considering:
 - (i) the objects of this Act, and
 - (ii) whether a road of the determined width is necessary to provide access to land

in the vicinity of the road or to provide an appropriate set back (within the meaning of section 188C) from the carriageway of the road.

(7) On the making of an order under subsection (5):

- (a) land of the determined width that follows the centreline of the access road (as it existed before the order was made) vests, if it is not already vested, in the Minister on behalf of the Crown for the purposes of Part 11 of this Act for an estate in fee simple, freed and discharged from:
 - (i) all trusts, obligations, estates, interests, rights of way or other easements, and
 - (ii) any dedication, reservation, Crown grant or vesting to which the land is subject, and any such dedication, reservation, grant or vesting is revoked, and
- (b) the land referred to in paragraph (a) is taken to be an access road and may continue to be used for the purposes for which it was used immediately before the making of the order, and
- (c) if any land was vested in the Minister by virtue of being an access road, but is not covered by the land referred to in paragraph (a), the land is reserved as part of the reserved land within which it is situated.

(8) Subsection (7) (a) (i) does not apply in relation to a right of way granted under section 20A of the *Forestry Act 1916* that is taken to have continued in force (as if it were granted under section 149 or 153 of this Act) by clause 8 (11) of Schedule 7 to the *National Park Estate (Southern Region Reservations) Act 2000*.

(9) **Definitions** In this section:

access road means an access road to which any of the following provisions apply:

- (a) clause 5 of Schedule 9 to the *Brigalow and Nandewar Community Conservation Area Act 2005*,
- (b) clause 7 of Schedule 7 to the *Forestry and National Park Estate Act 1998*,
- (c) clause 5 of Schedule 7 to the *National Park Estate (Lower Hunter Region Reservations) Act 2006*,
- (d) clause 7 of Schedule 8 to the *National Park Estate (Reservations) Act 2002*,
- (e) clause 6 of Schedule 5 to the *National Park Estate (Reservations) Act 2003*,
- (f) clause 5 of Schedule 6 to the *National Park Estate (Reservations) Act 2005*,
- (g) clause 8 of Schedule 7 to the *National Park Estate (Southern Region Reservations) Act 2000*,

(h) clause 5 of Schedule 8 to the *National Park Estate (South-Western Cypress Reservations) Act 2010*,

(i) clause 5 of Schedule 9 to the *National Park Estate (Riverina Red Gum Reservations) Act 2010*.

exclusion order means an order under any of the following provisions that excludes an access road from reservation under this Act:

(a) clause 5 (5) of Schedule 9 to the *Brigalow and Nandewar Community Conservation Area Act 2005*,

(b) clause 7 (5) of Schedule 7 to the *Forestry and National Park Estate Act 1998*,

(c) clause 5 (7) of Schedule 7 to the *National Park Estate (Lower Hunter Region Reservations) Act 2006*,

(d) clause 7 (6) of Schedule 8 to the *National Park Estate (Reservations) Act 2002*,

(e) clause 6 (7) of Schedule 5 to the *National Park Estate (Reservations) Act 2003*,

(f) clause 5 (7) of Schedule 6 to the *National Park Estate (Reservations) Act 2005*,

(g) clause 8 (6) of Schedule 7 to the *National Park Estate (Southern Region Reservations) Act 2000*,

(h) clause 5 (7) of Schedule 8 to the *National Park Estate (South-Western Cypress Reservations) Act 2010*,

(i) clause 5 (7) of Schedule 9 to the *National Park Estate (Riverina Red Gum Reservations) Act 2010*.

188E Continuing effect of notices, directions and conditions of licences and permits

- (1) A notice or direction given, or a condition of a licence or permit imposed, under this Act or the regulations that specifies a time by which, or period within which, the notice, direction or condition must be complied with continues to have effect until the notice, direction or condition is complied with even though the time has passed or the period has expired.
- (2) A notice or direction, or a condition of a licence or permit, that does not specify a time by which, or period within which, the notice, direction or condition must be complied with continues to have effect until the notice, direction or condition is complied with.
- (3) This section does not apply to the extent that any requirement under a notice or direction, or a condition of a licence or permit, is revoked.
- (4) Nothing in this section affects the enforcement of a notice or direction or a condition of a licence or permit.

188F Public register

- (1) The Director-General is to establish and keep a public register in accordance with this section.
- (2) The register is to contain the following:
 - (a) details of each application for an Aboriginal heritage impact permit made to the Director-General,
 - (b) details of each decision of the Director-General made in respect of any such application,
 - (c) details of each Aboriginal heritage impact permit issued by the Director-General,
 - (d) details of each variation of an Aboriginal heritage impact permit (including the conditions of any permit),
 - (e) details of each decision to suspend, revoke or approve the surrender of any such Aboriginal heritage impact permit (including details of any conditions to which it is subject),
 - (f) details of each Aboriginal place declared under section 84,
 - (g) details of each remediation direction under Division 3 of Part 6A given by the Director-General,
 - (h) details of convictions in prosecutions under this Act or the *Threatened Species Conservation Act 1995*,
 - (i) the results of civil proceedings before the Land and Environment Court under this Act or the *Threatened Species Conservation Act 1995*,
 - (j) details of such other matters as are prescribed by the regulations (relating to matters under or relevant to this Act or the *Threatened Species Conservation Act 1995*).
- (3) The register may be kept in any form determined by the Director-General. Different parts of the register may be kept in different forms.
- (4) The regulations may authorise the removal from the register of any matter concerning applications that were not granted, or permits or directions that are no longer in force.
- (5) For the purposes of this section, **details** of a matter means:
 - (a) particulars of the matter, or
 - (b) a copy of the matter, or
 - (c) any electronic or other reproduction of the matter.

188G Public availability of register

- (1) A copy of the public register is to be available for public inspection at the head office of the Department and at such other places as the Director-General thinks fit.
- (2) An extract of the register may be obtained by members of the public from the Director-General.
- (3) The regulations may prescribe any or all of the following:
 - (a) the means by which the register can be inspected,
 - (b) the hours when the register can be inspected and when extracts can be obtained,
 - (c) fees for the inspection of the register,
 - (d) fees for extracts of the register.
- (4) The register can be inspected or extracts can be obtained during ordinary office hours, and on payment of fees determined by the Director-General, in the absence of regulations prescribing these matters.

Note—

Access to information may be limited by the operation of section 161 of this Act.

Part 15 Criminal and other proceedings

Division 1 Proceedings for offences generally

189 Proceedings for offences

- (1) Proceedings for an offence under this Act or the regulations may be dealt with:
 - (a) summarily before the Local Court, or
 - (b) summarily before the Land and Environment Court.

(1AA), (1BB) (Repealed)

(1A) The maximum pecuniary penalty that the Local Court may impose in respect of an offence against this Act or the regulations is 200 penalty units (including any daily penalty, any additional penalty as provided by section 98, 99, 118 or 118A or any further penalty for a second or subsequent offence) or the maximum penalty provided by this Act or the regulations in respect of the offence, whichever is the lesser.

(1B) (Repealed)

- (2) Where the penalty is a daily penalty it may be recovered either under a separate court attendance notice, summons or application for each day or under a court

attendance notice, summons or application for the sum of the daily penalties.

- (3) Where any person is convicted of an offence against this Act or the regulations and the Judge or Magistrate before whom the person was convicted makes an order under the *Criminal Procedure Act 1986* for the payment by the defendant of costs, those costs shall be paid into the Fund.

190 Time within which proceedings may be commenced

- (1) Proceedings for an offence under this Act or the regulations may be commenced:
- (a) within but not later than 2 years after the date on which the offence is alleged to have been committed, or
 - (b) within but not later than 2 years after the date on which evidence of the alleged offence first came to the attention of any authorised officer.
- (2) If subsection (1) (b) is relied on for the purpose of commencing proceedings for an offence, the court attendance notice, summons or application must contain particulars of the date on which evidence of the offence first came to the attention of any authorised officer and need not contain particulars of the date on which the offence was committed. The date on which evidence first came to the attention of any authorised officer is the date specified in the court attendance notice, summons or application, unless the contrary is established.
- (3) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.
- (4) In this section, **evidence** of an offence means evidence of any act or omission constituting the offence.

191 Authority to take proceedings

- (1) Subject to subsection (1A), any legal proceedings for an offence against, or to recover any charge, fee or money due under, this Act or the regulations or the *Threatened Species Conservation Act 1995* or the regulations under that Act may only be taken by a police officer, the Director-General or by a person duly authorised by the Director-General in that behalf, either generally or in any particular case.
- (1A) Proceedings for an offence under this Act may be instituted in the Land and Environment Court in its summary jurisdiction only by the following persons:
- (a) the Director-General,
 - (b) an officer of the Service authorised by the Director-General for the purposes of this section.
- (2) In any proceedings referred to in this section the production of an authority purporting

to be signed by the Director-General shall be evidence of the authority without proof of the Director-General's signature.

Division 2 General provisions

192 Penalty notice for certain offences

Editorial note—

See also Part 3 of the *Fines Act 1996*.

(1) In this section:

owner has the same meaning as in section 159.

prescribed offence means an offence prescribed for the purposes of this section and includes a parking offence within the meaning of section 159.

prescribed person means:

- (a) a police officer, or
- (b) an officer of the Service, or
- (b1) the Chairperson of the Environment Protection Authority, or
- (b2) a member of staff of the Office of the Environment Protection Authority, or
- (c) a person, or a person belonging to a class of persons, prescribed for the purposes of this section.

(1A) In this section, a reference to this Act or the regulations includes a reference to the *Threatened Species Conservation Act 1995* or the regulations made under that Act.

(2) Where it appears to a prescribed person that any other person has committed any prescribed offence against this Act or the regulations or is, by virtue of section 159, guilty of such an offence, the prescribed person may serve a notice on that other person to the effect that, if that other person does not desire to have the matter determined by a court, he or she may pay to a person specified in the notice at the place and within the time so specified the amount of the penalty prescribed for the offence if dealt with under this section.

(3) A notice under subsection (2) may be served:

- (a) where the offence is a parking offence within the meaning of section 159 or an offence of which a person is guilty by virtue of that section:
 - (i) in the manner provided by section 174, or
 - (ii) by addressing the notice to the owner of the vehicle to which the offence

relates, without naming that owner or stating his or her address, and leaving it on, or attaching it to, the vehicle, or

- (b) in any other case—in the manner provided by section 174.
- (4) Where the amount of penalty prescribed for an alleged offence is paid pursuant to this section, no person shall be liable for any further proceedings for the alleged offence.
- (5) Payment of a penalty pursuant to this section is not an admission of liability for the purpose of any action or proceedings and does not in any way affect or prejudice any civil claim, action or proceedings arising out of the same occurrence.
- (6) The regulations may:
- (a) prescribe an offence as a prescribed offence for the purposes of this section by specifying the offence or by reference to the provision creating the offence,
 - (b) prescribe the amount of penalty payable under this section for each prescribed offence, and
 - (c) for the purposes of this section, prescribe different amounts of penalties for different offences or classes of offences, or for offences or classes of offences having regard to the circumstances thereof.
- (7) No amount of penalty prescribed under this section for any offence shall exceed any maximum amount of penalty which could be imposed for the offence by a court.
- (8) The provisions of this section are supplemental to, and do not derogate from, any other provisions of this or any other Act in relation to proceedings that may be taken in respect of prescribed offences.
- (9) A prescribed person belonging to the same class of prescribed person as the person by whom a penalty notice has been served:
- (a) may withdraw the notice within 28 days after the date on which the notice was served, and
 - (b) must withdraw the notice immediately if directed to do so by the Director-General.
- (10) The following provisions have effect in relation to an alleged offence if a penalty notice for the alleged offence is withdrawn in accordance with subsection (9):
- (a) The amount that was payable under the notice ceases to be payable.
 - (b) Any amount that has been paid under the notice is repayable to the person by whom it was paid.
 - (c) Further penalty notices and proceedings in respect of the alleged offence may be taken against any person (including the person on whom the notice was served)

as if the notice had never been served.

193 Restraint etc of breaches of Act or regulations

- (1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act or the regulations, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.
- (2) Proceedings under this section may be brought by a person on the person's own behalf or on behalf of the person and other persons (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.
- (3) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.
- (4) In this section, **breach** includes a threatened or apprehended breach.

194 Sentencing—matters to be considered in imposing penalty

- (1) In imposing a penalty for an offence under this Act or the regulations, the court is to take into consideration the following (so far as they are relevant):
 - (a) the extent of the harm caused or likely to be caused by the commission of the offence,
 - (b) the significance of the reserved land, Aboriginal object or place, threatened species or endangered species, population or ecological community (if any) that was harmed, or likely to be harmed, by the commission of the offence,
 - (c) the practical measures that may be taken to prevent, control, abate or mitigate that harm,
 - (d) the extent to which the person who committed the offence could reasonably have foreseen the harm caused or likely to be caused by the commission of the offence,
 - (e) the extent to which the person who committed the offence had control over the causes that gave rise to the offence,
 - (f) in relation to an offence concerning an Aboriginal object or place or an Aboriginal area—the views of Aboriginal persons who have an association with the object, place or area concerned,
 - (g) whether, in committing the offence, the person was complying with an order or direction from an employer or supervising employee,
 - (h) whether the offence was committed for commercial gain.

- (2) The court may take into consideration other matters that it considers relevant.

195 Continuing offences

- (1) A person who is guilty of an offence because the person contravenes a requirement made by or under this Act or the regulations (whether the requirement is imposed by a notice or otherwise) to do or cease to do something (whether or not within a specified period or before a particular time):
- (a) continues, until the requirement is complied with and despite the fact that any specified period has expired or time has passed, to be liable to comply with the requirement, and
 - (b) is guilty of a continuing offence for each day the contravention continues.
- (2) This section does not apply to an offence if the relevant provision of this Act or the regulations does not provide for a penalty for a continuing offence.
- (3) This section does not apply to the extent that a requirement of a notice is revoked.

196 Onus of proof of reasonable excuse or lawful excuse

In any proceedings under this Act, the onus of proving that a person had a reasonable excuse or lawful excuse (as referred to in any provision of this Act or the regulations) lies with the defendant.

197 Evidentiary provisions etc

- (1) An allegation, in a court attendance notice, summons or application in respect of an offence against this Act or the regulations, that any lands in question form part of a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve, Aboriginal area, Aboriginal place or wildlife refuge shall be sufficient without proof of the matter so alleged unless the defendant proves to the contrary.
- (2) An allegation, in a court attendance notice, summons or application in respect of an offence against this Act or the regulations, that a standard, sign, symbol, notice or device was erected, displayed or marked with the authority of the Director-General, or that a standard, sign, symbol, notice or device was erected, displayed, marked, interfered with, altered or removed without the authority of the Director-General, shall be accepted by the court as evidence of the truth of the allegation, unless the defendant proves to the contrary.
- (2A) An allegation, in a court attendance notice, summons or application in respect of an offence against this Act or the regulations, that an animal or plant is a member of a species, population or ecological community specified in that court attendance notice, summons or application is sufficient proof of the matter so alleged unless the defendant proves to the contrary.

- (3) In any proceedings for an offence against this Act or the regulations, a certificate purporting to be signed by the officer for the time being in charge of the records kept under the law for the time being in force in any part of the Commonwealth relating to the ownership of motor vehicles and naming the owner of a motor vehicle as shown on those records shall be prima facie evidence of the name of the owner of the motor vehicle.
- (4) In any prosecution under this Act, any allegation in any court attendance notice, summons or application that any person is unlicensed or acting without permission or authority need not be proved, and that person shall be deemed to be unlicensed or acting without permission or authority, as the case may be, until the contrary is proved by the production of a licence, permit or authority or otherwise.
- (5) In any proceedings for an offence against this Act or the regulations, a certificate purporting to be signed by the Director-General and certifying:
- (a) that any person was or was not, on a date or within a period specified therein, the holder of any specified licence, certificate, consent, authority or other thing issued or granted by instrument in writing under this Act, or
 - (b) that, on a date or within a period so specified, any such licence, certificate, consent, authority or other thing:
 - (i) related to any specified premises,
 - (ii) was subject to any specified conditions or restrictions, or
 - (iii) was, to any specified extent, unconditional or unrestricted,
- shall be prima facie evidence of the matter or matters so certified.
- (6) In any proceedings for an offence against this Act or the regulations, a certificate purporting to be signed by the Director-General and certifying:
- (a) that an amount specified therein is the amount of any charge, cost or expense incurred as specified therein by reason of the offence, or
 - (b) that an amount specified therein is the amount of any loss or damage sustained, as specified therein, as a result of the offence,
- shall be prima facie evidence of the matter or matters so certified.
- (7) In any proceedings, a certificate purporting to be signed by the Director-General 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
 - (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-General or the Registrar-General as a copy of a conservation agreement registered under section 69F shall be prima facie evidence of the agreement.
- (9) A copy of any declaration or map of critical habitat published in the Gazette, being a copy purporting to be certified by the Director-General, as being a true copy of the declaration or map so published, is admissible in any legal proceedings and is evidence of the matter or matters contained in the declaration or map.
- (10) In any proceedings, a certificate purporting to be signed by the Director-General of the Department of Industry and Investment (or a person authorised by that Director-General for the purposes of this subsection) stating that at a time, or during a period, specified in the certificate a specified animal was an animal that is a pest within the meaning of Part 11 of the *Rural Lands Protection Act 1998* is evidence of the matter or matters stated in the certificate.
- (11) In any proceedings, a certificate purporting to be signed by the Director-General stating that at a time, or during a period, specified in the certificate a specified animal was an animal whose impact is listed in Schedule 3 to the *Threatened Species Conservation Act 1995* as a key threatening process is evidence of the matter or matters stated in the certificate.

Division 3 Court orders in connection with offences

198 Operation of Division

- (1) **Application to proved offences** This Division applies where a court finds an offence under this Act or the regulations proved.
- (2) **Meaning of proved offences** Without limiting the generality of subsection (1), a court finds an offence proved if:
 - (a) the court convicts the offender of the offence, or
 - (b) the court makes an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* against the offender in relation to the offence (in which case any order under this Division is not a punishment for the purposes of that section).
- (3) **Definitions** In this Division:

the court means the court that finds the offence proved.

the offender means the person who is found to have committed the offence.

199 Orders generally

- (1) **Orders may be made** One or more orders may be made under this Division against the offender.
- (2) **Orders are additional** Orders may be made under this Division in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.
- (3) **Other action not required** Orders may be made under this Division regardless of whether any penalty is imposed, or other action taken, in relation to the offence.

200 Orders for restoration and prevention

- (1) The court may order the offender to take such steps as are specified in the order, within such time as is so specified (or such further time as the court on application may allow):
 - (a) to prevent, control, abate or mitigate any harm caused by the commission of the offence, or
 - (b) in relation to an offence under Part 8A involving damage to any critical habitat or habitat of a threatened species, an endangered population or an endangered ecological community—to retire, in accordance with Part 7A of the *Threatened Species Conservation Act 1995*, biodiversity credits of a number and class (if applicable) specified in the order and, if the offender does not hold sufficient biodiversity credits to comply with the direction, to acquire the necessary biodiversity credits for the purpose of retiring them, or
 - (c) to make good any resulting damage, or
 - (d) to prevent the continuance or recurrence of the offence.
- (2) The court may order the offender to provide security to the court or to the Director-General for the performance of any obligation imposed under this section.
- (3) An order under subsection (2) must specify:
 - (a) the amount of the security required to be provided, and
 - (b) the kind of security required to be provided, and
 - (c) the manner and form in which the security is to be provided.
- (4) In this section:

biodiversity credit has the same meaning as it has in Part 7A of the *Threatened Species Conservation Act 1995*.

harm has its ordinary meaning.

201 Orders for costs, expenses and compensation at time offence proved

- (1) The court may, if it appears to the court that:
 - (a) a public authority has incurred costs and expenses in connection with:
 - (i) the prevention, control, abatement or mitigation of any harm caused by the commission of the offence, or
 - (ii) making good any resulting damage, or
 - (b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

order the offender to pay to the public authority or person the costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be, in such amount as is fixed by the order.

- (2) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the [Land and Environment Court Act 1979](#).
- (3) The Local Court may not make an order under subsection (1) for the payment of an amount that exceeds the amount for which an order may be made by the court when exercising jurisdiction under the [Civil Procedure Act 2005](#). An order made by the court is enforceable as if it were an order made by the court when exercising jurisdiction under that Act.

202 Recovery of costs, expenses and compensation after offence proved

- (1) If, after the court finds the offence proved:
 - (a) a public authority has incurred costs and expenses in connection with:
 - (i) the prevention, control, abatement or mitigation of any harm caused by the commission of the offence, or
 - (ii) making good any resulting damage, or
 - (b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

the person or public authority may recover from the offender the costs and expenses

incurred or the amount of the loss or damage in the Land and Environment Court.

- (2) The amount of any such costs and expenses (but not the amount of any such loss or damage) may be recovered as a debt.

203 Orders regarding costs and expenses of investigation

- (1) The court may, if it appears to the court that an officer of the Service has reasonably incurred costs and expenses during the investigation of the offence, order the offender to pay to the Director-General the costs and expenses so incurred in such amount as is fixed by the order.
- (2) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the [Land and Environment Court Act 1979](#).
- (3) An order made by the Local Court under subsection (1) is enforceable as if it were an order made by the court when exercising jurisdiction under the [Civil Procedure Act 2005](#).
- (4) In this section, **costs and expenses**, in relation to the investigation of an offence, means the costs and expenses:
 - (a) in taking any sample or conducting any inspection, examination, test, measurement or analysis, or
 - (b) of transporting, storing or disposing of evidence,during the investigation of the offence.

204 Orders regarding monetary benefits

- (1) The court may order the offender to pay, as part of the penalty for committing the offence, an additional penalty of an amount the court is satisfied, on the balance of probabilities, represents the amount of any monetary benefits acquired by the offender, or accrued or accruing to the offender, as a result of the commission of the offence.
- (2) The amount of an additional penalty for an offence is not subject to any maximum amount of penalty provided elsewhere by or under this Act.
- (3) In this section:

monetary benefits means monetary, financial or economic benefits.

the court does not include the Local Court.

205 Additional orders

(1) **Orders** The court may do any one or more of the following:

- (a) order the offender to take specified action to publicise the offence (including the circumstances of the offence) and its environmental and other consequences and any other orders made against the person,
- (b) order the offender to take specified action to notify specified persons or classes of persons of the offence (including the circumstances of the offence) and its consequences and of any orders made against the person (including, for example, the publication in an annual report or any other notice to shareholders of a company or the notification of persons aggrieved or affected by the offender's conduct),
- (c) order the offender to carry out a specified project for the restoration or enhancement of the environment in a public place or for the public benefit,
- (d) order the offender to pay a specified amount to the Environmental Trust established under the *Environmental Trust Act 1998*, or a specified organisation, for the purposes of a specified project for the restoration or enhancement of the environment or for general environmental purposes,
- (e) order the offender to attend, or to cause an employee or employees or a contractor or contractors of the offender to attend, a training or other course specified by the court,
- (f) order the offender to establish, for employees or contractors of the offender, a training course of a kind specified by the court.

The Local Court is not authorised to make an order referred to in paragraph (c) or (d).

(2) **Machinery** The court may, in an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.

(3) **Failure to publicise or notify** If the offender fails to comply with an order under subsection (1) (a) or (b), the prosecutor or a person authorised by the prosecutor may take action to carry out the order as far as may be practicable, including action to publicise or notify:

- (a) the original contravention, its consequences, and any other penalties imposed on the offender, and
- (b) the failure to comply with the order.

(4) **Cost of publicising or notifying** The reasonable cost of taking action referred to in subsection (3) is recoverable by the prosecutor or person taking the action, in a court

of competent jurisdiction, as a debt from the offender.

206 Offence

A person who fails to comply with an order under this Division (except an order under section 201 or 203) is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—1,100 penalty units for each day the offence continues, or
- (b) in the case of an individual—550 penalty units for each day the offence continues.

Schedule 1 Recategorisation of reserved land

Part 1 General provisions

1 Reservation of lands as national parks, nature reserves, state conservation areas, regional parks, historic sites or Aboriginal areas

- (1) The lands reserved as, or as parts of, national parks, nature reserves or state conservation areas, a regional park, historic sites or Aboriginal areas by this Schedule are, for the purposes of this Act and the *Native Title (New South Wales) Act 1994*, taken to have been so reserved by notice published under Division 1 of Part 4.
- (2) A reference in this Act to the publication of a notice under Division 1 of Part 4 is, in relation to a reservation of land effected by this Schedule, taken to be a reference to the commencement of the operation of the relevant provision of this Schedule that effects the reservation of the land.
- (3) A name assigned to any national park, nature reserve, state conservation area, regional park, historic site or Aboriginal area by this Schedule is taken to have been assigned to that land by a notice published under Division 1 of Part 4.
- (4) Section 35 (including section 35 as applied by section 58) and sections 47D and 47R do not apply to a reservation of land as, or as part of, a national park, nature reserve, state conservation area, regional park or historic site that is effected by this Schedule.

2 Current plans of management

- (1) This clause applies to a plan of management adopted under Part 5 of this Act, for land the subject of a recategorisation or renaming under this Schedule, before the recategorisation or renaming.
- (2) A plan of management to which this clause applies continues to apply, to the extent to which it applied previously, to the land so recategorised or renamed, as a plan of management for the purposes of this Act.

- (3) A plan of management to which this clause applies may be amended, altered, cancelled or substituted in accordance with Part 5 of this Act.

3 Pending plans of management

- (1) This clause applies to a plan of management for land the subject of a recategorisation or renaming under this Schedule, being a plan of management for which notice had been given under Part 5 of this Act, before the recategorisation or renaming of the land, but that was not finally adopted at that time of the recategorisation or renaming.
- (2) A plan of management to which this clause applies may be adopted under Part 5 of this Act for the land so recategorised or renamed as a plan of management for the purposes of this Act.
- (3) A plan of management to which this clause applies may be amended, altered, cancelled or substituted in accordance with Part 5 of this Act.

4 Saving in relation to revocations

A revocation effected by a provision of this Schedule does not affect anything done or omitted to be done before the commencement of that provision.

5 Maps and diagrams

In this Schedule, a reference to a map or diagram is a reference to a map or diagram deposited at the head office of the Department of Environment, Climate Change and Water.

Part 2 Recategorisation of land by [National Parks and Wildlife Amendment \(Visitors and Tourists\) Act 2010](#)

6 Corramy State Conservation Area (part only) recategorisation

- (1) The reservation under this Act of that part of Corramy State Conservation Area to which this clause applies as part of a state conservation area is revoked and the land is reserved as a regional park to be known as Corramy Regional Park.
- (2) This clause applies to an area of about 290 hectares, being that part of Corramy State Conservation Area reserved by the [National Park Estate \(Southern Region Reservations\) Act 2000](#) (as Corramy State Recreation Area), designated as area 642-01 on the diagram Misc R 00082 (Third Edition), subject to any variations or exceptions noted on that diagram.
- (3) To avoid doubt, section 10 of, and clause 8 of Schedule 7 to, the [National Park Estate \(Southern Region Reservations\) Act 2000](#) continue to apply to land to which they applied immediately before the commencement of this clause, despite the enactment of this clause.

- (4) In this clause, a reference to land affected by a provision of an Act referred to in subclause (3) is taken to be a reference to the land as adjusted from time to time under any such provision that applies to the land.

7 Limeburners Creek Nature Reserve recategorisation

- (1) The reservation under this Act of Limeburners Creek Nature Reserve as a nature reserve is revoked and the land is reserved as a national park to be known as Limeburners Creek National Park.

- (2) In this clause:

Limeburners Creek Nature Reserve means an area of about 9,223.39 hectares, being the whole of Limeburners Creek Nature Reserve reserved by notices published in the following:

- (a) Gazette No 34 of 26 March 1971 at page 1000,
- (b) Gazette No 37 of 7 April 1972 at page 1189,
- (c) Gazette No 191 of 19 December 1980 at page 6506,
- (d) Gazette No 19 of 23 January 1981 at page 433,
- (e) Gazette No 51 of 3 April 1981 at page 1964,
- (f) Gazette No 82 of 10 June 1983 at page 2572,
- (g) Gazette No 137 of 30 September 1983 at page 4461,
- (h) Gazette No 175 of 7 November 1986 at page 5388,
- (i) Gazette No 104 of 19 June 1987 at page 2992,
- (j) Gazette No 35 of 9 March 1990 at page 1992,
- (k) Gazette No 139 of 4 October 1991 at page 8504,
- (l) Gazette No 115 of 11 October 1996 at page 6940,
- (m) Gazette No 27 of 5 March 1999 at pages 1834-1836.

8 Sea Acres Nature Reserve recategorisation

- (1) The reservation under this Act of Sea Acres Nature Reserve as a nature reserve is revoked and the land is reserved as a national park to be known as Sea Acres National Park.

- (2) In this clause:

Sea Acres Nature Reserve means an area of about 76 hectares, being the whole of

Sea Acres Nature Reserve reserved by notices published in the following:

- (a) Gazette No 54 of 20 March 1987 at pages 1453-1454,
- (b) Gazette No 52 of 11 March 1988 at page 1527,
- (c) Gazette No 107 of 3 November 1989 at page 9033.

9 Macquarie Nature Reserve (part only) recategorisation

- (1) The reservation under this Act of the land to which this clause applies as a nature reserve is revoked and the land is reserved as a historic site to be known as Roto House Historic Site.
- (2) This clause applies to an area of about 4 hectares, being that part of the Macquarie Nature Reserve No 45, reserved by notice published in Gazette No 3 of 9 January 1970 at pages 83-84, shown by hatching in diagram Misc R 00106, subject to any variations or exceptions noted on the diagram.

Part 3 Recategorisation of land by National Parks and Wildlife Legislation Amendment (Reservations) Act 2011

10 Wianamatta Regional Park (part only) recategorisation

- (1) This clause applies to an area of about 181.1 hectares of Wianamatta Regional Park, being Lot 2, DP 1057347.
- (2) The reservation under this Act of the land to which this clause applies as part of a regional park is revoked and the land is reserved as a nature reserve to be known as Wianamatta Nature Reserve.

Schedule 1A Reservation of land

Part 1 General provisions

1 Reservation of lands as national parks, nature reserves, state conservation areas, regional parks, historic sites or Aboriginal areas

- (1) The lands reserved as, or as parts of, national parks, nature reserves or state conservation areas, regional parks, historic sites or Aboriginal areas by this Schedule are, for the purposes of this Act and the *Native Title (New South Wales) Act 1994*, taken to have been so reserved by notice published under Division 1 of Part 4.
- (2) A reference in this Act to the publication of a notice under Division 1 of Part 4 is, in relation to a reservation of land effected by this Schedule, taken to be a reference to the commencement of the operation of the relevant provision of this Schedule that effects the reservation of the land.

- (3) A name assigned to any national park, nature reserve, state conservation area, regional park, historic site or Aboriginal area by this Schedule is taken to have been assigned to that land by a notice published under Division 1 of Part 4.
- (4) Section 35 (including section 35 as applied by section 58) and sections 47D and 47R do not apply to a reservation of land as, or as part of, a national park, nature reserve, state conservation area, regional park or historic site that is effected by this Schedule.

Part 2 Reservation of part of Hunter Wetlands National Park

2 Reservation of land as part of Hunter Wetlands National Park

- (1) This clause applies to an area of about 22 hectares, being Lot 22, DP 1150980.
- (2) On the commencement of this clause, the land to which this clause applies is reserved as part of Hunter Wetlands National Park.
- (3) The reservation is restricted to a depth of 50 metres below the surface of the land.

Schedule 2 Revocation of reservation or dedication of certain land

Part 1 Revocations under the [National Parks and Wildlife Amendment \(Adjustment of Areas\) Act 2010](#)

1 Revocation in Beni State Conservation Area

- (1) The reservation under this Act as state conservation area of land within Lot 2, DP 1155597, being part of Beni State Conservation Area, is revoked.
- (2) On the revocation of the reservation as state conservation area of land described in subclause (1), that land is vested in Dubbo City Council for an estate in fee simple, freed and discharged from all trusts, obligations, estates, interests, rights of way or other easements.

2 Revocation in Gwydir River State Conservation Area

- (1) The reservation under this Act as state conservation area of land within Lot 3, DP 1156300, being part of Gwydir River State Conservation Area, is revoked.
- (2) On the revocation of the reservation as state conservation area of land described in subclause (1), that land is vested in the State Water Corporation for an estate in fee simple, freed and discharged from all trusts, obligations, estates, interests, rights of way or other easements.
- (3) The revocation and vesting referred to in this clause do not have effect until a day appointed by the Minister by notice published in the Gazette.
- (4) The Minister must not publish a notice under subclause (3) unless other land has been

transferred into the national park estate as compensation for the excision of the land described in subclause (1) (being other land that is, in the opinion of the Minister, of equal or greater conservation value).

- (5) For the purposes of subclause (4), the national park estate comprises land reserved under this Act or land acquired by the Minister under Part 11 of this Act for the purposes of its reservation under this Act.

Part 2 Revocations under the [National Parks and Wildlife \(Further Adjustment of Areas\) Act 2005](#)

3 Revocation in Illawarra Escarpment State Conservation Area

- (1) The reservation under this Act as state conservation area of land to which this clause applies, being part of Illawarra Escarpment State Conservation Area, is revoked.
- (2) This clause applies to land within Lot 2, DP 1083121 and those parts of Lot 31, DP 1083116 that were within Illawarra Escarpment State Conservation Area immediately before the commencement of section 3 of the [National Parks and Wildlife \(Further Adjustment of Areas\) Act 2005](#).
- (3) On the revocation of the reservation as state conservation area of land to which this clause applies, that land:
 - (a) is vested in the Crown for an estate in fee simple, freed and discharged from all trusts, obligations, estates, interests and rights of way or other easements, and
 - (b) is subject to the [Crown Lands Act 1989](#).

4 Revocation in Jerrawangala National Park and Morton National Park

- (1) The reservation under this Act as national park of land to which this clause applies, being part of Jerrawangala National Park and part of Morton National Park, is revoked.
- (2) This clause applies to the following land:
 - (a) land within Lots 31-33, DP 1075211,
 - (b) land within Lots 64-68, DP 1075869, Lots 100-111, DP 1078152 and Lots 11-32, DP 1080225.
- (3) On the revocation of the reservation as national park of land to which this clause applies, that land is vested in the Minister on behalf of the Crown for the purposes of Part 11 of this Act for an estate in fee simple, freed and discharged from all trusts, obligations, estates, interests, rights of way or other easements.
- (4) The Minister must not transfer under Part 11 of this Act:
 - (a) the whole or any part of land to which this clause applies, or

(b) any interest in that land,

unless other land is first transferred into the national park estate as compensation for the excision of that land (being other land the Minister is satisfied is of equal or greater conservation value in terms of natural and cultural heritage).

(5) For the purposes of subclause (4), the national park estate comprises land reserved under this Act or land acquired by the Minister under Part 11 of this Act for the purposes of its reservation under this Act.

5 Transferred provisions to which [Interpretation Act 1987](#) applies

Clauses 3 and 4 re-enact (with minor modification) sections 3–5 of the [National Parks and Wildlife \(Further Adjustment of Areas\) Act 2005](#). Clauses 3 and 4 are transferred provisions to which section 30A of the [Interpretation Act 1987](#) applies.

Part 3 Revocations under the [National Parks and Wildlife \(Adjustment of Areas\) Act 2006](#)

6 Revocation in Bargo State Conservation Area

The reservation under this Act as state conservation area of land within Lot 100, DP 1088254, being part of Bargo State Conservation Area, is revoked.

7 Reservation of certain Crown land as state conservation area or national park

(1) The land shown coloured pink on the map catalogued Misc R 00105 in the Department of Environment, Climate Change and Water is reserved under this Act as Bargo River State Conservation Area.

(2) Land within Lots 9 and 10, DP 753788 is reserved under this Act as part of Yengo National Park.

8 Transferred provisions to which [Interpretation Act 1987](#) applies

Clauses 6 and 7 re-enact (with minor modification) sections 3 and 4 of the [National Parks and Wildlife \(Adjustment of Areas\) Act 2006](#). Clauses 6 and 7 are transferred provisions to which section 30A of the [Interpretation Act 1987](#) applies.

Part 4 Revocations under the [National Parks and Wildlife \(Leacock Regional Park\) Act 2008](#)

9 Revocation in Leacock Regional Park

(1) The reservation under this Act as regional park of land to which this clause applies, being part of Leacock Regional Park, is revoked.

(2) This clause applies to an area of about 1,564 square metres, being Lot 2, DP 1123827.

- (3) On the revocation of the reservation as regional park of land to which this clause applies, that land is vested in the Minister on behalf of the Crown for the purposes of Part 11 of this Act for an estate in fee simple, freed and discharged from all trusts, obligations, estates, interests, rights of way or other easements.
- (4) In this clause, **Leacock Regional Park** means an area of about 34.3 hectares, being the land reserved as Leacock Regional Park by notices published in the following:
 - (a) Gazette No 97 of 5 September 1997 at page 7850,
 - (b) Gazette No 156 of 12 October 2001 at page 8586.

10 Transferred provisions to which [Interpretation Act 1987](#) applies

Clause 9 re-enacts (with minor modification) sections 3 and 4 of the [National Parks and Wildlife \(Leacock Regional Park\) Act 2008](#). Clause 9 is a transferred provision to which section 30A of the [Interpretation Act 1987](#) applies.

Part 5 Revocations under the [National Parks and Wildlife \(Broken Head Nature Reserve\) Act 2010](#)

11 Revocation in Broken Head Nature Reserve

- (1) The reservation under this Act as nature reserve of land to which this clause applies, being part of Broken Head Nature Reserve, is revoked.
- (2) This clause applies to an area of about 981 square metres of Broken Head Nature Reserve, being Lot 4, DP 1139721.
- (3) On the revocation of the reservation as nature reserve of land to which this clause applies, that land is vested in the Minister on behalf of the Crown for the purposes of Part 11 of this Act for an estate in fee simple, freed and discharged from all trusts, obligations, estates, interests, rights of way or other easements.
- (4) In this clause, **Broken Head Nature Reserve** means an area of about 98 hectares, being the land reserved as Broken Head Nature Reserve by notices published in the following:
 - (a) Gazette No 119 of 27 September 1974 at page 3843 (as amended by an erratum published in Gazette No 149 of 13 December 1974 at page 4884),
 - (b) Gazette No 166 of 7 November 1980 at page 5732,
 - (c) Gazette No 38 of 6 March 1981 at page 1301,
 - (d) Gazette No 46 of 26 March 1982 at page 1281,
 - (e) Gazette No 60 of 27 April 1984 at page 2227,

- (f) Gazette No 145 of 12 October 1984 at page 4989,
- (g) Gazette No 52 of 11 March 1988 at page 1528,
- (h) Gazette No 164 of 23 December 2005 at pages 11512-11516.

12 Transferred provisions to which [Interpretation Act 1987](#) applies

Clause 11 re-enacts (with minor modification) sections 3 and 4 of the [National Parks and Wildlife \(Broken Head Nature Reserve\) Act 2010](#). Clause 11 is a transferred provision to which section 30A of the [Interpretation Act 1987](#) applies.

Part 6 Revocations under the [National Parks and Wildlife Legislation Amendment \(Reservations\) Act 2011](#)

13 Revocation of part of Hunter Wetlands National Park

- (1) This clause applies to an area of about 18.5 hectares of Hunter Wetlands National Park, being the land shown hatched black on the diagram catalogued Misc R 00326 (Edition 1) in the Office of Environment and Heritage, Department of Premier and Cabinet, subject to any variations and exceptions noted on that diagram.
- (2) The reservation under this Act as national park of land to which this clause applies, being part of Hunter Wetlands National Park, is revoked.
- (3) On the revocation of the reservation as national park of land to which this clause applies, the land is vested in the Minister on behalf of the Crown for the purposes of Part 11 of this Act for an estate in fee simple, freed and discharged from all trusts, obligations, estates, interests, rights of way or other easements.

Schedule 3 Savings, transitional and other provisions

(Section 4 (3))

Part 1 General

1 Regulations

- (1) The Governor may make regulations containing provisions of a saving or transitional nature consequent on the enactment of the following Acts:

[Threatened Species Conservation Act 1995](#)

[National Parks and Wildlife Amendment \(Aboriginal Ownership\) Act 1996](#)

[National Parks and Wildlife Amendment \(Abercrombie, Jenolan and Wombeyan Karst Conservation Reserves\) Act 1997](#)

[National Parks and Wildlife Amendment \(Transfer of Special Areas\) Act 2001](#)

National Parks and Wildlife Amendment Act 2001

Threatened Species Conservation Amendment Act 2002

Threatened Species Legislation Amendment Act 2004, to the extent that it amends this Act

Brigalow and Nandewar Community Conservation Area Act 2005, but only to the extent that it amends this Act

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

National Parks and Wildlife Amendment Act 2010

National Parks and Wildlife Amendment (Visitors and Tourists) Act 2010

National Parks and Wildlife Legislation Amendment (Reservations) Act 2011

- (2) A provision referred to in subsection (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or at a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Special provisions

1A Definitions

In this Schedule:

repealed enactments means the enactments repealed by this Act.

state park means a state park within the meaning of the Act of 1967.

2 The Director

- (1) The person holding office as Director of National Parks and Wildlife under the Act of 1967 immediately before the commencement day shall be deemed to have been appointed Director under this Act, and the person shall, subject to this Act, hold office for the remainder of the period specified in the person's instrument of appointment

under the Act of 1967.

- (2) All acts, matters, and things done or omitted by, or done or suffered in relation to, the Director of National Parks and Wildlife appointed under the Act of 1967 before the commencement day shall, on and from that day, have the same force and effect as if they had been done or omitted by, or done or suffered in relation to, the Director appointed under this Act.
- (3) Without affecting the generality of Schedule 4, clauses 10 and 11 of that Schedule apply to and in respect of the person holding office as Director immediately before the commencement day as if this Act had been in force at the time when the person was appointed Director under the Act of 1967.

3 Advisory committees

The members of an advisory committee constituted for any lands under the Act of 1967 and holding office immediately before the commencement day shall be deemed to be members of an advisory committee constituted for those lands under this Act as if this Act had been in force at the time of the constitution of the committee.

4 Relics Committee

A person holding office as a member of the Aboriginal Relics Advisory Committee under section 33A of the Act of 1967 immediately before the commencement day shall be deemed to have been appointed a member of the Relics Committee under this Act, and the person shall, subject to this Act, hold office for the remainder of the period specified in the instrument of the person's appointment under the Act of 1967.

5 (Repealed)

6 Delegations

- (1) Any delegation in force under section 7 of the Act of 1967 shall be deemed to be a delegation under section 21.
- (2) Section 7 of the Act of 1967 continues to apply to and in respect of any act or thing done by a delegate under that section before the commencement day.

7 Reserved, dedicated and declared lands

- (1) Lands comprised within a national park or state park under the Act of 1967 immediately before the commencement day shall be deemed to be reserved as a national park under this Act.
- (2) Lands comprised within a historic site under the Act of 1967 immediately before the commencement day shall be deemed to be reserved as a historic site under this Act.
- (3) Lands comprised within a nature reserve under the [Fauna Protection Act 1948](#)

immediately before the commencement day shall be deemed to be dedicated as a nature reserve under this Act.

- (4) A proclamation under section 20 of the Act of 1967 in force immediately before the commencement day in relation to a national park, state park or historic site under that Act shall be deemed to be a proclamation under section 33.
- (5) To the extent that section 20 (5) and (6) of the Act of 1967 would, had this Act not been enacted, apply or continue to apply to or in respect of a proclamation published under section 20 of that Act before the commencement day, section 35 applies to or in respect of that proclamation.
- (6) An order under section 33B of the Act of 1967 in force immediately before the commencement day in relation to an Aboriginal area under that Act shall be deemed to be a proclamation in force under section 62.
- (7) An order under section 33I of the Act of 1967 in force immediately before the commencement day in relation to a protected archaeological area under that Act shall be deemed to be an order in force under section 65.
- (8) A proclamation under section 23A (1) of the *Fauna Protection Act 1948*, in force immediately before the commencement day in relation to a wildlife refuge under that Act shall be deemed to be a proclamation in force under section 68.
- (9) A proclamation under section 23A (1) of the *Fauna Protection Act 1948*, in force immediately before the commencement day in relation to a game reserve under that Act shall be deemed to be a proclamation in force under section 69.
- (10) A direction under section 33J of the Act of 1967 in force immediately before the commencement day in relation to a protected archaeological area under that Act shall be deemed to be a direction in force under section 66.

8 References to state parks

- (1) A reference, in any other Act, or in any regulation, ordinance, by-law or any other instrument or document whatever, of the same or a different kind or nature, to:
 - (a) a state park shall be read as a reference to a national park under this Act, or
 - (b) a particular state park under the Act of 1967 shall be read as a reference to the national park deemed to be reserved under clause 7 (1) and comprising the lands within that state park.
- (2) (Repealed)

9 Plans of management

- (1) A plan of management under the Act of 1967 shall be deemed to be a plan of

management under this Act.

- (2) A working plan under the *Fauna Protection Act 1948* shall be deemed to be a plan of management under this Act.
- (3) A plan of management under any Act for any lands dedicated under this Act as Jenolan Caves Reserve Trust lands, being a plan of management in force immediately before that dedication, is taken to be a plan of management under this Act for the land concerned until a new plan of management for that land is adopted under section 76.

10 Mining

- (1) A notice under section 24 (2) (a) of the Act of 1967 shall be deemed to be a notice under section 41, and anything done or commenced to be done under section 24 (2) (a) of the Act of 1967 shall be deemed to have been done or commenced under section 41.
- (2) A reference in subclause (1) to section 41 includes a reference to that section as applied by any other provision of this Act.

11 Certain existing interests

- (1) In this clause, **prescribed interest** means an authority, authorisation, permit, lease, licence or occupancy to which section 22 of the Act of 1967 applied immediately before the commencement day.
- (2) Section 39 applies to and in respect of a prescribed interest granted with respect to lands comprised in a national park, state park or historic site under the Act of 1967 as if this Act had been in force when that national park, state park or historic site was reserved under that Act.

12 Licences etc

- (1) A licence, registration, certificate, franchise, permit, permission, concurrence, consent, authorisation or authority, issued or given under any of the repealed enactments, shall be deemed to be issued or given under this Act.
- (2) Notwithstanding subclause (1), a permit granted under section 33 of the *Fauna Protection Act 1948* shall be deemed to be a licence issued under section 127.

13 Open seasons

A notice of an open season under section 18 of the *Fauna Protection Act 1948* in force immediately before the commencement day shall be deemed to be an order in force under section 95.

14 Property

- (1) Any property acquired by the Minister under the Act of 1967 shall be deemed to have been acquired by the Minister under this Act.
- (2) Lands acquired under section 19A of the Act of 1967 shall be deemed to have been acquired under section 145.
- (3) Lands acquired under section 19B of the Act of 1967 shall be deemed to have been acquired under section 146 (1).
- (4) A lease or licence granted under the Act of 1967 and in force immediately before the commencement day shall be deemed to have been granted under this Act.
- (5) A franchise in force under section 32 of the Act of 1967 immediately before the commencement day shall be deemed to have been granted under section 152.
- (6) An easement or right of way in force under section 31 of the Act of 1967 immediately before the commencement day shall be deemed to have been granted under section 153.

15 Community service contribution

- (1) Any community service contribution under section 37 of the Act of 1967 due and payable immediately before the commencement day shall be deemed to be due and payable under section 140.
- (2) Section 140 applies to and in respect of any community service provided or maintained under section 37 of the Act of 1967 before the commencement day and in respect of which a notice of the amount of contribution had not been served under that section before that day.

16 Forfeiture and seizure

The provisions of any of the repealed enactments continue to apply to and in respect of any forfeiture or seizure under those provisions before the commencement day, and so apply as if this Act had not been enacted.

17 Regulations and by-laws

Any regulations in force under any of the repealed enactments immediately before the commencement day shall be deemed to be regulations made under this Act, but any such regulations shall, to the extent to which they would be by-laws if made under this Act, be deemed to be by-laws made under this Act.

18 Certain amendments made by Act of 1967

The amendments made by sections 53, 54 and 56 of the Act of 1967 continue to have the same force and effect as if those sections had not been repealed by this Act.

19 (Repealed)

20 Amendments made by the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 1986](#)

- (1) Any by-law made under this Act, or by-law, rule or regulation deemed to be a by-law made under this Act, and in force immediately before the date of assent to the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 1986](#) shall on that date be deemed to be a regulation made under this Act.
- (2) A reference in any other Act or statutory instrument, or in any other document, to a by-law made under this Act shall be read as a reference to a regulation made under this Act.

20A Amendments made by the [Statute Law \(Miscellaneous Provisions\) Act 1993](#)

On and from the commencement of this clause, a reference in any other Act, or in any instrument made under any Act, or in any other document of any kind, to the Director of National Parks and Wildlife or to the Acting Director of National Parks and Wildlife is to be read as a reference to the Director-General of National Parks and Wildlife or to the Acting Director-General of National Parks and Wildlife respectively.

21 Validation of plans of management and authorities

- (1) In this clause, **the amending Act** means the [National Parks and Wildlife \(Amendment\) Act 1989](#).
- (2) Any act, matter or thing done before the commencement of this clause in relation to the preparation of a plan of management for any lands that was not validly done, but that would have been validly done if the amending Act had been in force at the time it was done, is validated.
- (3) An authority that purported to have been given to a person under section 164 or 165 before the commencement of this clause shall be deemed to have been given under the section concerned as if the amending Act had been in force when the authority was given.

22 Protected amphibians

Section 97 (1) (c) applies in respect of fauna that is an amphibian as if the reference in that section to the commencement day were a reference to:

- (a) the date of assent to the [National Parks and Wildlife \(Amendment\) Act 1983](#) in the case of an amphibian that was a protected amphibian immediately before the date of assent to the [Endangered Fauna \(Interim Protection\) Act 1991](#), or
- (b) the date of assent to the [Endangered Fauna \(Interim Protection\) Act 1991](#) in the case of any other amphibian.

22A Transitional provision consequent on enactment of [National Parks and Wildlife](#)

Amendment (Game Birds Protection) Act 1995

(1) In so far as:

(a) a licence in force under Division 2 of Part 9 immediately before 30 November 1995, or

(b) an authority in force under section 171 (1) immediately before that day,

has the effect of authorising its holder to take or kill game birds for sporting or recreational purposes, the licence or authority ceases to have that effect on that day. However, the licence or authority does not cease to authorise a sporting or recreational shooter from taking or killing game birds for any other specified lawful purpose.

(2) This clause is taken to have commenced on 30 November 1995 (the date of assent to the amending Act).

(3) Subclause (1) re-enacts (with minor modifications) section 4 (1) of the amending Act. Subclause (1) is a transferred provision to which section 30A of the *Interpretation Act 1987* applies.

(4) In this clause:

amending Act means the *National Parks and Wildlife Amendment (Game Birds Protection) Act 1995*.

23 Replacement of former incorporated trustees by SRA trusts

(1) In this clause:

amending Act means the *National Parks and Wildlife Amendment Act 1996*.

former incorporated trustees means the persons holding office as trustees, and constituted as a corporation, in respect of a particular state recreation area and holding office immediately before the commencement of Schedule 1 [65] to the amending Act.

(2) On the commencement of Schedule 1 [65] to the amending Act, an SRA trust is taken to be constituted and appointed as trustee of the state recreation area in respect of which the former incorporated trustees held office.

(3) Any such SRA trust is a continuation of, and the same legal entity as, the former incorporated trustees, and the corporate name of the SRA trust is to be the same as the corporate name of the former incorporated trustees. That corporate name can be changed in accordance with this Act.

(4) Each of the persons who constituted the former incorporated trustees is taken to be appointed as a member of the relevant trust board under section 47GB for the

unexpired terms of their original appointment as trustees.

24 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the *National Parks and Wildlife Amendment Act 1996*.
- (2) Any such savings or transitional provision may, if the regulations so provide, take effect on the date of assent to that Act or a later day.
- (3) To the extent to which any such savings or transitional provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

25 Advisory committees to cease to function on vesting of Schedule 14 lands

An advisory committee that immediately before the publication of a proclamation under Division 3 or 8 of Part 4A in respect of lands listed in Schedule 14 exercised functions in respect of those lands, ceases to exercise those functions on the date of that publication.

26 Dissolution of certain SRA trusts and regional park trusts on vesting of Schedule 14 lands

- (1) On the publication of a proclamation under Division 3 or 8 of Part 4A in respect of lands listed in Schedule 14:
 - (a) any SRA trust or regional park trust in existence for the lands immediately before that publication is dissolved, and
 - (b) the members of the SRA trust board or the regional park board are removed from office.
- (2) However, if the proclamation relates to a part or parts of lands listed in Schedule 14, the SRA trust or regional park trust ceases to hold office under this Act in relation to that part or those parts only of the lands on the date of that publication.

27 Provision consequent on enactment of *National Parks and Wildlife Amendment (Transfer of Special Areas) Act 2001*

Anything done or omitted to be done before the commencement of an amendment made by Schedule 1 [2] or [3] to the *National Parks and Wildlife Amendment (Transfer of Special*

Areas) Act 2001 is as valid as it would have been had the amendment been in force when the thing was done or omitted.

Part 3 Provisions consequent on enactment of National Parks and Wildlife Amendment Act 2001

28 Definitions

In this Part:

amending Act means the *National Parks and Wildlife Amendment Act 2001*.

relevant instrument means this Act, any other Act, any instrument made under an Act or any other instrument.

29 References to dedicated, reserved or declared land

- (1) On and from the commencement of Schedule 1 [26] to the amending Act, a reference in a relevant instrument (whether the instrument was made before or after that commencement), other than a reference in this Schedule:
 - (a) to land reserved as a national park, historic site or regional park includes a reference to land reserved as a national park, historic site or regional park, respectively, under this Act immediately before that commencement, and
 - (b) to land reserved as a state conservation area includes a reference to land reserved as a state recreation area under this Act immediately before that commencement, and
 - (c) to land reserved as a nature reserve, karst conservation reserve or Aboriginal area includes a reference to land dedicated as a nature reserve, karst conservation reserve or Aboriginal area, respectively, under this Act immediately before that commencement, and
 - (d) to land dedicated under this Act as a nature reserve, karst conservation reserve or Aboriginal area includes a reference to land reserved under this Act as a nature reserve, karst conservation reserve or Aboriginal area, respectively, and
 - (e) to land reserved as a state recreation area under this Act includes a reference to land reserved as a state conservation area under this Act, and
 - (f) to land reserved under Part 4A in a particular classification includes a reference to land reserved as or dedicated to the same classification under that Part immediately before that commencement, and
 - (g) to a wild and scenic river declared under this Act includes a reference to any river or part of a river declared as a wild river under this Act, and

- (h) to a wild river declared under this Act includes a reference to any river or part of a river declared as a wild and scenic river immediately before that commencement, and
 - (i) to land declared to be a wilderness area under this Act is a reference to land reserved or dedicated under this Act and declared to be a wilderness area under the *Wilderness Act 1987*.
- (2) On and from the commencement of Schedule 1 [26], a reference in any relevant instrument (other than this Act), being a reference in existence before that commencement:
- (a) to land dedicated under this Act is a reference to land within a nature reserve, karst conservation reserve or Aboriginal area, and
 - (b) to land reserved under this Act is a reference to land within a national park, historic site, state recreation area, state conservation area or regional park.

30 Existing reservations and dedications not affected

- (1) No amendment made by the amending Act affects any act, done before the commencement of that amendment, that effected a reservation, dedication or declaration under this Act in relation to an area.
- (2) No amendment made by the amending Act alters the purposes for which any land was reserved or dedicated under this Act immediately before that amendment.

31 Removal of certain reservations, dedications and declarations

- (1) On and from the commencement of Schedule 1 [33] to the amending Act, land dedicated as a state game reserve under this Act immediately before that commencement is no longer so dedicated.
- (2) On and from the commencement of Schedule 1 [42] to the amending Act, land dedicated as a protected archaeological area under this Act immediately before that commencement is no longer so dedicated.
- (3) On and from the commencement of Schedule 1 [37] to the amending Act, land declared as a wilderness area under this Act immediately before that commencement is no longer so declared.
- (4) On and from the commencement of Schedule 1 [44] to the amending Act, land declared as a wildlife district under this Act immediately before that commencement is no longer so declared.
- (5) On and from the commencement of Schedule 1 [45] to the amending Act, land declared as a wildlife management area under this Act immediately before that commencement is no longer so declared.

32 Change of name of state recreation areas

On and from the commencement of Schedule 1 [26] to the amending Act, the name of any land reserved as a state recreation area is changed to omit the word “Recreation” and insert instead the word “Conservation”.

33 References to state game reserves, wildlife districts and wildlife management areas

- (1) On and from the commencement of Schedule 1 [33] to the amending Act, a reference to a state game reserve in any provision of this Act (other than this Schedule) and in any provision of any other Act or instrument made under an Act is taken to have been omitted.
- (2) On and from the commencement of Schedule 1 [42] to the amending Act, a reference to a protected archaeological area in any provision of this Act (other than this Schedule) and in any provision of any other Act or instrument made under an Act is taken to have been omitted.
- (3) On and from the commencement of Schedule 1 [44] to the amending Act, a reference to a wildlife district in any provision of this Act (other than this Schedule) and in any provision of any other Act or instrument made under an Act is taken to have been omitted.
- (4) On and from the commencement of Schedule 1 [45] to the amending Act, a reference to a wildlife management area in any provision of this Act (other than this Schedule) and in any provision of any other Act or instrument made under an Act is taken to have been omitted.

34 National Parks and Wildlife Advisory Council

Despite clause 1 of Schedule 7, a person who was a member of the Council immediately before the commencement of this clause is taken to be a member of the Council for the remainder of the term which the person was serving at that commencement.

35 Advisory Committees

- (1) On the substitution of section 24 by the amending Act, an advisory committee constituted under that section and in existence at that substitution is dissolved.
- (2) The first regional advisory committee constituted for an administrative region under section 24 after its substitution by the amending Act has as members each person who, immediately before that substitution, held office as a member of an advisory committee constituted under that section in respect of an area that was the same as, or formed part of, that administrative region.
- (3) A person referred to in subclause (2) holds office only until the end of the term of office which the person was serving immediately before section 24 was substituted.

- (4) The Aboriginal Cultural Heritage (Interim) Advisory Committee is dissolved.
- (5) Despite clause 1 of Schedule 9, a person who was a member of the Aboriginal Cultural Heritage (Interim) Advisory Committee immediately before its dissolution by subclause (4) is taken to be a member of the Aboriginal Cultural Heritage Advisory Committee for the remainder of the term which the person was serving at that dissolution.

36 Plans of management

- (1) A plan of management adopted under Part 5, before its amendment by the amending Act, for land the subject of a reservation, dedication or declaration under this Act continues to apply to the land as a plan of management for the purposes of this Act as so amended.
- (2) A plan of management referred to in subclause (1) may be amended or revoked in accordance with Part 5 as amended by the amending Act.
- (3) A plan of management prepared under Part 5 before its amendment by the amending Act and notice of which has been given in accordance with that Part for the purpose of enabling public submissions on the plan:
 - (a) may be adopted in accordance with Part 5 as if that Part had not been so amended, and
 - (b) if adopted, is taken to have been adopted under Part 5 as so amended.

37 References to relics

In any other Act or instrument, a reference to a relic within the meaning of this Act is taken to be a reference to an Aboriginal object.

38 Existing leases, licences, easements and rights of way

No amendment made by the amending Act affects the validity of any lease, licence, easement or right of way in existence at the commencement of the amendment.

39 (Repealed)

40 Regulations

The operation of this Part is subject to the regulations.

Part 4 Provisions consequent on enactment of [Threatened Species Conservation Amendment Act 2002](#)

41 Conservation agreement and joint management agreements

A reference, in an amendment made to Parts 7, 7A, 8 or 8A by the [Threatened Species](#)

Conservation Amendment Act 2002, to a conservation agreement, or a joint management agreement entered into under Part 7 of the *Threatened Species Conservation Act 1995*, does not extend to any agreement entered into before the commencement of the amendment concerned.

42 Changes consequent on introduction of scientific licences

The amendments made to Divisions 2 and 3 of Part 9 by the *Threatened Species Conservation Amendment Act 2002* do not apply in respect of any licence issued before the commencement of those amendments.

43 Commencement of National Parks and Wildlife Amendment Act 2001

- (1) Sections 132C (2) and 132D, as inserted by the *Threatened Species Conservation Amendment Act 2002*, do not apply in respect of state conservation areas or Aboriginal areas until the commencement of Schedule 1 [26] to the *National Parks and Wildlife Amendment Act 2001*.
- (2) Until the commencement of Schedule 1 [28] to the *National Parks and Wildlife Amendment Act 2001*, the provisions of sections 132C (2) and 132D (a), as inserted by the *Threatened Species Conservation Amendment Act 2002*, are taken to apply in respect of state recreation areas in the same way as they apply to the other areas mentioned in those provisions.
- (3) Until the commencement of Schedule 1 [33] to the *National Parks and Wildlife Amendment Act 2001*, the provisions of sections 132C (2) and 132D (a), as inserted by the *Threatened Species Conservation Amendment Act 2002*, are taken to apply in respect of state game reserves in the same way as they apply to the other areas mentioned in those provisions.
- (4) Until the commencement of Schedule 1 [44] to the *National Parks and Wildlife Amendment Act 2001*, the provisions of sections 132C (2) and 132D (b), as inserted by the *Threatened Species Conservation Amendment Act 2002*, are taken to apply in respect of wildlife districts in the same way as they apply to the other areas mentioned in those provisions.
- (5) Until the commencement of Schedule 1 [45] to the *National Parks and Wildlife Amendment Act 2001*, the provisions of sections 132C (2) and 132D (b), as inserted by the *Threatened Species Conservation Amendment Act 2002*, are taken to apply in respect of wildlife management areas in the same way as they apply to the other areas mentioned in those provisions.

Part 5 Provisions consequent on enactment of Threatened Species

Legislation Amendment Act 2004

44 Authorised officers

- (1) A person who is duly authorised for the purposes of section 164 or 165 immediately before the commencement of section 156B is, on that commencement taken to have been appointed as an authorised officer under that section.
- (2) The functions conferred on an authorised officer by section 156B extend to matters arising before the commencement of that section.

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 to Department

The persons employed, immediately before the repeal of section 58V by the amending Act, under Chapter 1A of the *Public Sector Employment and Management Act 2002* in a Division of the Government Service to enable the Trust to exercise its functions are transferred to the Department and become members of staff of the Department.

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, employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Jenolan Caves Reserve Trust Division of the Government Service as the Jenolan ranger or as a permanent or temporary member of staff of the Wombeyan Caves, the Abercrombie Caves or the Karst Conservation Unit in that Division, 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.

Part 7 Provisions consequent on enactment of [Statute Law \(Miscellaneous Provisions\) Act 2008](#)

60 Definition

In this Part, **amending Act** means the [Statute Law \(Miscellaneous Provisions\) Act 2008](#).

61 Saving of delegations

Any delegation made under section 21 by the Minister or the Director-General and in force immediately before the substitution of that section by the amending Act continues to have effect as if it were a delegation made by the Minister or the Director-General under section 21 as substituted, but may be revoked at any time by the Minister or the Director-General, as appropriate.

62 Saving of trapper's licences

Any trapper's licence in force immediately before the commencement of the amending Act is taken to be a commercial fauna harvester's licence in force under section 123.

63 Saving of certain licences and certificates issued by authorised officers under Part 9

A licence or certificate issued by an authorised officer under Part 9 of the Act, and a condition or restriction attached to such a licence or certificate, that was in force immediately before that Part was amended by the amending Act is taken to have been issued or attached by the Director-General.

Part 8 Provisions consequent on enactment of [National Parks and Wildlife Amendment Act 2010](#)

64 Definition

In this Part, **amending Act** means the [National Parks and Wildlife Amendment Act 2010](#).

65 Aboriginal objects and Aboriginal places: permits under section 87 and consents under

section 90

- (1) A permit granted under section 87 (1) and in force immediately before the repeal of that subsection by the amending Act is taken to be an Aboriginal heritage impact permit issued under section 90 (as inserted by the amending Act) and is subject to the same terms and conditions on which it was granted.
- (2) A consent granted under section 90 (2) and in force immediately before the repeal of that subsection by the amending Act is taken to be an Aboriginal heritage impact permit issued under section 90 (as inserted by the amending Act) and is subject to the same terms and conditions on which it was granted.

66 Existing codes of practice may be adopted for purposes of due diligence defence

Section 87 (5) does not apply to the making of a regulation that adopts or prescribes, for the purposes of section 87 (3), the following codes of practice:

- (a) the PNF code of practice within the meaning of Part 5A of the *Native Vegetation Regulation 2005* (as in force at the date of assent to the amending Act),
- (b) the *Plantations and Reafforestation Code* set out in the Appendix to the *Plantations and Reafforestation (Code) Regulation 2001* (as in force at the date of assent to the amending Act).

67 Remediation directions

A remediation direction under Division 3 of Part 6A may be given in relation to the commission of an offence that occurred before the commencement of that Division.

68 Court orders in relation to offences committed before commencement

A court order under Division 3 of Part 15 may be made in relation to the commission of an offence that occurred before the commencement of that Division, but only where the court concerned finds the offence proved after that commencement.

69 Saving of acts by certain authorised officers

- (1) Any certificate purporting to be signed by a prescribed officer of the Service under section 181 (5) and in force immediately before the amendment of that subsection by the amending Act continues to be prima facie evidence of the matter or matters certified in it.
- (2) Any certificate purporting to be signed by an officer of the Service authorised by the Director-General under section 181 (7) and in force immediately before the amendment of that subsection by the amending Act continues to be prima facie evidence of the matter or matters certified in it.
- (3) A copy of any declaration or map of critical habitat published in the Gazette, being a

copy purporting to be certified by an officer of the Service authorised by the Director-General under section 181 (9) before the amendment of that subsection by the amending Act, as being a true copy of such a declaration or map, continues to be admissible in any legal proceedings and is evidence of the matter or matters contained in the declaration or map.

70 Collation of public register

The public register is to be collated as soon as is practicable after the commencement of section 188F.

71 Determination of width of certain access roads excluded from reservation

- (1) This clause applies to an exclusion order made before the commencement of section 188D that determined a width (not being a width greater than 30 metres) for an access road to be excluded from reservation under the Act by the order.
- (2) On and from the commencement of this clause:
 - (a) land of the determined width that follows the centreline of the access road (as it existed before the exclusion order was made) vests, if it is not already vested, in the Minister on behalf of the Crown for the purposes of Part 11 of this Act for an estate in fee simple, freed and discharged from:
 - (i) all trusts, obligations, estates, interests, rights of way or other easements, and
 - (ii) any dedication, reservation, Crown grant or vesting to which the land is subject, and any such dedication, reservation, grant or vesting is revoked, and
 - (b) the land referred to in paragraph (a) is taken to be an access road and may continue to be used for the purposes for which it was used immediately before the making of the exclusion order, and
 - (c) if any land was vested in the Minister by virtue of being an access road, but is not covered by the land referred to in paragraph (a), the land is reserved as part of the reserved land within which it is situated.
- (3) Subclause (2) (a) (i) does not apply in relation to a right of way granted under section 20A of the *Forestry Act 1916* that is taken to have continued in force (as if it were granted under section 149 or 153 of this Act) by clause 8 (11) of Schedule 7 to the *National Park Estate (Southern Region Reservations) Act 2000*.
- (4) In this clause, **access road** and **exclusion order** have the same meanings that they have in section 188D.

Part 9 Provision consequent on enactment of National Parks and

Wildlife Amendment (Visitors and Tourists) Act 2010

72 Licences may be granted in relation to wilderness areas despite certain existing plans of management

- (1) Despite section 81, a licence may be granted under section 152 in relation to a wilderness area (and operations under such a licence may be undertaken in the wilderness area) even if a plan of management under Part 5 of this Act that was adopted before the commencement of this clause prohibits commercial activities in that area.
- (2) Nothing in subclause (1) affects any other prohibition or restriction in such a plan of management.

Note—

For example, despite subclause (1), a prohibition in an existing plan of management against all mountain biking in a specified wilderness area would still have effect to prohibit commercial mountain biking in that wilderness area.

- (3) This clause ceases to have effect 5 years after the date on which it commences.

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.

Schedules 5-6 (Repealed)

Schedule 7 The Council

(Section 22 (2))

1 Composition

(1) The Council is to consist of 19 members appointed by the Minister (referred to in this Schedule as **members**).

(2) The members are to comprise the following:

- (a) 4 members of advisory committees representing the geographic spread of the reserve system,
 - (b) 2 persons with expertise in non-government organisations concerned with the conservation of nature, one of whom is to be selected from a panel of 3 nominees of the National Parks Association of NSW Inc and one of whom is to be selected from a panel of 3 nominees of the Nature Conservation Council of NSW,
 - (c) 1 person with expertise and experience in Aboriginal cultural heritage conservation,
 - (d) 2 persons with scientific qualifications in areas associated with the conservation of nature,
 - (e) 1 person with qualifications in cultural heritage research,
 - (f) 1 person with expertise and experience in ecotourism or the sustainable visitor or tourist use, enjoyment and appreciation of reserves,
 - (g) 1 person representing peak recreational bodies, selected from a panel of 3 nominees of bodies that, in the opinion of the Minister, are peak recreational bodies,
 - (h) 1 person with expertise and experience in environmental education and community involvement in environmental education,
 - (i) 1 person with expertise and experience in rural and regional development and planning issues,
 - (j) 1 person with expertise and experience in agriculture and rural issues, being a person nominated by the New South Wales Farmers' Association,
 - (k) 1 person with expertise and experience in bush fire management,
 - (l) 2 persons with experience in planning and local government, to be selected from a panel of 4 persons nominated by the Local Government and Shires Association,
 - (m) 2 persons who are members of the Aboriginal Cultural Heritage Advisory Committee and have been nominated by that Committee.
- (3) In appointing and re-appointing persons under this Schedule, the Minister is to ensure, as far as is reasonably practicable, that members of the Council are appointed from a range of organisations that have dealings with the Service.
- (4) The Director-General, or a delegate of the Director-General, is to attend meetings of the Council and may participate in discussions of the Council, but is not entitled to vote at any such meeting.

(5) If a nomination for the purposes of subclause (2), or a panel of nominees from which a member is to be chosen for appointment, is not provided within the time and in the manner directed by the Minister, the Minister may appoint a person to be a member instead of the person required to be appointed on that nomination, or to be chosen for appointment from a panel so nominated, as the case may be.

(6) A person so appointed is taken to have been duly nominated.

2 Term of office

(1) A member shall, subject to this Schedule, hold office for a period of 4 years or such lesser period as may be specified in the member's instrument of appointment, and is eligible for reappointment as a member.

(2) A person shall not hold office (whether for 2 consecutive terms or otherwise) for more than 8 years as a member.

3, 4 (Repealed)

5 Removal from office

The Governor may for any cause which to the Governor seems sufficient remove from office any member.

6 Vacation of office

A member shall be deemed to have vacated the member's office if the member:

(a) dies,

(b) resigns the member's office by writing under the member's hand addressed to the Minister,

(c) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the [Mental Health Act 1958](#) or a person under detention under Part 7 of that Act,

(d) ceases to hold the qualification by virtue of which the member was appointed, or

(e) is removed from office by the Governor.

7 Filling casual vacancy

On the occurrence of a vacancy in the office of a member, otherwise than by the expiration of the term for which the member was appointed, the Minister may appoint a person to hold that office for the balance of the predecessor's term of office, being a person qualified under clause 1 (3) in the same manner as that predecessor.

8 Alternate members

- (1) The Minister may at any time appoint, as an alternate member to act during the absence or illness of a member, a person qualified under clause 1 (3) in the same manner as the person for whom he or she is the alternate member.
- (2) An alternate member shall have and may exercise, while acting as a member of the Council, the powers, authorities, duties and functions, as such a member, of the person for whom he or she is the alternate member.

9 Chairperson and Deputy Chairperson

- (1) The Minister is to appoint a Chairperson and Deputy Chairperson of the Council.
- (2) The Chairperson is to be appointed from a panel of 3 members nominated by the Council.
- (3) The Deputy Chairperson is to be appointed from a panel of 3 members nominated by the Council.
- (4) The panels referred to in subclauses (2) and (3) may comprise the same members.
- (5) A meeting of the Council at which a panel is determined for the purposes of subclause (2) or (3) is to be chaired by a member elected by the members present at the meeting.
- (6) A person appointed as Chairperson or Deputy Chairperson holds office for a period of not more than 2 years specified in the person's instrument of appointment.
- (7) A person is not to hold office (whether for 2 consecutive terms or otherwise) for more than 4 years as Chairperson.
- (8) A person is not to hold office (whether for 2 consecutive terms or otherwise) for more than 4 years as Deputy Chairperson.

10 Presiding member

- (1) The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson or, in the absence of both of them, another member elected to chair the meeting by the members present is to preside at a meeting of the Council.
- (2) The person presiding at a meeting of the Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

11 (Repealed)

12 Quorum

- (1) Eight members shall form a quorum at any meeting of the Council and any duly

convened meeting at which a quorum is present shall be competent to transact any business of the Council.

- (2) Questions arising at a meeting of the Council shall be determined by a majority of votes of the members present and voting.

13 Procedure

The procedure for the calling of meetings of the Council and for the conduct of business at those meetings shall, subject to this Schedule and any regulations made in relation thereto, be as determined by the Council.

14 Fees

A member of the Council shall be entitled to receive such fees and travelling or other expenses (if any) as the Minister may determine in respect of the member.

Schedule 8 Regional advisory committees

(Section 24 (2) and (4))

1A Application

This Schedule applies to regional advisory committees constituted under section 24 (2) of this Act.

1 Composition

- (1) A regional advisory committee is to consist of at least 12 members, but not more than 17 members, appointed by the Minister.
- (2) The members are to include at least 2 Aboriginal persons, a person jointly nominated by the Nature Conservation Council of New South Wales and the National Parks Association of New South Wales, and such other persons who, in the opinion of the Minister, have one or more of the following qualifications:
- (a) expertise and experience in local government,
 - (b) expertise and experience in community involvement in conservation,
 - (c) expertise in Aboriginal Cultural Heritage,
 - (d) scientific qualifications in the area of conservation biology, wildlife management or related disciplines,
 - (e) expertise and experience in rural or regional issues,
 - (f) expertise and experience in agriculture and rural issues, being a person nominated by the New South Wales Farmers' Association.

- (g) expertise and experience in ecotourism or ecologically sustainable visitor or tourist use, enjoyment and appreciation of reserves,
 - (h) expertise and experience in environmental education and community involvement in environmental education,
 - (i) expertise in non-Aboriginal cultural heritage conservation.
- (3) The Minister is to ensure, as far as is possible, that the composition of the advisory committee reflects the expertise and experience referred to in subclause (2).
- (4) The Director-General is to arrange for a senior officer of the Service to attend meetings of each advisory committee and for secretarial support to be available to each advisory committee.

2 Removal from office

- (1) The Minister may for any cause which to the Minister seems sufficient remove from office any member of an advisory committee.
- (2) Without limiting the generality of subclause (1), the Minister may remove from office a member of an advisory committee who is absent without leave of the advisory committee (or without being excused by the committee) from 3 consecutive meetings held by the advisory committee over any period of 12 months.

3 Vacation of office

A member of an advisory committee shall be deemed to have vacated the member's office if the member:

- (a) dies,
- (b) resigns the member's office by writing under the member's hand addressed to the Minister,
- (c) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the [Mental Health Act 1958](#) or a person under detention under Part 7 of that Act, or
- (d) is removed from office by the Minister.

4 Vacancies and additional members

The Minister may from time to time appoint additional members of any advisory committee or appoint a member to fill any vacancy.

5 Term of office

The members of an advisory committee shall hold office for such period, not exceeding 4

years, as may be specified in their respective instruments of appointment and are eligible, if otherwise qualified, for further appointment under this Schedule.

6, 7 (Repealed)

8 Quorum

- (1) A majority of the members of an advisory committee shall form a quorum at any meeting of the committee and any duly convened meeting of the committee at which a quorum is present shall be competent to transact any business of the committee.
- (2) Questions arising at a meeting of an advisory committee shall be determined by a majority of votes of the members present and voting.

9 Procedure

The procedure for the calling of meetings of an advisory committee and for the conduct of business at those meetings shall, subject to this Schedule and any regulations made in relation thereto, be as determined by the advisory committee.

10 Expenses

A member of an advisory committee shall be entitled to receive such travelling and other expenses (if any) as the Minister may determine in respect of the member.

Schedule 8A Marine Mammals Advisory Committee

(Section 112A (4))

1 Definitions

In this Schedule:

appointed member means a member other than the Chairperson.

Chairperson means the Chairperson of the Committee.

Committee means the Marine Mammals Advisory Committee constituted by this Act.

member means a member of the Committee.

2 Nomination of members

Where, for the purposes of section 112A (3) (a), (b) or (c), 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, the Minister may appoint a person to be a member of the Committee instead of the person required to be appointed under section 112A (3) (a), (b) or (c) and the person so appointed shall be deemed to have been duly nominated.

3 Removal from office

The Minister may remove from office any appointed member.

4 Vacation of office

An appointed member shall be deemed to have vacated office if the appointed member:

- (a) dies,
- (b) resigns the office by instrument in writing addressed to the Minister,
- (c) becomes a mentally incapacitated person, or
- (d) is removed from office by the Minister.
- (e) (Repealed)

5 Vacancies

In the event of the office of an appointed member becoming vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

6 Acting members

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, shall have and may exercise and perform all the powers, authorities, duties and functions of the appointed member and shall be deemed to be an appointed member.

7 Term of office

The appointed members shall hold office for such period, not exceeding 5 years, as may be specified in their respective instruments of appointment and are eligible, if otherwise qualified, for re-appointment.

8 (Repealed)

9 Quorum

The quorum for a meeting of the Committee is 4 members.

10 Voting

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

11 Procedure

Subject to this Act, the procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall be as determined by the Committee.

12 Expenses

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

Schedule 8B (Repealed)

Schedule 9 The Aboriginal Cultural Heritage Advisory Committee

(Section 27 (2))

1 Composition

(1) The Aboriginal Cultural Heritage Advisory Committee is to consist of:

- (a) 13 members appointed by the Minister in accordance with this clause, and
- (b) an ex-officio member, being the Director-General (or his or her delegate).

(1A) The ex-officio member is a non-voting member of the Committee.

(2) The appointed members of the Committee are to consist of:

- (a) one member nominated by the New South Wales Aboriginal Land Council, and
- (b) one member nominated by the Heritage Council of New South Wales, and
- (c) one member nominated by the NTSCORP Limited (ACN 098 971 209), and
- (d) 10 other members appointed from the following:
 - (i) nominees of Aboriginal elders groups,
 - (ii) registered native title claimants,
 - (iii) Aboriginal owners listed on the register under the [Aboriginal Land Rights Act 1983](#).

(3) The members of the Committee are to be persons who:

- (a) are involved in cultural heritage matters in their local communities, and
- (b) have an understanding of cultural heritage management issues.

(4) The Minister is to ensure that:

- (a) as far as is reasonably practicable, there is gender balance in the membership of the Committee, and
- (b) as far as is reasonably practicable, the members of the Committee come from a range of cultural areas across New South Wales, and

- (c) all the appointed members of the Committee are Aboriginal persons.
- (5) The Minister is to cause an advertisement inviting written nominations of persons for appointment to the Committee to be published in a newspaper circulating throughout New South Wales and in a newspaper widely read in Aboriginal communities in New South Wales.
- (6) The advertisement must specify the following:
 - (a) the number of members to be appointed to the Committee pursuant to nomination,
 - (b) the particular capacity or capacities (being a capacity specified in subclause (2) or (3)) that a member will be required to have,
 - (c) the closing date for nominations (being a date not earlier than 28 days after the date of the advertisement),
 - (d) the address to which nominations are to be sent.
- (7) The advertisement must also state that a nomination will not be accepted unless the nominee's written consent to the nomination is forwarded with the nomination.
- (8) The Minister is not to appoint a person as a member of the Committee unless:
 - (a) the person was duly nominated under this clause, and
 - (b) nominations have closed, and
 - (c) the Minister has considered all nominations duly received.

2 Term of office

A member shall, subject to this Schedule, hold office for a period of 3 years or such lesser period as may be specified in the member's instrument of appointment, and is eligible for reappointment as a member.

3 Removal from office

The Minister may for any cause which to the Minister seems sufficient remove from office any member of the Aboriginal Cultural Heritage Advisory Committee.

4 Vacation of office

A member of the Aboriginal Cultural Heritage Advisory Committee shall be deemed to have vacated the member's office if the member:

- (a) dies,
- (b) resigns the member's office by writing under the member's hand addressed to the

Minister,

- (c) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the *Mental Health Act 1958* or a person under detention under Part 7 of that Act,
- (d) ceases to hold the qualification by virtue of which the member was appointed, or
- (e) is removed from office by the Minister.

5 Filling casual vacancy

On the occurrence of a vacancy in the office of a member of the Aboriginal Cultural Heritage Advisory Committee, otherwise than by the expiration of the term for which the member was appointed, the Minister may appoint a person to hold that office for the balance of the predecessor's term of office, being a person qualified under clause 1 in the same manner (if any) of that predecessor.

6 Alternate members

- (1) The Minister may at any time appoint, as an alternate member to act during the absence or illness of a member of the Aboriginal Cultural Heritage Advisory Committee, a person qualified under clause 1 in the same manner (if any) as the person for whom he or she is the alternate member.
- (2) An alternate member shall have and may exercise, while acting as a member of the Aboriginal Cultural Heritage Advisory Committee, the powers, authorities, duties and functions, as such a member, of the person for whom he or she is the alternate member.

6A Presiding member

At a meeting of the Aboriginal Cultural Heritage Advisory Committee, a member elected by the members present at the meeting to chair the meeting is to preside at the meeting.

7 Quorum

- (1) Seven members shall form a quorum at any meeting of the Aboriginal Cultural Heritage Advisory Committee and any duly convened meeting at which a quorum is present shall be competent to transact any business of the Committee.
- (2) Questions arising at a meeting of the Aboriginal Cultural Heritage Advisory Committee shall be determined by a majority of votes of the members present and voting.

8 Procedure

The procedure for the calling of meetings of the Aboriginal Cultural Heritage Advisory Committee and for the conduct of business at those meetings shall, subject to the Schedule and any regulations made in relation thereto, be as determined by the

Aboriginal Cultural Heritage Advisory Committee.

9 Fees

A member of the Aboriginal Cultural Heritage Advisory Committee shall be entitled to receive such fees and travelling or other expenses (if any) as the Minister may determine in respect of the member.

10 (Repealed)

Schedule 9A Transfer of assets, rights and liabilities

(Sections 47B, 47GG, 47N, 47O, 47Y)

1 Definitions

In this Schedule:

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.

former trustees means the trustees holding office under any other Act as trustees in respect of land immediately before the reservation of the land as a state recreation area or regional park.

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).

2 Transfer of assets when land is reserved as state conservation area or regional park

- (1) Subject to subclause (2), on the publication in the Gazette of a notice under section 30A in relation to a state conservation area or a regional park, the assets, rights and liabilities of the former trustees (if any) of the land concerned 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 trustees 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 trustees is (to the extent that that 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,
 - (e) a reference in any instrument of any kind to the trustees in so far as it relates those assets, rights and liabilities is to be read as a reference to the Director-General.
- (2) If, on the publication in the Gazette of a notice under section 30A in relation to a state conservation area or a regional park, a state conservation area trust or regional park trust is constituted in respect of the reserved land:
- (a) the assets, rights and liabilities of the former trustees (if any) of the land concerned are transferred to the relevant state conservation area trust or regional park trust, and
 - (b) the provisions of subclause (1) (a)-(e) apply as if references in those provisions to the Director-General were references to the state conservation area trust or regional park trust concerned.

3 Transfer of assets when state conservation area trust or regional park trust is dissolved

- (1) On the date on which a notice under section 47GG or 47Y takes effect to dissolve a state conservation area trust or regional park trust, the care, control and management of the relevant state conservation area or regional park vests in the Director-General, the assets, rights and liabilities (if any) of the dissolved trust are transferred to the Director-General and the following provisions have effect:
- (a) the assets of the dissolved trust vest in the Director-General by virtue of this clause without the need for any conveyance,
 - (b) the rights and liabilities of the dissolved trust become the rights and liabilities of the Director-General,
 - (c) all proceedings commenced before that day by or against the dissolved trust and pending immediately before that day are taken to be proceedings pending by or against the Director-General,
 - (d) any act, matter or thing done or omitted to be done before that day by, to or in respect of the trust is (to the extent that that 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,
 - (e) a reference in any instrument of any kind to the dissolved trust is to be read as a reference to the Director-General.
- (2) No attornment to the Director-General by a lessee from the dissolved trust is required.

4 Transfer of assets relating to trustees of certain state recreation areas that are converted to reserve trusts

On the commencement of section 47N, the assets, rights and liabilities of the trustees (if any) of the state recreation areas to which that section applies are transferred to the respective reserve trust and the following provisions have effect:

- (a) those assets vest in the reserve trust concerned by virtue of this clause and without the need for any conveyance,
- (b) those rights and liabilities become the rights and liabilities of the reserve trust,
- (c) all proceedings relating to those assets, rights and liabilities commenced before the transfer by or against the trustees of the state recreation area and pending immediately before the transfer are taken to be proceedings pending by or against the reserve trust,
- (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 trustees is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the reserve trust,
- (e) a reference in any instrument of any kind to the trustees of the state recreation areas in so far as it relates to those assets, rights and liabilities is to be read as a reference to the reserve trust.

5 Operation of Schedule

- (1) The operation of this Schedule 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.
- (2) Stamp duty is not chargeable in respect of the transfer of assets, rights and liabilities under this Schedule.

Schedule 10 Provisions relating to trust boards

(Sections 47GB, 47T)

1 Definition

In this Schedule:

member means a member of a trust board.

2 Acting members

- (1) The Minister may, from time to time, appoint a person to act in the office of a member during the illness or absence of the member, and the person, while so acting, has and may exercise all the functions of the member and is taken to be a 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.

3 Term of office

Subject to this Schedule, a 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.

4 Vacancy in office of member

- (1) The office of a 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 bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (e) becomes a mentally incapacitated person, or
 - (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (g) is removed by the Minister under this clause.

(1A) In addition, the office of a member who is a member by virtue of being the holder of a particular office becomes vacant if the member ceases to hold the office that qualifies the member as a member.

(2) The Minister may remove a member from office at any time.

5 Filling of vacancy

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

6 Disclosure of pecuniary interests

(1) If:

(a) a member of a trust board has a direct or indirect pecuniary interest in a matter that is being considered or is about to be considered at a meeting of the board, and

(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the trust board.

(2) A disclosure by a member at a meeting of the trust board that the member:

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or a specified person,

is a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause are to be recorded by the trust board in a book kept for the purpose and that book is to be open at all reasonable hours to inspection by any person.

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the trust board otherwise determines, be present during any deliberation of the trust board, or take part in any decision of the trust board, with respect to the matter.

(5) A contravention of this clause does not invalidate any decision of the trust board.

7 Liability of members and other persons

A matter or thing done or omitted to be done by:

- (a) an SRA trust or regional park trust, or
- (b) a member, or
- (c) an administrator while managing the affairs of an SRA trust or regional park trust, or of a local council in relation to the care, control and management of a regional park, or
- (d) a person acting under the direction of a trust board, or of an administrator while so managing,

does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject any member, administrator or person so acting personally to any action, liability, claim or demand.

8 General procedure and first meeting of members

- (1) The procedure for the calling of meetings of the members of a trust board and for the conduct of business is, subject to any directions by the Director-General, to be as determined by the members.
- (2) The Director-General is to call the first meeting of the members of a trust board in such manner as the Director-General thinks fit.

9 Quorum

The quorum for a meeting of the members of a trust board is a majority of the members for the time being.

10 Voting

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

11 Minutes of meetings

A trust board is required to keep full and accurate minutes of the proceedings of each of its meetings.

Schedule 11 Unprotected fauna

(Sections 5 (1), 93)

Mammals

Carnivora other than Pinnipedia	Bears, lions, dogs, etc
Insectivora	Moles, hedgehogs

Artiodactyla	Cloven hoofed animals
Perissodactyla	Horses, donkeys, etc
Primates	Apes, monkeys
Subungulates	Elephants
<i>Lepus europaeus</i>	Hare
<i>Oryctolagus cuniculus</i>	Rabbit
<i>Scirius palmarum</i>	Indian Palm Squirrel

Schedule 12 Threatened interstate fauna

(Section 94)

Note—

This Schedule is blank until material is inserted in accordance with section 94.

Schedule 12A (Repealed)

Schedule 13 Protected native plants

(Sections 5 (1), 115)

Part 1 Plant parts used in the cut-flower industry

Scientific Name	Common Name(s)
Group 1	
Group 2	
<i>Adiantum</i> spp.	Maidenhair Fern
<i>Archontophoenix cunninghamiana</i>	Bangalow Palm (foliage only)
<i>Baeckea linifolia</i>	Weeping Baeckea
<i>Baeckea virgata</i>	Twiggy Heath Myrtle, Tall Baeckea
<i>Banksia spinulosa</i>	Hairpin Banksia
<i>Cassinia aureonitens</i>	Yellow Cassinia
<i>Caustis</i> spp., native to NSW	Curly Sedges, Old Man's Whiskers
<i>Cordyline stricta</i>	Narrow-leaved Palm Lily
<i>Crowea exalata</i>	Crowea
<i>Crowea saligna</i>	Crowea
<i>Davallia pyxidata</i>	Hare's Foot Fern

<i>Dodonaea lobulata</i>	Lobed-leaved Hop Bush
<i>Eriostemon</i> spp. native to NSW (unless listed under the Threatened Species Conservation Act 1995)	
<i>Gahnia sieberiana</i>	Red-fruited Saw Sedge
<i>Isopogon</i> spp., native to NSW	Drumsticks, Cone Bushes
<i>Kunzea ambigua</i>	Tick Bush
<i>Kunzea capitata</i>	Pink Kunzea
<i>Leptospermum lanigerum</i>	Woolly Tea-tree
<i>Leptospermum rotundifolium</i>	Round-leaf Tea-tree
<i>Livistona australis</i> (foliage only)	Cabbage Tree Palm, Fan Palm
<i>Lomatia silaifolia</i>	Crinkle Bush
<i>Persoonia</i> spp., native to NSW (except <i>P. pinifolia</i> and all species listed under the Threatened Species Conservation Act 1995)	Geebungs
<i>Petrophile</i> spp., native to NSW	Conesticks
<i>Phebalium squamulosum</i>	Scaly Phebalium
<i>Philothea</i> spp., native to NSW (except <i>P. obovalis</i> and all species listed under the Threatened Species Conservation Act 1995)	Philothea
<i>Ptilotus exaltatus</i>	Tall Mulla Mulla
<i>Ptilotus obovatus</i>	Smoke Bush, Cotton Bush
<i>Pycnosorus</i> spp., native to NSW	Billy-buttons
<i>Restio tetraphyllus</i>	Tassel-rush
<i>Sprengelia incarnata</i>	Pink Swamp Heath
<i>Sticherus flabellatus</i>	Shiny Fan-fern, Umbrella Fern
<i>Swainsona formosa</i>	Sturt's Desert Pea
<i>Tmesipteris</i> spp., native to NSW	Ferns
<i>Xanthorrhoea</i> spp. (foliage only)	Grass Trees
<i>Xylomelum</i> spp., native to NSW	Woody Pear
Zamiaceae, native to NSW	Cycads
Group 3	
<i>Actinotus</i> spp., native to NSW (except <i>A. minor</i>)	Flannel Flower
<i>Boronia</i> spp., native to NSW	Boronias

<i>Doryanthes excelsa</i> (foliage only)	Giant Lilies
<i>Eriostemon australasius</i>	Wax Flower
<i>Lycopodium</i> spp., native to NSW	Mountain Moss
<i>Persoonia pinifolia</i>	Pine-leaved Geebung
<i>Philothea obovalis</i>	Wax Flower
Group 4	
<i>Blandfordia</i> spp.	Christmas Bells
<i>Doryanthes excelsa</i> (flowers only)	Giant Lily
<i>Xanthorrhoea</i> spp. (flowers only)	Grass Tree
Group 5	
<i>Boronia deanei</i>	Dean's Boronia
<i>Boronia umbellata</i>	Boronia
<i>Craspedia</i> spp., native to NSW	Billy Buttons
<i>Dicranopteris linearis</i>	
<i>Doryanthes palmeri</i>	Spear Lily
<i>Grevillea longifolia</i>	Fern-leaf Grevillea
<i>Isopogon fletcheri</i>	
<i>Leptospermum spectabile</i>	
<i>Macrozamia johnsonii</i>	Cycad
<i>Macrozamia pauli-guilielmi</i> ssp. <i>flexuosa</i>	Cycad
<i>Persoonia</i> spp.	Geebung
<i>Phebalium bifidum</i>	
<i>Phebalium glandulosum</i> ssp. <i>eglandulosum</i>	
<i>Philothea ericifolia</i>	
<i>Philothea obovatifolia</i>	Native Daphne, Long-leaf Wax Flower
<i>Telopea</i> spp., native to NSW	Waratah
All other species of plant listed in Schedule 1, 1A or 2 to the Threatened Species Conservation Act 1995 , unless otherwise listed in this Schedule	

All other species of plant included in the list of threatened species, as amended from time to time, established under section 178 of the [Environment Protection and Biodiversity Conservation Act 1999](#) of the Commonwealth and published in the Commonwealth of Australia Gazette

Part 2 Whole plants

Scientific Name	Common Name(s)
Group 1	
<i>Ceratopetalum gummiferum</i>	Christmas Bush
<i>Isopogon</i> spp.	Drumsticks
<i>Swainsona formosa</i>	Sturt's Desert Pea
Group 2	
<i>Telopea aspera</i>	Gibraltar Range Waratah
<i>Telopea mongaensis</i>	Monga Waratah, Braidwood Waratah
<i>Telopea oreades</i>	Gippsland Waratah
<i>Telopea speciosissima</i>	Waratah
<i>Wollemia nobilis</i>	Wollemi Pine
Group 3	
Arecaceae, native to NSW	Palms
<i>Asplenium australasicum</i>	Bird's-nest Fern
<i>Asplenium falcatum</i>	Fern
<i>Cyathea</i> spp.	Tree Ferns
<i>Dicksonia</i> spp.	Tree Ferns
Orchidaceae, native to NSW	Orchids
<i>Platynerium</i> , native to NSW	Elk Horn and Stag Horn
<i>Sphagnum</i> spp.	Sphagnum Mosses
<i>Todea barbara</i>	King Fern
<i>Xanthorrhoea</i> spp.	Grass Trees
Zamiaceae, native to NSW	Cycads
Group 4	

Casuarina cunninghamiana

River Oak

Pandanus spp., native to NSW

Pandanus

Schedule 14 Lands of cultural significance to Aboriginal persons

(Sections 71D (2), 71U, 71AW and 71BM)

Biamanga National Park

Gulaga National Park

Jervis Bay National Park

Mungo National Park

Mootwingee Historic Site, Mootwingee National Park and Coturaundee Nature Reserve

Mount Grenfell Historic Site

Mount Yarrowyck Nature Reserve

Schedule 14A Boards of management established under Part 4A

(Section 71AN (6A))

Part 1 General

1 Definitions

In this Schedule:

board of management means a board of management established under Part 4A (Aboriginal land) of this Act.

Chairperson means the Chairperson of a board of management elected in accordance with clause 5.

Deputy Chairperson means the Deputy Chairperson of a board of management elected in accordance with clause 5.

member means any member of the board of management.

Part 2 Constitution

2 Deputies

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.
- (2) The person appointed must be selected from the same category of persons specified in section 71AN (3) of this Act, and in accordance with the terms of any relevant lease, as the member for whom the person is to deputise.
- (3) In the absence of a member, the member's deputy may, if available, act in the place of the member.

- (4) While acting in the place of a member, a person has all the functions of the member and is taken to be a member.
- (5) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.
- (6) This clause does not operate to confer on the deputy of a member who is the Chairperson of a board of management the member's functions as Chairperson.

3 Vacancy in office of member

- (1) The office of a 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) is removed from office by the Minister under this clause, or
 - (e) is absent from 3 consecutive meetings of the member's board of management (of which reasonable notice has been given to the member personally, by post or by email), unless:
 - (i) before the meetings, the board granted leave to the member to be absent from those meetings, or
 - (ii) after the meetings, the member was excused by the board for having been absent from those meetings, or
 - (f) becomes a mentally incapacitated person.
- (2) The Minister may remove a member from office at any time.

4 Filling of casual vacancy in office of member

- (1) If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.
- (2) In relation to a vacancy in the office of a member appointed under section 71AN (3) (a), the Minister is to appoint the deputy of the member (if any) to serve for the remainder of the member's term of office.

5 Chairperson and Deputy Chairperson

- (1) The members of a board of management are to elect a Chairperson and a Deputy Chairperson of the board from amongst the persons referred to in section 71AN (3) (a) of this Act.

- (2) The Chairperson or Deputy Chairperson vacates office if he or she:
 - (a) resigns that office by instrument in writing addressed to the Minister, or
 - (b) ceases to be a member of the board of management.

6 Disclosure of pecuniary interests

- (1) If:
 - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the member's board of management, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the board of management.
- (2) A disclosure by a member at a meeting of the board of management that the member:
 - (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the board of management in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the board of management otherwise determines:
 - (a) be present during any deliberation of the board of management with respect to the matter, or
 - (b) take part in any decision of the board of management with respect to the matter.
- (5) For the purposes of the making of a determination by the board of management under subclause (4), a member who has a direct or indirect pecuniary interest in a

matter to which the disclosure relates must not:

- (a) be present during any deliberation of the board of management for the purpose of making the determination, or
 - (b) take part in the making by the board of management of the determination.
- (6) A contravention of this clause does not invalidate any decision of the board of management.

7 Effect of certain other Acts

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a member of a board of management.
- (2) If by or under any Act provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

Part 3 Procedure

8 General procedure

The procedure for the calling of meetings of a board of management and for the conduct of business at those meetings is, subject to this Act, to be as determined by the board of management concerned.

9 Presiding member

- (1) The Chairperson is to preside at a meeting of the board of management.
- (2) In the absence of the Chairperson, the Deputy Chairperson may, if available, act in the place of the Chairperson.
- (3) If both the Chairperson and the Deputy Chairperson are absent from a meeting of a board of management, the members present are to elect another person referred to in section 71AN (3) (a) of this Act to chair the meeting.
- (4) While acting in the place of the Chairperson, the Deputy Chairperson or person elected under subclause (3) has all the functions of the chairperson and is taken to be the chairperson.

- (5) The presiding member does not have a casting vote in relation to any motion but may vote in his or her own right if otherwise entitled.

10 Quorum

- (1) The quorum for a meeting of a board of management is a majority of its members for the time being (including the Chairperson or Deputy Chairperson).
- (2) A meeting of a board of management has a quorum only if a majority of the members present are persons referred to in section 71AN (3) (a).

11 Voting

- (1) At any meeting of a board of management, all members present are to strive for consensus in reaching decisions.
- (2) However, if no such consensus has been reached, a decision by a board of management has effect if, at a meeting at which a quorum is present:
 - (a) if the Minister has approved in writing a decision making process by a board—it is made in accordance with that process, or
 - (b) in any other case—it is supported by a majority of the votes cast at the meeting.

12 Transaction of business outside meetings or by telephone

- (1) A board of management may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the board of management for the time being, and a resolution in writing approved in writing in accordance with the requirements set out in clause 11 is taken to be a decision of the board of management.
- (2) A board of management 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 and each member have the same voting rights as they have at an ordinary meeting of the board of management.
- (4) A resolution approved under subclause (1) is to be recorded in the minutes of the meetings of the board of management.

- (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.

13 First meeting

The Minister may call the first meeting of a board of management in such manner as the Minister thinks fit.

Schedule 15 Leases in respect of which head leases may be granted

(Section 151H)

- 1** Lease dated 6.10.1978 between Minister for Lands and The Man at Perisher Hotel Pty Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 580 P.6512)
- 2** Lease dated 14.6.1985 between Minister for Planning and Environment and Qurveh Holdings Pty Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 585 P.7792)
- 3** Lease dated 14.6.1985 between Minister for Planning and Environment and Qurveh Holdings Pty Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 586 P.7792)
- 4** Lease dated 2.12.1987 between Minister for Planning and Environment and Qurveh Holdings Pty Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 970 P.7792)
- 5** Lease dated 13.10.1967 between Minister for Lands and Kosciusko Alpine Lodge Pty Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 573 P.50)
- 6** Lease dated 14.1.1984 between Minister for Planning and Environment and Leighton Contractors Pty Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 27 P.34)
- 7** Lease dated 20.12.1965 between Minister for Lands and Harbord Ski Club Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 571 P.4922)
- 8** Lease dated 20.5.1969 between Minister for Lands and G. Stipis in respect of land situated at Perisher Valley (NPWS reference: MTR 576 P.301)
- 9** Lease dated 15.6.1966 between Minister for Lands and City Tattersalls Club Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 578 P.5602)
- 10** Lease dated 21.8.1973 between Minister for Lands and Chez Jean Apartments Pty Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 747 P.197)
- 11** Lease dated 25.9.1964 between Minister for Lands and Corroboree Lodge Pty Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 25 P.164)
- 12** Lease dated 30.7.1964 between Minister for Lands and Eiger Chalet Nominees Pty Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 579 P.354)
- 13** Lease dated 23.12.1963 between Minister for Lands and Jolly Swagman Alpine Inn Pty Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 399 P.876)
- 14** Lease dated 21.11.1975 between Minister for Lands and Southern Alps Ski Club Lodge Co-op Ltd

in respect of land situated at Perisher Valley (NPWS reference: MTR 577 P.184)

- 15** Lease dated 24.2.1984 between Minister for Planning and Environment and Pelagon Pty Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 21 P.843)
- 16** Lease dated 11.7.1984 between Minister for Planning and Environment and Matterhorn Ski Lodge Pty Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 24 P.337)
- 17** Lease dated 14.3.1963 between Minister for Lands and F. and C. Breitfuss in respect of land situated at Perisher Valley (NPWS reference: MTR 574 P.182)
- 18** Lease dated 13.3.1984 between Minister for Planning and Environment and Salzburg Chalet Pty Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 22 P.4163)
- 19** Lease dated 25.11.1965 between Minister for Lands and G. and E. Step in respect of land situated at Perisher Valley (NPWS reference: MTR 575 P.6649)
- 20** Lease dated 10.9.1964 between Minister for Lands and Preskiss Pty Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 398 P.3612)
- 21** Lease dated 10.9.1973 between Minister for Lands and Barina Milpara Lodge Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 572 P.3931)
- 22** Lease dated 18.1.1965 between Minister for Lands and Inghams Enterprises Pty Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 415 P.221)
- 23** Lease dated 20.3.1984 between Minister for Planning and Environment and The Stables Perisher Pty Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 23 P.494)
- 24** Lease dated 10.12.1984 between Minister for Planning and Environment and Alexandra Ski Club Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 32 P.2731)
- 25** Lease dated 10.12.1984 between Minister for Planning and Environment and Aurora Ski Club Co-op Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 36 P.7774)
- 26** Lease dated 29.8.1986 between Minister for Planning and Environment and Australian Golf Club Ski Lodge Co-op Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 532 P.1981)
- 27** Lease dated 28.5.1987 between Minister for Planning and Environment and Avalanche Alpine Club Co-op Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 566 P.5712)
- 28** Lease dated 10.12.1984 between Minister for Planning and Environment and Beachcombers Alpine Retreat Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 51 P.7772)
- 29** Lease dated 24.4.1985 between Minister for Planning and Environment and Canberra Alpine Club Incorporated in respect of land situated at Perisher Valley (NPWS reference: MTR 62 P.183)
- 30** Lease dated 10.12.1984 between Minister for Planning and Environment and Cooma Ski Club Lodge Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 8 P.798)
- 31** Lease dated 31.1.1985 between Minister for Planning and Environment and Cronulla Alpine Lodge

Co-op Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 56 P.840)

- 32** Lease dated 12.12.1984 between Minister for Planning and Environment and CSIRO Ski Club Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 4 P.8)
- 33** Lease dated 29.1.1986 between Minister for Planning and Environment and Dianella Ski Club Co-op Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 368 P.7148)
- 34** Lease dated 16.1.1985 between Minister for Planning and Environment and Dulmison Ski Club Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 57 P.1272)
- 35** Lease dated 25.11.1985 between Minister for Planning and Environment and Edelweiss Ski Club Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 366 P.7412)
- 36** Lease dated 10.12.1984 between Minister for Planning and Environment and Eremo Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 42 P.7413)
- 37** Lease dated 10.12.1984 between Minister for Planning and Environment and Fjellheim Ski Lodge Co-op Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 37 P.2673)
- 38** Lease dated 18.7.1978 between Minister for Lands and Geebung Ski Club Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 385 P.6414)
- 39** Lease dated 28.12.1984 between Minister for Planning and Environment and Gunyah Ski Club Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 54 P.6868)
- 40** Lease dated 11.1.1988 between Minister for Planning and Environment and Highway Alpine Club Co-op Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 568 P.4635)
- 41** Lease dated 10.12.1984 between Minister for Planning and Environment and Hus-ski Lodge Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 33 P.162)
- 42** Lease dated 10.12.1984 between Minister for Planning and Environment and The Port Kembla Ski Club in respect of land situated at Perisher Valley (NPWS reference: MTR 1 P.1343)
- 43** Lease dated 10.12.1984 between Minister for Planning and Environment and Kalymaro Lodge (Co-op) Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 48 P.5338)
- 44** Lease dated 11.12.1984 between Minister for Planning and Environment and Kandahar Ski Club Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 6 P.842)
- 45** Lease dated 4.3.1987 between Minister for Planning and Environment and Karralika Ski Club Co-op Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 528 P.202)
- 46** Lease dated 10.12.1984 between Minister for Planning and Environment and Kosciusko Snow Revellers Club in respect of land situated at Perisher Valley (NPWS reference: MTR 31 P.191)
- 47** Lease dated 28.1.1987 between Minister for Planning and Environment and Kunapipi Ski Club Co-op Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 529 P.200)
- 48** Lease dated 10.12.1984 between Minister for Planning and Environment and Ku-ring-gai Alpine

Lodge Co-op in respect of land situated at Perisher Valley (NPWS reference: MTR 55 P.7773)

- 49** Lease dated 10.12.1986 between Minister for Planning and Environment and Lampada Ski Club Co-op Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 522 P.181)
- 50** Lease dated 10.1.1986 between Minister for Planning and Environment and Langlauf Ski Club Co-op Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 369 P.7000)
- 51** Lease dated 10.12.1984 between Minister for Planning and Environment and Manly-Warringah Master Builders Ski Club Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 52 P.2457)
- 52** Lease dated 19.11.1984 between Minister for Planning and Environment and Thirroul Ski Club Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 53 P.179)
- 53** Lease dated 10.12.1984 between Minister for Planning and Environment and Merriment Alpine Club Co-op Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 10 P.1943)
- 54** Lease dated 10.12.1984 between Minister for Planning and Environment and Mirrabooka Co-op Ski Club Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 43 P.7693)
- 55** Lease dated 28.2.1985 between Minister for Planning and Environment and Munjarra Ski Club Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 58 P.3989)
- 56** Lease dated 23.4.1987 between Minister for Planning and Environment and Narraburra Ski Club Co-op Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 527 P.5956)
- 57** Lease dated 10.1.1985 between Minister for Planning and Environment and Oldina Ski Club Co-op Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 5 P.5869)
- 58** Lease dated 10.12.1984 between Minister for Planning and Environment and Orana Ski Club Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 13 P.7511)
- 59** Lease dated 10.12.1986 between Minister for Planning and Environment and Parrawa Ski Club in respect of land situated at Perisher Valley (NPWS reference: MTR 531 P.203)
- 60** Lease dated 22.7.1985 between Minister for Planning and Environment and Kiandra Pioneer Ski Club (1870) Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 29 P.878)
- 61** Lease dated 20.5.1988 between Minister for Environment and R.A.N. Ski Club in respect of land situated at Perisher Valley (NPWS reference: MTR 525 P.4763)
- 62** Lease dated 10.12.1986 between Minister for Planning and Environment and Redwood Ski Club Lodge Co-op Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 523 P.5706)
- 63** Lease dated 3.12.1985 between Minister for Planning and Environment and Rock Creek Ski Lodge Co-op Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 371 P.7775)
- 64** Lease dated 10.12.1984 between Minister for Planning and Environment and Rugby Ski Club Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 45 P.296)
- 65** Lease dated 7.8.1984 between Minister for Planning and Environment and Snowgums Alpine Club

Co-op Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 7 P.4893)

- 66** Lease dated 22.2.1988 between Minister for Planning and Environment and Sundowner Ski Club Co-op Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 384 P.875)
- 67** Lease dated 10.12.1984 between Minister for Planning and Environment and Sydney Ski Club in respect of land situated at Perisher Valley (NPWS reference: MTR 11 P.321)
- 68** Lease dated 10.1.1986 between Minister for Planning and Environment and Tambaroora Ski Club Co-op Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 370 P.7707)
- 69** Lease dated 7.1.1987 between Minister for Planning and Environment and Tarrawonga Alpine Club Co-op in respect of land situated at Perisher Valley (NPWS reference: MTR 530 P.6475)
- 70** Lease dated 2.4.1985 between Minister for Planning and Environment and Technology Ski Club Co-op Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 2 P.5335)
- 71** Lease dated 26.2.1986 between Minister for Planning and Environment and Telemark Ski Club Co-op Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 367 P.3226)
- 72** Lease dated 17.2.1987 between Minister for Planning and Environment and Trissana Ski Lodge Co-op Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 524 P.879)
- 73** Lease dated 10.12.1984 between Minister for Planning and Environment and University Alpine Club Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 9 P.1355)
- 74** Lease dated 23.4.1987 between Minister for Planning and Environment and Ullr Ski Lodge Co-op Society in respect of land situated at Perisher Valley (NPWS reference: MTR 526 P.231)
- 75** Lease dated 12.12.1984 between Minister for Planning and Environment and Waratah Ski Club Limited in respect of land situated at Perisher Valley (NPWS reference: MTR 35 P.877)
- 76** Lease dated 6.8.1984 between Minister for Planning and Environment and Wirruna Lodge Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 3 P.3327)
- 77** Lease dated 10.12.1984 between Minister for Planning and Environment and Warrugang Ski Club Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 34 P.6611)
- 78** Lease dated 6.6.1989 between Minister for Environment and Public Service Officers Ski Club Co-op in respect of land situated at Perisher Valley (NPWS reference: MTR 597 P.118)
- 79** Lease dated 10.12.1984 between Minister for Planning and Environment and Yaraandoo Ski Club Co-op Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 44 P.6970)
- 80** Lease dated 15.9.1986 between Minister for Planning and Environment and Yeti Alpine Ski Club Co-op Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 520 P.800)
- 81** Lease dated 26.10.1972 between Minister for Lands and South Perisher Co-op Alpine Club in respect of land situated at Perisher Valley (NPWS reference: MTR 383 P.1346)
- 82** Lease dated 17.5.1974 between Minister for Lands and Shortland Alpine Club Co-op Ltd in respect

of land situated at Perisher Valley (NPWS reference: MTR 386 P.4161)

- 83** Lease dated 15.2.1965 between Minister for Lands and Perisher Heutte Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 400 P.7119)
- 84** Lease dated 12.8.1986 between Minister for Planning and Environment and Cowra Ski Club Co-op Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 521 P.5581)
- 85** Lease dated 10.12.1984 between Minister for Planning and Environment and Christina Ski Club Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 46 P.7550)
- 86** Lease dated 29.10.1986 between Minister for Planning and Environment and Health Administration Corporation in respect of land situated at Perisher Valley (NPWS reference: MTR 437 P.8401)
- 87** Lease dated 13.11.1989 between Minister for Environment and Board of Fire Commissioners in respect of land situated at Perisher Valley (NPWS reference: MTR 675 P.7995)
- 88** Lease dated 7.1.1987 between Minister for Planning and Environment and G. J. Cocker in respect of land situated at Perisher Valley (NPWS reference: MTR 650 P.6313)
- 89** Lease dated 27.8.1986 between Minister for Planning and Environment and Hans Oversnow Pty Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 802 P.20)
- 90** Lease dated 18.2.1981 between Minister for Planning and Environment and NSW Ski Association in respect of land situated at Perisher Valley (NPWS reference: MTR 685 P.3975)
- 91** Lease dated 7.12.1984 between Minister for Planning and Environment and Perisher Skitube Joint Venture in respect of land situated at Perisher Valley (NPWS reference: MTR 396 P.7842)
- 92** Lease dated 7.7.1982 between Director of National Parks and Wildlife and Commissioner of Police in respect of land situated at Perisher Valley (NPWS reference: MTR 676 P.7150)
- 93** Lease dated 27.10.1972 between Minister for Lands and Trustees of the All Denominational Alpine Church in respect of land situated at Perisher Valley (NPWS reference: MTR 690 P.437)
- 94** Lease dated 9.9.1966 between Minister for Lands and Trustees of the Roman Catholic Church for the Archdiocese of Canberra and Goulburn in respect of land situated at Perisher Valley (NPWS reference: MTR 684 P.8791)
- 95** Lease dated 21.6.1985 between Minister for Planning and Environment and R. L., J. C., D. J. and C. R. Pryke in respect of land situated at Smiggin Holes (NPWS reference: MTR 591 P.6835)
- 96** Lease dated 21.6.1985 between Minister for Planning and Environment and R. L., J. C., D. J. and C. R. Pryke in respect of land situated at Smiggin Holes (NPWS reference: MTR 593 P.7925)
- 97** Lease dated 13.10.1966 between Minister for Lands and J. P. and C. M. Grant in respect of land situated at Smiggin Holes (NPWS reference: MTR 374 P.291)
- 98** Lease dated 23.3.1965 between Minister for Lands and Valse Pty Ltd in respect of land situated at

Smiggin Holes (NPWS reference: MTR 512 P.511)

- 99** Lease dated 29.1.1965 between Minister for Lands and Dalgama Pty Ltd in respect of land situated at Smiggin Holes (NPWS reference: MTR 373 P.237)
- 100** Lease dated 27.8.1979 between Minister for Planning and Environment and Aymost Pty Ltd in respect of land situated at Smiggin Holes (NPWS reference: MTR 372 P.6833)
- 101** Lease dated 17.8.1979 between Minister for Planning and Environment and Snow Accommodation Pty Ltd in respect of land situated at Smiggin Holes (NPWS reference: MTR 513 P.6837)
- 102** Lease dated 31.7.1975 between Minister for Lands and Heidis Hideaway Bistro Pty Ltd in respect of land situated at Smiggin Holes (NPWS reference: MTR 375 P.57)
- 103** Lease dated 1.11.1966 between Minister for Lands and Snowline Ski Centre (Kosciusko) Pty Ltd in respect of land situated at Smiggin Holes (NPWS reference: MTR 515 P.928)
- 104** Lease dated 6.5.1980 between Minister for Planning and Environment and Norman Tonkin in respect of land situated at Smiggin Holes (NPWS reference: MTR 514 P.6835)
- 105** Lease dated 17.10.1979 between Minister for Planning and Environment and Apex Foundation in respect of land situated at Smiggin Holes (NPWS reference: MTR 516 P.6437)
- 106** Lease dated 10.12.1984 between Minister for Planning and Environment and Caloola Ski Club Co-op Ltd in respect of land situated at Smiggin Holes (NPWS reference: MTR 50 P.7777)
- 107** Lease dated 19.4.1978 between Minister for Lands and Clancy Alpine Club Co-op Ltd in respect of land situated at Smiggin Holes (NPWS reference: MTR 381 P.5668)
- 108** Lease dated 29.5.1975 between Minister for Lands and Fellowship Ski Club Co-op Ltd in respect of land situated at Smiggin Holes (NPWS reference: MTR 377 P.2447)
- 109** Lease dated 2.11.1977 between Minister for Lands and Gunuma Lodge Ltd in respect of land situated at Smiggin Holes (NPWS reference: MTR 382 P.5573)
- 110** Lease dated 10.12.1984 between Minister for Planning and Environment and Illawarra Alpine Club Ltd in respect of land situated at Smiggin Holes (NPWS reference: MTR 49 P.220)
- 111** Lease dated 22.2.1988 between Minister for Planning and Environment and IMBAC Ltd in respect of land situated at Smiggin Holes (NPWS reference: MTR 376 P.4021)
- 112** Lease dated 25.3.1968 between Minister for Lands and Illoura Lodge Pty Ltd in respect of land situated at Smiggin Holes (NPWS reference: MTR 378 P.199)
- 113** Lease dated 10.12.1984 between Minister for Planning and Environment and Muniong Ski Club Co-op Ltd in respect of land situated at Smiggin Holes (NPWS reference: MTR 47 P.3585)
- 114** Lease dated 28.1.1987 between Minister for Planning and Environment and Smugglers Ski Club Ltd in respect of land situated at Smiggin Holes (NPWS reference: MTR 519 P.3592)
- 115** Lease dated 3.12.1984 between Minister for Planning and Environment and Snow Country Ski

Club Co-op Ltd in respect of land situated at Smiggin Holes (NPWS reference: MTR 39 P.4903)

- 116** Lease dated 10.12.1984 between Minister for Planning and Environment and Anglican Youth Department Diocese in respect of land situated at Smiggin Holes (NPWS reference: MTR 38 P.3422)
- 117** Lease dated 4.5.1977 between Minister for Lands and Wild Spitz Ski Club Incorporated in respect of land situated at Smiggin Holes (NPWS reference: MTR 379 P.5596)
- 118** Lease dated 17.12.1973 between Minister for Lands and Windarra Ski Lodge Co-op Ltd in respect of land situated at Smiggin Holes (NPWS reference: MTR 380 P.3613)
- 119** Lease dated 15.12.1975 between Minister for Lands and Guthega Hoteliers Pty Ltd in respect of land situated at Guthega (NPWS reference: MTR 351 P.211)
- 120** Lease dated 5.12.1979 between Minister for Planning and Environment and Guthega Developments Pty Ltd in respect of land situated at Guthega (NPWS reference: MTR 352 P.936)
- 121** Lease dated 28.7.1972 between Minister for Lands and Tate Ski Club Co-op Ltd in respect of land situated at Guthega (NPWS reference: MTR 349 P.895)
- 122** Lease dated 1.9.1977 between Minister for Lands and Australian Ski Club Co-op Ltd in respect of land situated at Guthega (NPWS reference: MTR 347 P.5380)
- 123** Lease dated 26.6.1971 between Minister for Lands and ACTP Ski Club Incorporated in respect of land situated at Guthega (NPWS reference: MTR 348 P.532)
- 124** Lease dated 10.12.1984 between Minister for Planning and Environment and Guthega Ski Club Incorporated in respect of land situated at Guthega (NPWS reference: MTR 40 P.69)
- 125** Lease dated 31.1.1985 between Minister for Planning and Environment and YMCA Ski Club of Canberra Incorporated in respect of land situated at Guthega (NPWS reference: MTR 59 P.3372)
- 126** Lease dated 31.1.1985 between Minister for Planning and Environment and YMCA Ski Club of Canberra Incorporated in respect of land situated at Guthega (NPWS reference: MTR 60 P.3372)
- 127** Lease dated 23.12.1975 between Minister for Lands and Snowy River Ski Club Co-op Ltd in respect of land situated at Guthega (NPWS reference: MTR 350 P.5309)
- 128** Lease dated 10.12.1984 between Minister for Planning and Environment and Blue Cow Ski Club Incorporated in respect of land situated at Guthega (NPWS reference: MTR 12 P.215)
- 129** Lease dated 10.12.1984 between Minister for Planning and Environment and Turnak Co-op Ski Club Ltd in respect of land situated at Guthega (NPWS reference: MTR 41 P.249)
- 130** Lease dated 27.6.1986 between Minister for Planning and Environment and Murray Publishers Pty Ltd in respect of land situated at Smiggin Holes (NPWS reference: MTR 570 P.8429)
- 131** Lease dated 30.1.1985 between Minister for Planning and Environment and Murray Publishers Pty Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 587 P.6409)
- 132** Lease dated 21.6.1985 between Minister for Planning and Environment and Murray Publishers

Pty Ltd in respect of land situated at Smiggin Holes (NPWS reference: MTR 588 P.6409)

133 Lease dated 21.6.1985 between Minister for Planning and Environment and Murray Publishers Pty Ltd in respect of land situated at Smiggin Holes (NPWS reference: MTR 589 P.6409)

134 Lease dated 21.6.1985 between Minister for Planning and Environment and Murray Publishers Pty Ltd in respect of land situated at Smiggin Holes (NPWS reference: MTR 590 P.6409)

135 Lease dated 23.2.1987 between Minister for Planning and Environment and Murray Publishers Pty Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 864 P.6409)

136 Lease dated 23.2.1987 between Minister for Planning and Environment and Murray Publishers Pty Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 865 P.6409)

137 Lease dated 17.3.1988 between Minister for Planning and Environment and Murray Publishers Pty Ltd in respect of land situated at Perisher Valley (NPWS reference: MTR 866 P.6409)

Schedule 16 Land vested in RMS

(Section 184A)

Kosciuszko Road

Lots 101–107 in RTA Plan number 0286.119.SS.0129

Lot 201 in RTA Plan number 0286.119.SS.0130

Lots 301–313 in RTA Plan number 0286.119.SS.0131

Alpine Way

Lots 401–417 in RTA Plan number 0677.435.SS.0006

Lots 501–522 in RTA Plan number 0677.435.SS.0007

Lots 601–605 in RTA Plan number 0677.435.SS.0008

Lot 701 in RTA Plan number 0677.119.SS.0001

Lots 801–809 in RTA Plan number 0677.119.SS.0002

Lot 901 in RTA Plan number 0677.435.SS.0010