

# National Park Estate (Reservations) Act 2018 No 57

[2018-57]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Authorisation

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# National Park Estate (Reservations) Act 2018 No 57



New South Wales

An Act to transfer certain State forest land to the national park estate; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *National Park Estate (Reservations) Act 2018*.

### 2 Commencement

This Act commences on 1 January 2019.

### 3 Definitions

(1) In this Act:

**NPW Minister** means the Minister administering Divisions 1 and 2 of Part 4 of the *National Parks and Wildlife Act 1974*.

**State forest** means land dedicated under the *Forestry Act 2012* (or under the former *Forestry Act 1916* or the former *Forestry Act 1909*) as a State forest, being a dedication that is in force.

#### Note—

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

(2) Notes included in this Act do not form part of this Act.

## Part 2 Land transfers

### 4 Revocation of State forests

(1) The dedication as State forest of the lands described in Schedules 1, 2 and 3 is revoked on 1 January 2019.

- (2) Any notices under section 18 of the [Forestry Act 2012](#) (or under section 21A of the [Forestry Act 1916](#)) that declare, as special management zones, areas of State forests whose dedication is revoked by subsection (1) are also revoked by this Act on the date the dedication is revoked, but only to the extent to which they relate to special management zones, or parts of special management zones, situated within the lands referred to in that subsection.
- (3) Any notices under section 16 of the [Forestry Act 2012](#) (or under section 25A of the [Forestry Act 1916](#)) that set apart, as flora reserves, areas of State forests whose dedication is revoked by subsection (1) are also revoked by this Act on the date the dedication is revoked, but only to the extent to which they relate to flora reserves, or parts of flora reserves, situated within the lands referred to in that subsection.

## **5 Reservation of former State forests as national park or state conservation area**

The lands described in Schedules 1 and 2 are, on the date their dedication as State forest is revoked by section 4, reserved under the [National Parks and Wildlife Act 1974](#) as, or as part of, national park or state conservation area (as indicated in the relevant Schedule).

## **6 Vesting in NPW Minister of former State forests on 1 January 2019**

- (1) The lands described in Schedule 3 vest, on 1 January 2019, in the NPW Minister on behalf of the Crown for the purposes of Part 11 of the [National Parks and Wildlife Act 1974](#) for an estate in fee simple, freed and discharged from:
  - (a) all trusts, obligations, estates, interests, rights of way or other easements, and
  - (b) any dedication, reservation, Crown grant or vesting to which the lands were subject, and any such dedication, reservation, grant or vesting is revoked.
- (2) Despite subsection (1), the lands described in Schedule 3 are not freed and discharged from any continued perpetual lease, continued special lease or continued term lease within the meaning of Schedule 1 to the [Crown Land Management Act 2016](#) (or from rights or interests arising under an incomplete purchase within the meaning of that Act of land that was formerly under a lease of that kind) to which the lands were subject immediately before their vesting under this section.

## **7 Adjustment of description of land transferred to national park estate**

- (1) The description of any land in Schedules 1, 2 and 3 (a **relevant Schedule**) may be adjusted in accordance with this section.
- (2) A description of land may be adjusted from time to time:
  - (a) to alter the boundaries of the land for the purposes of the effective management of national park estate land and State forest land, including adjustments to enable boundaries to follow distinctive land features, to provide access to land or to rationalise the boundaries of similar areas of land, or

- (b) to adjust the boundary of any land adjoining a public road, including adjustments to enable the boundary to follow the formed path of the road or to provide an appropriate setback from the carriageway of the road, or
  - (c) to include, remove or change a description of any easement or restriction to which the land is subject, or
  - (d) to provide a more detailed description of the boundaries of the land.
- (3) Any adjustment of a description of land may include adding to a relevant Schedule a description of the land removed by the adjustment from the description of land in another relevant Schedule.
- (4) An adjustment of the description of land is to be made by the Environment Agency Head by a notice published on the NSW legislation website that amends a relevant Schedule.
- (5) A notice under this section may be published only with the approval of:
  - (a) the NPW Minister, and
  - (b) to the extent that the notice relates to a State forest—the Minister administering the [Forestry Act 2012](#), and
  - (c) to the extent that the notice applies to Crown land or a Crown road—the Minister administering the [Crown Land Management Act 2016](#), and
  - (d) 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.
- (6) The Environment Agency Head is required to certify in any notice under this section that the adjustments effected by the notice will not result in significant reduction in the size or value of national park estate land or State forest land.
- (7) An adjustment of the description of land may only be made before 1 January 2022.
- (8) If any of the land described in a relevant Schedule on the commencement of this Act is not included in the adjusted description of the land, the land that is not included is taken never to have been subject to or affected by the provisions of this Act applying to land described in the relevant Schedule.
- (9) If land included in the adjusted description of the land includes any land not described in a relevant Schedule on the commencement of this Act, the land is taken to have been subject, on and from the commencement of this Act, to the provisions of this Act applying to land described in the relevant Schedule.
- (10) The Environment Agency Head may, in a notice published under this section to adjust the boundary of land adjoining a public road, declare that:

- (a) the land (described in the notice) is part of the public road and, accordingly, is vested in the roads authority for the public road under the [Roads Act 1993](#) or is Crown land, or
- (b) the land (described in the notice) ceases to be part of the public road and is divested from the relevant roads authority or the Crown and becomes part of the land subject to the provisions of this Act applying to land described in the relevant Schedule in which the land is included.

(11) A declaration under subsection (10) has effect despite anything to the contrary in the [Roads Act 1993](#).

(12) In this section:

**appropriate setback**, in relation to a carriageway of a road, includes a setback that allows for drainage, signposts, traffic control devices, lighting and other supporting infrastructure for the road.

**classified road** and **public road** have the same meanings as they have in the [Roads Act 1993](#).

**Environment Agency Head** means the Chief Executive of the Office of Environment and Heritage.

**land adjoining a public road** includes land in the vicinity of a public road.

**national park estate land** means:

- (a) land reserved under the [National Parks and Wildlife Act 1974](#), or
- (b) land vested in the NPW Minister for the purposes of Part 11 of the [National Parks and Wildlife Act 1974](#).

## Part 3 Miscellaneous

### 8 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

### 9 Regulations

- (1) 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 or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.

- (3) Any such provision has effect despite anything to the contrary in Schedule 4 (Land transfers—ancillary and special provisions). The regulations may make separate savings and transitional provisions or amend Schedule 4 to consolidate the savings and transitional provisions.
- (4) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (5) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, 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.

## **Schedule 1 State forests reserved as national park**

### **1 Addition to Willi Willi National Park: Carrai State Forest No 909**

An area of about 2,080 hectares, being part of Carrai State Forest No 909, dedicated by proclamation published in the NSW Government Gazette on 14 October 1949, and Extensions No 1 and No 5, dedicated on 28 April 1950 and 2 August 1985, respectively, in the Parishes of Clarke, Loch and Dudley, Counties of Dudley and Vernon, and being the land shown coloured pink on the diagram catalogued Misc R 00339 in the Office of Environment and Heritage, subject to any variations or exceptions noted on the diagram.

### **2 Addition to Budderoo National Park: Yarrawa State Forest No 878**

An area of about 120.6 hectares, being part of Yarrawa State Forest No 878, dedicated by proclamation published in the NSW Government Gazette on 26 February 1943, being the whole of Extension 1, dedicated on 11 November 1949, in the Parish of Yarrawa, County of Camden.

## **Schedule 2 State forests reserved as state conservation area**

### **1 Addition to Curracabundi State Conservation Area: Mernot State Forest No 1047**

An area of about 1,144 hectares, being the whole of Mernot State Forest No 1047, dedicated by proclamation published in the NSW Government Gazette on 3 October 1986, being the whole of Extension 1, dedicated on 8 May 1987, in the Parish of Barnard, County of Hawes.

## **2 Yango State Conservation Area**

An area of about 647.5 hectares, being the whole of Yango State Forest No 278, dedicated by proclamation published in the NSW Government Gazette on 15 December 1916, in the Parish of Yango, County of Northumberland.

## **Schedule 3 State forests vested in NPW Minister**

- 1** An area of about 513 hectares, being the whole of Muldiva State Forest No 1049, being Lot 8, DP 752815 and dedicated by proclamation published in the NSW Government Gazette on 12 June 1987, in the Parish of Bostobrick, County of Fitzroy.

## **Schedule 4 Land transfers—ancillary and special provisions**

### **1 Exclusion of freehold and certain leasehold interests**

- (1) The following land is not reserved by this Act:
  - (a) land that a person holds for an estate in fee simple,
  - (b) land that a person holds under a continued perpetual lease, a continued special lease or a continued term lease within the meaning of Schedule 1 to the [Crown Land Management Act 2016](#),
  - (c) land that is comprised in an incomplete purchase within the meaning of the [Crown Land Management Act 2016](#) if the land was formerly under a lease of the kind referred to in paragraph (b).
- (2) This clause has effect despite any other provision of this Act.
- (3) However, this clause does not apply to any interest in land of the NPW Minister or the Water Administration Ministerial Corporation.

### **2 Application of Act**

- (1) This Act has effect despite the provisions of the [Forestry Act 2012](#) and, in particular, despite any different procedure under that Act for the revocation of State forests, national forests, special management zones, flora reserves or timber reserves.
- (2) This Act has effect despite the provisions of the [National Parks and Wildlife Act 1974](#) and, in particular, despite any different procedure for reserving or vesting, or revoking the reservation of, land under that Act.

### **3 Reservation of lands as national park or state conservation area**

- (1) The lands reserved as, or as parts of, national park or state conservation area by this Act are, for the purposes of the [National Parks and Wildlife Act 1974](#), taken to have been so reserved by notice published under Division 1 of Part 4 of that Act.



- (2) A reference in the [National Parks and Wildlife Act 1974](#) to the publication of a notice under Division 1 of Part 4 of that Act is, in relation to a reservation of any of the lands described in Schedule 1 or 2 that is effected by this Act, taken to be a reference to the commencement of the operation of the relevant item of the Schedules.
- (3) A name assigned to any national park or state conservation area by this Act is taken to have been assigned to that land by notice published under Division 1 of Part 4 of the [National Parks and Wildlife Act 1974](#).
- (4) Sections 35 and 47D of the [National Parks and Wildlife Act 1974](#) do not apply to a reservation of land as, or as part of, a national park or state conservation area that is effected by this Act.

#### **4 Existing leases under [Forestry Act 2012](#) affecting lands reserved as national park or state conservation area**

Sections 42 (2) and 47K of the [National Parks and Wildlife Act 1974](#) apply to and in respect of a lease under the [Forestry Act 2012](#), being a lease:

- (a) affecting any of the lands described in Schedule 1 or 2 that are reserved as, or as parts of, national park or state conservation area by this Act, and
- (b) current and in force immediately before 1 January 2019,

in the same way as those sections apply to a licence or permit under the [Forestry Act 2012](#).

#### **5 Access roads within national park or state conservation area**

- (1) In this clause:

**access roads** means the roads, tracks, trails and other means of access referred to in subclause (2) (a)–(c).

**private land holding** means land held:

- (a) by an owner within the meaning of the [National Parks and Wildlife Act 1974](#), or
- (b) as a holding within the meaning of the [Crown Land Management Act 2016](#).

- (2) This clause applies to and in respect of the following access roads situated within the lands described in Schedule 1 or 2 immediately before 1 January 2019:

- (a) roads of access within the meaning of section 37 of the [Forestry Act 2012](#) (or section 33A of the [Forestry Act 1916](#)),
- (b) roads, tracks, trails and other means of access used, immediately before 1 January 2019, for access to private land holdings within those lands,
- (c) roads, tracks, trails and other means of access through those lands to State

forests or private land holdings that adjoin or are in the vicinity of the lands.

- (3) The access roads to which this clause applies are not, on 1 January 2019, reserved as, or as part of, a national park or state conservation area by this Act but vest in the NPW Minister on behalf of the Crown for the purposes of Part 11 of the [National Parks and Wildlife Act 1974](#) for an estate in fee simple, freed and discharged from:
  - (a) all trusts, obligations, estates, interests, rights of way or other easements, and
  - (b) any dedication, reservation, Crown grant or vesting to which the lands were subject, and any such dedication, reservation, grant or vesting is revoked.
- (4) The access roads may continue, subject to this clause, to be used for the purposes for which they were used immediately before 1 January 2019.
- (5) The NPW Minister must, under section 149 of the [National Parks and Wildlife Act 1974](#), grant a right of way over an access road to which this clause applies for the benefit of a private land holding in order to replace any right of way duly granted under section 34 of the [Forestry Act 2012](#) (or under section 20A of the [Forestry Act 1916](#)) for the benefit of that land holding and in force immediately before 1 January 2019.
- (6) The NPW Minister may from time to time revoke or vary the grant of a right of way under subclause (5).
- (7) Before 1 January 2022, the NPW Minister must, by one or more orders published in the Gazette, declare which of the access roads to which this clause applies:
  - (a) are excluded from reservation as part of a national park or state conservation area, or
  - (b) are not so excluded and are reserved as part of the national park or state conservation area in which they are situated.
- (8) An order under subclause (7) may be published only with the concurrence of the Minister administering the [Forestry Act 2012](#).
- (9) On the publication of an order under subclause (7):
  - (a) the access roads that are referred to in the order as excluded from reservation as part of a national park or state conservation area remain vested in the NPW Minister for the purposes of Part 11 of the [National Parks and Wildlife Act 1974](#) and may, subject to this clause, continue to be used for the purposes for which they were used immediately before 1 January 2019, and
  - (b) the access roads that are not so excluded are reserved as part of the national park or state conservation area within which they are situated.
- (10) Nothing in this clause affects the exercise of any power, authority, duty or function

by the NPW Minister or any other person under and in accordance with the [National Parks and Wildlife Act 1974](#) in relation to any access road to which this clause applies.

(11) While a private land holding is in private ownership, nothing in this clause authorises the NPW Minister to close any access road that comprises the only practical means of access to the land holding.

(12) This clause has effect despite the provisions of the [Forestry Act 2012](#).

## **6 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.

## **7 Provisions relating to certain existing access roads**

(1) In this clause:

**access road** means an access road to which clause 5 of this Schedule applies.

**exclusion order** means an order under clause 5 (7) of this Schedule that excludes an access road from reservation under this Act.

(2) At the time an exclusion order is made, the NPW 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.

(3) An order under subclause (2) may:

(a) be made only with the concurrence of the Minister administering the [Forestry Act 2012](#), and

(b) be made by the same order that constitutes the exclusion order concerned, and

(c) be made only if the NPW Minister has determined it is appropriate after considering:

(i) the objects of the [National Parks and Wildlife Act 1974](#), 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 setback from the carriageway of the road.

(4) On the making of an order under subclause (2):

(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 NPW Minister on behalf of the Crown for the purposes of Part 11 of the [National Parks and Wildlife Act 1974](#) 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 NPW 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 Status of land vested in NPW Minister**

- (1) Any land that is vested by this Act in the NPW Minister for the purposes of Part 11 of the [National Parks and Wildlife Act 1974](#) is taken to have been acquired by that Minister under that Part, and may be dealt with by that Minister as if it had been so acquired.
- (2) Any such land is, to the extent that it relates to land subject to a lease preserved by section 6 of this Act, taken to be Crown land reserved from sale for the purpose of any application by the holder of the lease to purchase the land comprised in the lease.

## **9 Provisions relating to activities carried out on land vested in NPW Minister**

- (1) This clause applies to and in respect of land vested in the NPW Minister for the purposes of Part 11 of the [National Parks and Wildlife Act 1974](#) by this Act.
- (2) For the avoidance of doubt, the purposes for which the NPW Minister's powers under section 149 of the [National Parks and Wildlife Act 1974](#) may be exercised in respect of land to which this clause applies include enabling an activity to continue to be carried out that was carried out on the land before it was so vested.
- (3) The Chief Executive of the Office of Environment and Heritage may authorise the use of relevant access roads for the purpose of enabling any lawful activity to be carried out on the land to which this clause applies.
- (4) In this clause, **relevant access roads** means roads, tracks, trails and other means of access through any land reserved under the [National Parks and Wildlife Act 1974](#) to land to which this clause applies.

## **10 Saving in relation to revocations**

A revocation effected by this Act does not affect anything done or omitted to be done before the revocation takes effect.