

Wilderness Act 1987 No 196

[1987-196]



New South Wales

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Wilderness Act 1987 No 196



New South Wales

An Act to provide for the identification of wilderness and the protection and management of wilderness areas in the State; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Wilderness Act 1987*.

2 Definitions

(1) In this Act:

conservation agreement has the same meaning as it has in the *National Parks and Wildlife Act 1974*.

conservation area has the same meaning as it has in the *National Parks and Wildlife Act 1974*.

Council means the National Parks and Wildlife Advisory Council constituted under the *National Parks and Wildlife Act 1974*.

development, in relation to a wilderness 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.

Director-General means the Director-General of the Department of Environment, Climate Change and Water.

statutory authority means:

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- (b) (Repealed)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

wilderness area means lands (including subterranean lands) declared to be a wilderness area under this Act or the *National Parks and Wildlife Act 1974*.

wilderness protection agreement means an agreement entered into under section 10.

(2) 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*.

(3) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

3 Objects of Act

The objects of this Act are:

- (a) to provide for the permanent protection of wilderness areas,
- (b) to provide for the proper management of wilderness areas, and
- (c) to promote the education of the public in the appreciation, protection and management of wilderness.

4 Act binds Crown

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

- (2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

Part 2 Functions of Director-General etc relating to wilderness

5 Functions of Director-General and Service

- (1) The Director-General has the following functions:
- (a) to investigate and identify areas of land that are wilderness or are suitable to be declared as wilderness areas or for addition to existing wilderness areas,
 - (b) to consider and assess proposals made to the Director-General under this Act relating to wilderness, wilderness areas or possible wilderness areas,
 - (c) to promote such educational activities as the Director-General considers necessary in respect of wilderness or wilderness areas,
 - (d) in the case of each wilderness area, but subject to the terms of any wilderness protection agreement or conservation agreement relating to the area—to arrange for the carrying out of such works as the Director-General considers necessary in connection with the protection, management and maintenance of the area,
 - (e) to undertake such scientific research as the Director-General considers necessary in connection with the protection, management and use of wilderness areas,
 - (f) to enter into negotiations on behalf of the Minister in connection with the protection, management, use or declaration of existing or proposed wilderness areas,
 - (g) to take such other action as the Director-General considers necessary in connection with the carrying out of directions by the Minister relating to existing or proposed wilderness areas.
- (2) The National Parks and Wildlife Service shall carry out such works and activities as the Minister may direct either generally or in any particular case in connection with wilderness areas.

6 Identification of wilderness

- (1) An area of land shall not be identified as wilderness by the Director-General unless the Director-General is of the opinion that:
- (a) the area is, together with its plant and animal communities, in a state that has not been substantially modified by humans and their works or is capable of being restored to such a state,
 - (b) the area is of a sufficient size to make its maintenance in such a state feasible,
and

- (c) the area is capable of providing opportunities for solitude and appropriate self-reliant recreation.
- (2) In forming an opinion under subsection (1) the Director-General may consider any relevant circumstance, including:
 - (a) the period of time within which the area of land could reasonably be restored to a substantially unmodified state,
 - (b) whether, despite development which would otherwise render it unsuitable, the area of land is needed for the management of an existing or proposed wilderness area, and
 - (c) any written representations received by the Director-General from any person (including a statutory authority) as to whether the area of land should be identified as wilderness.

7 Wilderness proposals

- (1) Any person, body or organisation (including a statutory authority) may submit to the Director-General a written proposal that an area of land be identified as wilderness, declared to be a wilderness area or added to an existing wilderness area.
- (2) A proposal may be made by a person, body or organisation even though it is not the owner of the area of land concerned.
- (3) On receipt of any such proposal that is not made by the owner of the area of land concerned, the Director-General shall notify the owner of the area.
- (4) The Director-General shall, not later than 2 years after receiving any such proposal, consider the proposal and advise the Minister in relation to the proposal.

Part 3 Wilderness areas

Division 1 General provisions

8 Declaration of wilderness areas

- (1) The Minister shall, by notification published in the Gazette, declare an area of land (which may, but need not, be restricted to land that is wholly or predominantly subterranean land):
 - (a) subject to a wilderness protection agreement, or
 - (b) subject to a conservation agreement referred to in section 16,to be a wilderness area.
- (1A) The Minister may, by notification published in the Gazette, declare any lands

reserved or dedicated under the *National Parks and Wildlife Act 1974* to be a wilderness area.

- (1B) The Minister may not declare lands referred to in subsection (1A) to be a wilderness area unless the Director-General has identified those lands as wilderness in accordance with this Act.
- (2) A notification under subsection (1) shall be published not later than 28 days after the agreement takes effect or at such later time as may be provided by the agreement.
- (3) A declaration relating to an area of land subject to a wilderness protection agreement may be varied by a further notification published in the Gazette but shall not be revoked except by an Act of Parliament.
- (4) A declaration relating to a conservation area may be varied or revoked by a further notification published in the Gazette and a copy of any notification revoking such a declaration shall be laid before each House of Parliament within the prescribed time after its publication.
- (4A) A declaration under subsection (1A) may be varied by a further notification by the Minister published in the Gazette but must not be revoked except by an Act of Parliament.
- (5) A declaration under this section does not, except as otherwise provided by any agreement under this Act, affect any existing interest in the area of land subject to the declaration.
- (6) In this section:
interest means any authority, authorisation, permit, lease, licence or occupancy, whether or not arising under an Act.

9 Management principles for wilderness areas

A wilderness area shall be managed so as:

- (a) to restore (if applicable) and to protect the unmodified state of the area and its plant and animal communities,
- (b) to preserve the capacity of the area to evolve in the absence of significant human interference, and
- (c) to permit opportunities for solitude and appropriate self-reliant recreation (whether of a commercial nature or not).

Division 2 Wilderness protection agreements and conservation

agreements

10 Wilderness protection agreements

- (1) The Minister may enter into a wilderness protection agreement relating to land identified by the Director-General as wilderness:
 - (a) if the land is owned by, or (being land owned by the Crown) is under the control of, a statutory authority (not being a Government Department or Administrative Office)—with the statutory authority, or
 - (b) if the land is owned by the Crown and is under the control of a Government Department or Administrative Office—with the responsible Minister.
- (2) The Minister shall not enter into a wilderness protection agreement relating to land or an agreement varying such an agreement unless:
 - (a) where the land is subject to a residential tenancy agreement or other lease, the tenant or the lessee has consented in writing to the agreement, and
 - (b) 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.
- (2A) The Minister must not enter into a wilderness protection agreement relating to land owned by a Local Aboriginal Land Council unless the New South Wales Aboriginal Land Council has consented in writing to the agreement.
- (3) A statutory authority or Minister responsible for a statutory authority may enter into a wilderness protection agreement, and may carry out any functions under the agreement, despite the provisions of any Act whether enacted before or after the commencement of this Act.
- (4) A reference in this section to land owned by the Crown does not include a reference to land held under the [Crown Land Management Act 2016](#) other than land so held by a statutory authority.

11 Exhibition of proposed agreements

- (1) When a draft wilderness protection agreement has been prepared, the Minister shall, 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,
 - (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 may be made to the Minister.

- (2) The Minister shall cause a copy of the draft wilderness protection 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 shall, before entering into the agreement, consider any submissions made under subsection (3) or by the Council.

12 Purpose and content of agreements

- (1) A wilderness protection agreement may contain terms, binding on a statutory authority and, if the statutory authority is a Government Department or an Administrative Office, on the Crown:
 - (a) restricting the use of the area,
 - (b) requiring the statutory authority or Crown to refrain from or not to permit specified activities in the area,
 - (c) requiring the statutory authority or a person representing the Crown to carry out specified activities or to do specified things,
 - (d) requiring the statutory authority or Crown to permit access to the area by specified persons,
 - (e) without affecting the generality of paragraph (a), (b), (c) or (d), prohibiting, except where necessary for health or safety or essential management reasons or in emergencies, access to the area by motor vehicles, motor boats or other forms of transport,
 - (f) requiring the statutory authority or Crown to contribute towards costs incurred which relate to the area or the carrying out of functions under the agreement,
 - (g) specifying the manner in which any money provided to the statutory authority or Crown under the agreement shall be applied,
 - (h) requiring the statutory authority or Crown to repay money paid to it under the agreement if a specified breach of the agreement occurs, or
 - (i) providing for any other matter relating to the protection of the area, including the implementation of any plan of management for the area.
- (2) A wilderness protection 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 protection of the area, including the implementation of any plan of management for the area.
- (3) The terms of a wilderness protection agreement shall not be inconsistent with the principles set out in section 9 for the management of wilderness areas.

13 Duration and variation of agreements

- (1) A wilderness protection agreement shall have effect from a day, or on the happening of an event, specified in the agreement.
- (2) An agreement may be varied by a subsequent agreement between the parties to the agreement and any such subsequent agreement shall be exhibited and be subject to the same procedures as are provided for an original agreement by section 11 before it is entered into.
- (3) An agreement shall have effect until the declaration of the land subject to the agreement as a wilderness area is revoked.

14 Register of agreements

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

15 Proposals by statutory authorities affecting certain wilderness areas

- (1) A statutory authority shall not carry out development in a wilderness area subject to a wilderness protection agreement or a conservation agreement unless:
 - (a) it has given written notice of the proposed development to the Minister, any other party to the agreement, any statutory authority on behalf of which the agreement was entered into and, in the case of a conservation agreement, any successor in title to the owner who entered into the conservation agreement, and
 - (b) it has received written notice from the Minister consenting to the development.
- (2) The Minister may consent to the development only if:
 - (a) the Minister is of the opinion that the proposed development will not adversely

affect the area, and

(b) in the case of an area subject to a wilderness protection agreement—the Minister responsible for the statutory authority which entered into the agreement, or on behalf of which the agreement was entered into, has consented to the development.

(3) In subsection (1), **statutory authority** includes an authorised network operator under the *Electricity Network Assets (Authorised Transactions) Act 2015* but does not include the Soil Conservation Service or a statutory authority carrying out development in accordance with the terms of a wilderness protection agreement.

16 Additional provisions relating to conservation agreements

(1) A conservation agreement may be entered into under the *National Parks and Wildlife Act 1974* in relation to an area of land identified by the Director-General as wilderness.

(2) In addition to any other terms it may contain, a conservation agreement relating to such an area of land may:

(a) prohibit, except where necessary for health or safety or essential management reasons or in emergencies, access to the area by motor vehicles, motor boats or other forms of transport, or

(b) provide for any other matter relating to the protection of the area.

(3) The terms of such a conservation agreement shall not be inconsistent with the principles set out in section 9 for the management of wilderness areas.

Division 3 Plans of management for wilderness areas

17 Plans of management for land subject to wilderness protection agreements

(1) The Director-General shall from time to time cause a plan of management to be prepared for an area of land subject to or proposed to be made subject to a wilderness protection agreement.

(2) A plan of management shall not be inconsistent with the principles set out in section 9 for the management of wilderness areas.

(3) A plan of management is not required to be prepared under this Act for an area of land if a plan of management is being or has been prepared under the *National Parks and Wildlife Act 1974* for that land.

18 Adoption etc of plan of management for land subject to wilderness protection agreement

(1) When a plan of management for an area of land subject to a wilderness protection agreement has been prepared, the Director-General shall refer the plan of

management to the Council for its consideration and advice.

- (2) The Director-General shall submit the plan of management to the Minister together with any comments or suggestions of the Council.
- (3) The Minister shall, before adopting the plan of management, consider any comments or suggestions of the Council.
- (4) The Minister may, with the consent of the other party to the agreement, adopt the plan of management without alteration or with such alterations as the Minister thinks fit or may refer it back to the Director-General and Council for further consideration.
- (5) The Minister may, on the recommendation of the Director-General and with the consent of the other party to the agreement:
 - (a) alter or amend the plan of management from time to time,
 - (b) cancel the plan, or
 - (c) cancel the plan and substitute a new plan.
- (6) The provisions of section 17 (2) apply to an alteration or amendment of any such plan of management.
- (7) If the Minister has adopted a plan of management for an area of land subject to a wilderness protection agreement, it shall be carried out and given effect to by the Director-General and the other party to the agreement and (if applicable) the statutory authority on behalf of which the agreement was entered into.

19 Plans prepared under the [National Parks and Wildlife Act 1974](#)

A plan of management for a wilderness area, or for any part of a wilderness area or an area subject to or proposed to be made subject to a wilderness protection agreement, that is prepared under the [National Parks and Wildlife Act 1974](#) shall not be inconsistent with the principles set out in section 9 for the management of wilderness areas.

Part 4 Miscellaneous

20 Provisions relating to Crown land leases

- (1) This section applies to land leased under the [Crown Land Management Act 2016](#) where the land has been identified by the Director-General as wilderness and notice of that identification has been given by the Minister to the Minister administering the Act under which the land is leased.
- (2) The Minister administering the Act under which the land is leased shall not under that Act:
 - (a) approve any change in use, or

(b) approve the conversion, sale or disposal,
of land to which this section applies, without consulting the Minister administering this Act.

21 Resolution of certain disputes

- (1) If a dispute arises between the Minister and a statutory authority or the Minister responsible for a statutory authority in relation to:
 - (a) a wilderness protection agreement or a proposed wilderness protection agreement,
 - (b) land leased under the *Crown Land Management Act 2016*,
 - (c) a proposal to carry out development in a wilderness area, or
 - (d) any other matter arising out of this Act,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 an 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.

22 Delegation

- (1) The Minister may delegate to a person any of the Minister's functions under this Act, other than this power of delegation.
- (2) The Director-General may delegate to a person:
 - (a) any of the Director-General's functions under this Act, other than this power of delegation, and
 - (b) any of the functions delegated to the Director-General by the Minister under this

Act, subject to any conditions to which the delegation to the Director-General is subject.

23 Dunphy Wilderness Fund

- (1) There shall be established in the Special Deposits Account in the Treasury a Dunphy Wilderness Fund.
- (2) There shall be paid into the Fund:
 - (a) all money provided by Parliament for the purposes of this Act,
 - (b) any money received in connection with wilderness areas, including gifts for wilderness purposes received under section 148 of the *National Parks and Wildlife Act 1974*, and
 - (c) any other money received in connection with the execution of this Act or authorised by the regulations to be paid into the Fund.
- (3) There shall be paid out of the Fund:
 - (a) all amounts required to meet expenditure incurred in the execution of this Act,
 - (b) amounts required to be paid in accordance with a gift for wilderness purposes, and
 - (c) amounts authorised by the regulations to be paid out of the Fund.

24 Wilderness matters to be included in report

In preparing the annual report for the National Parks and Wildlife Service, the Director-General shall report on the status of areas identified as wilderness and on matters relating to wilderness areas.

25 Relationship of Act to *National Parks and Wildlife Act 1974*

Except as otherwise provided by this Act, nothing in this Act affects the operation of any of the provisions of the *National Parks and Wildlife Act 1974* in relation to land within a wilderness area.

26 Effect of Crown lands legislation

Nothing in the *Crown Land Management Act 2016* affects:

- (a) the operation of section 20, or
- (b) the terms of a wilderness protection agreement relating to land held under any of those Acts.

27 Restraint etc of breaches of this Act

- (1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act, 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.

28 Evidence of agreements

- (1) In any legal proceedings, a certificate purporting to be signed by the Director-General or an officer of the National Parks and Wildlife Service authorised by the Director-General and certifying that at a time, or during a period, specified in the certificate:
 - (a) a wilderness protection agreement relating to land specified in the certificate was in force, and
 - (b) the agreement contained the terms specified in the certificate,is prima facie evidence of the matter or matters so certified.
- (2) In any legal proceedings, a document purporting to be certified by the Director-General as a copy of a wilderness protection agreement is prima facie evidence of the agreement.

29 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) In particular, the regulations may make provision for or with respect to wilderness areas.
- (3) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.
- (4) A regulation made under this Act applying:
 - (a) to a wilderness area under the *National Parks and Wildlife Act 1974*—shall have no effect to the extent to which it is inconsistent with a regulation under that Act applying to that area, or

- (b) to an area subject to a wilderness protection agreement or conservation agreement—shall have no effect to the extent to which it is inconsistent with the terms of that agreement.

30 Proceedings for offences

Proceedings for an offence against the regulations shall be dealt with summarily before the Local Court.