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**NATIONAL PARKS AND WILDLIFE ACT 1977**

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**ANALYSIS**

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## NATIONAL PARKS AND WILDLIFE

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No. 62 of 1977

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**AN ACT to amend the National Parks and Wildlife Act 1970.**

**[21 September 1977]**

**BE** it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

**1—(1)** This Act may be cited as the *National Parks and Wildlife Act 1977*. Short title and citation.

(2) The *National Parks and Wildlife Act 1970\**, as subsequently amended, is in this Act referred to as the Principal Act.

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\* No. 47 of 1970. Subsequently amended by No. 77 of 1971, No. 85 of 1974, and No. 114 of 1976.

Interpretation.

**2** Section 3 of the Principal Act is amended—

(a) by inserting in subsection (1), after the definition of “dog”, the following definitions:—

“ ‘game’ means the forms of wildlife that are specified as partly protected wildlife in the wildlife regulations and whose taking is subject to licensing under those regulations;

“ ‘game reserve’ has the meaning assigned to that expression by subsection (2);”;

(b) by inserting in that subsection, after the definition of “managing authority”, the following definition:—

“ ‘Minister for Crown Lands’ means the Minister for the time being administering the *Crown Lands Act 1976*;”;

(c) by inserting in that subsection, after the definition of “ranger”, the following definition:—

“ ‘Recorder’ means the Recorder of Titles;”;

(d) by inserting in subsection (2), after the words “State reserves,”, the words “game reserves,”;

(e) by inserting in subsection (3), after the word “wildlife” (first occurring), the words “or to the taking of a form of wildlife that is game”;

(f) by inserting in that subsection, after the word “wildlife” (second occurring), the words “or that form of wildlife”; and

(g) by inserting after subsection (6) the following subsection:—

“(6A) For the purposes of this Act, ‘have in possession’ includes having under control in any place or conveyance, whether for the use or benefit of the person of whom the term is used or of another person, and although another person has the actual possession or custody of the thing in question and, without restricting the generality of the foregoing provisions of this subsection, a person shall be deemed to have a thing in his possession so long as it is in or on any place or conveyance occupied, controlled, or used by that person or is used or controlled by him in or on any place or conveyance, unless he proves that he had no knowledge of that thing.”.

**3** Section 13 of the Principal Act is amended—

Conservation purposes.

(a) by omitting the word “or” at the end of paragraph (e); and

(b) by adding at the end the following paragraphs:—

“(g) The management and taking of game; or

“(b) Any purpose that, in the opinion of the Governor, would promote the better management or more effective use of land set aside for any of the foregoing purposes.”.

**4** Section 14 of the Principal Act is amended—

Reservation and acquisition of land as conservation areas.

(a) by inserting after subsection (1) the following subsections:—

“(1A) A proclamation under subsection (1) declaring land to be a conservation area may give a name to that conservation area.

“(1B) Where a proclamation under subsection (1) declares any land, not being Crown land or land vested in a public authority, to be a conservation area or part of a conservation area, the proclamation does not come into force in respect of that land until it is registered in accordance with section 16A.”;

(b) by omitting from subsection (3) the word “Commissioner” and substituting the word “Minister”; and

(c) by omitting from that subsection the word “Director” (second occurring) and substituting the words “Minister for Crown Lands”.

**5** Section 15 of the Principal Act is amended—

State reserves and other reserves.

(a) by adding at the end of subsection (1) the words “or game reserve”;

(b) by inserting after that subsection the following subsections:—

“(1A) A proclamation under subsection (1) declaring the area of any land to be a State reserve may give a name to that State reserve that includes one of the prescribed expressions.

“(1B) For the purposes of subsection (1A), ‘prescribed expressions’ means State reserve, national park, nature reserve, historic site, and aboriginal site.

“(1c) A proclamation under subsection (1) declaring the area of any land to be a game reserve may give a name to that game reserve that includes the expression ‘ game reserve ’.”; and

- (c) by omitting from subsection (4) the words “ or a State reserve ” and substituting the words “, a State reserve, a game reserve,”.

**6** After section 15 of the Principal Act the following sections are inserted:—

Alteration of names of conservation areas and State reserves, &c.

“ 15A The Governor may by proclamation—

- (a) alter the name previously given to a conservation area, a State reserve, or a game reserve by proclamation under section 14 (1) or section 15 (1), as the case may be; and  
 (b) give a name to land previously declared to be a conservation area by proclamation under section 14 (1) or to an area of land previously declared to be a State reserve or a game reserve by proclamation under section 15 (1).

Prohibition of certain names except in reference to reserved land.

“ 15B—(1) No person shall use, or cause or permit to be used, alone or in combination with other words, any of the prescribed expressions in reference to any land that is not reserved land.

Penalty: \$100.

“(2) For the purposes of subsection (1), ‘ prescribed expressions ’ means State reserve, national park, nature reserve, historic site, aboriginal site, conservation area, game reserve, sanctuary, wildlife sanctuary, wildlife reserve, and fauna sanctuary.”.

Revocation of reservations.

**7** Section 16 of the Principal Act is amended—

- (a) by omitting from subsection (1) the words “ or a State reserve ” and substituting the words “, a State reserve, or a game reserve ”; and  
 (b) by omitting from that subsection the words “ or State reserve ” and substituting the words “, State reserve, or game reserve ”.

**8** After section 16 of the Principal Act the following section is inserted:—

Registration of proclamations relating to private reserves and of revocations of those proclamations.

“ 16A—(1) Where a proclamation is made under section 14 (1) declaring any land, not being Crown land or land vested in a public authority, to be a conservation area or part of a conservation area, the Minister shall forthwith cause the proclamation to be registered in respect of that land.

“(2) Where a proclamation is made under section 15A relating to an area of land in a conservation area that is a private reserve, the Minister shall forthwith cause the proclamation to be registered in respect of the land to which it relates.

“(3) Where a proclamation is made under section 16 (1) by which the whole or any part of a private reserve ceases to be, or form part of, a conservation area, the Minister shall forthwith cause the proclamation to be registered in respect of the land to which it relates.

“(4) The provisions of the third Schedule have effect in relation to the registration of proclamations referred to in this section.

“(5) Nothing in section 40 of the *Real Property Act 1862* shall be construed as affecting the validity of any proclamation referred to in this section or as prejudicing or affecting the operation of any such proclamation.”.

**9** Section 21 of the Principal Act is amended—

Contents of  
management  
plans.

(a) by omitting the word “ and ” at the end of paragraph (b) of subsection (1);

(b) by inserting after that paragraph the following paragraph—

“(ba) may, if the land is a private reserve, specify the cases and the circumstances in which the owner of the land is bound by regulations under section 29; and ”; and

(c) by inserting in subsections (2) and (4), after the words “ State reserve ” (wherever occurring), the words “ or a game reserve ”, in each case.

**10** Section 23 of the Principal Act is amended by omitting from subsection (1A) the word “ management ” and substituting the word “ managing ”.

Functions of  
managing  
authority in  
relation to  
reserved land.

**11** Section 24 of the Principal Act is amended—

Dealings with  
reserved lands.

(a) by inserting in subsections (1) and (3), after the words “ State reserve ” (wherever occurring), the words “ or a game reserve ”, in each case; and

(b) by adding at the end of subsection (2) the words “ or a game reserve ”.

**12** After section 25 of the Principal Act the following section is inserted:—

Restrictive  
covenants on  
private  
reserves.

“25A—(1) Where to do so would, in the opinion of the Minister, tend to promote the purpose for which reserved land that is a private reserve has been set aside under this Act, the owner of the land may, by agreement with the Minister, enter into a covenant with him restrictive of the user of the land.

“(2) Any covenant entered into by the owner of land pursuant to subsection (1) is, subject to this section, enforceable against him and any person deriving title under him in like manner and to the like extent as if that covenant were entered into by a fee simple owner for the benefit of adjacent land held by the Minister in fee simple that was capable of being benefited by the covenant and as if that adjacent land continued to be so held by the Minister.

“(3) Subject to this section, the Minister may, at any time, by agreement with the owner of land against whom a covenant entered into under this section is enforceable, discharge the covenant or may agree to a variation of the covenant.”.

Leases of, and  
licences to  
occupy,  
reserved  
Crown land.

**13** Section 26 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:—

“(1) Subject to this section, the Minister may, with the approval of the Minister for Crown Lands, grant leases of, or licences to occupy, any reserved land that is Crown land or any building erected on any such land.

“(1A) A lease or licence under this section shall be for such period, and on such terms and conditions, as the Minister for Crown Lands approves.”.

**14** After section 26 of the Principal Act the following section is inserted:—

Community  
service  
contributions  
payable by  
holders of  
private rights  
within reserved  
lands.

“26A—(1) The Director—

(a) shall from time to time determine the contribution to be paid by the holder of a private right within reserved land towards the cost incurred by the managing authority for the land in providing any community service from which the holder of that right benefits; and

(b) shall, on making such a determination, cause notice of the amount of the contribution payable by the holder of the private right to be served on him personally or by certified mail addressed to him at his usual or last-known place of abode or business.



“(2) For the purposes of subsection (1), ‘community service’ includes the supply or provision of access roads, parking areas, sewerage and garbage disposal services, water, electricity, piers or jetties, and boat ramps.

“(3) The amount of a contribution under subsection (1) is payable by the holder of a private right on the expiration of 3 months from the date of the service of a notice on him under that subsection and is recoverable by the managing authority for the relevant reserved land in a court of competent jurisdiction.”.

**15** Section 29 of the Principal Act is amended—

Regulations  
with respect to  
reserved land.

(a) by inserting after paragraph (d) of subsection (1) the following paragraph:—

“(da) the taking in that area of land of wildlife in the form of game, if it is a game reserve;”;

(b) by transposing the word “or” at the end of paragraph (a) of subsection (2) to the end of paragraph (b) of that subsection;

(c) by adding at the end of that subsection the following paragraph:—

“(c) that prohibition is necessary for the proper care, control, or management of that area.”; and

(d) by omitting from subsection (6) the word “Regulations” and substituting the words “Subject to section 21 (1) (ba), regulations”.

**16**—(1) Section 30 of the Principal Act is amended by omitting from subsection (2) the words “Tourism Development Authority” and substituting the words “Director of Tourism”.

Notable  
buildings and  
places.

(2) This section shall be deemed to have commenced on 1st June 1977.

**17** Section 47A of the Principal Act is amended by inserting after the words “State reserve,” (wherever occurring) the words “a game reserve,” in each case.

Evidentiary  
provision.

**18** After section 48 of the Principal Act the following sections are inserted:—

Assistance  
to officers.

“ 48A—(1) Where a person has been requested to assist an officer carrying out his duties under this Act and is willing to do so, no person shall, either directly or indirectly, prevent, dissuade, hinder, impede, or obstruct that person from assisting that officer or from proceeding to a place for the purpose of assisting that officer.

“(2) In this section, ‘ officer ’ means the Director, an officer of the Service, or a ranger.

Compensation  
for injury or  
death occurring  
in the course of  
official duty, &c.

“ 48B—(1) If—

(a) a ranger is killed or suffers personal injury in the course of carrying out official duties or dies as a result of personal injury so suffered; or

(b) a person (not being an officer) is killed or suffers personal injury in the course of assisting an officer carrying out official duties under the supervision of that officer, or dies as a result of personal injury so suffered,

and that ranger or other person is not, or as the case may be, his dependants are not, entitled to compensation under the *Workers' Compensation Act 1927* in respect of the injury to or death of the ranger or other person, that ranger or other person is, or in the case of his death, his dependants are, entitled to compensation as provided in this section.

“(2) A ranger or other person shall be deemed to be carrying out official duties—

(a) when he is carrying out any duties or exercising any powers conferred on him by this Act; or

(b) while he is travelling in either direction between his place of residence or place of employment and the place at which those duties are being, are to be, or have been, carried out.

“(3) A person shall be deemed to be assisting an officer carrying out official duties while he is travelling in either direction between his place of residence or place of employment and the place at which those duties are being, are to be, or have been, carried out.

“(4) Subject to subsection (5), the compensation payable to a ranger or other person under this section shall be such amount as the Governor, on the recommendation of the Director, may determine.

“(5) Compensation under this section shall be calculated, as nearly as possible, in accordance with the rules relating to the calculation of compensation contained in the *Workers’ Compensation Act 1927* as if it were compensation payable under that Act.

“(6) A ranger or other person by whom, or on whose behalf, compensation under this section is claimed shall, if so required by the Director, submit to the Director such evidence in support of his claim, and such medical certificates, as the Director may require, and such other information, if any, as may be prescribed.

“(7) The compensation payable to a ranger or other person under this section shall be defrayed out of moneys to be provided by Parliament for the purpose.

“(8) In this section—

‘dependants’ has the same meaning as it has in the *Workers’ Compensation Act 1927*;

‘officer’ has the same meaning as it has in section 48A.”.

**19** The Principal Act is amended by adding at the end the following Schedule:— New third Schedule.

### “ THE THIRD SCHEDULE

(Section 16A)

#### “ REGISTRATION OF PROCLAMATIONS REFERRED TO IN SECTION 16A

1—(1) A proclamation required to be registered under section 16A (1) shall be so registered by lodging with the Recorder—

(a) a copy of the proclamation; and

(b) particulars of the title to the land to which the proclamation relates that is not Crown land or land vested in a public authority.

(2) Where a proclamation has been lodged under sub-paragraph (1), the Recorder shall make an appropriate entry of the proclamation on the folium of the register book constituting the title to the land to which the proclamation relates that is not Crown land or land vested in a public authority.

2—(1) Where the whole or any part of the land referred to in paragraph 1 (1) (b) is not under the *Real Property Act 1862*, the Recorder shall bring under that Act so much of the land that is not under that Act by registering a qualified certificate of title to it in accordance with section 19 of that Act.

(2) Where part only of the land referred to in paragraph 1 (1) (b) to which a proclamation relates is required to be brought under the *Real Property Act 1862* by this paragraph, the Recorder shall issue a consolidated title to the whole of the land and for that purpose may call in and cancel in accordance with section 136 of that Act the certificates of title to the parts of the land.

(3) The Recorder is not bound, for the purposes of sub-paragraph (1), to investigate the title to any land.

(4) Where by this paragraph the Recorder is required to bring any land under the *Real Property Act* 1862, and no survey such as he could require under section 104 of that Act is available, the land may be described on the certificate of title by means of a description by metes and bounds instead of by reference to a plan.

(5) Where, in any certificate of title registered pursuant to this paragraph, land is described by means of a description by metes and bounds—

- (a) no action shall be brought against the Recorder or the assurance fund constituted under the *Real Property Act* 1862 by reason or in respect of any difference between the area of the land or the position or dimensions of the boundaries stated in the certificate of title and the actual area, position, or dimensions as found by admeasurement on the ground;
- (b) a solicitor who acts for any party taking or proposing to take any estate or interest in the land from the registered proprietor of the certificate of title is not under any duty to check that the description in the certificate of title agrees with the description in the antecedent document of title; and
- (c) upon such evidence of boundaries as he deems sufficient, the Recorder may cancel the certificate of title and replace it by a fresh certificate of title describing the land in accordance with that evidence.

3—(1) A proclamation required to be registered under subsection (2) or subsection (3) of section 16A—

- (a) shall contain particulars of the title to the area of the private reserve—
  - (i) to which it relates, in the case of a proclamation required to be registered under subsection (2) of that section; or
  - (ii) ceasing to be, or to form part of, a conservation area by virtue of the proclamation, in any other case; and
- (b) shall be so registered by lodging with the Recorder a copy of the proclamation.

(2) Where a proclamation has been lodged under sub-paragraph (1), the Recorder shall make an entry on the folium of the register book constituting the title to the area of the private reserve to which the proclamation relates—

- (a) containing particulars of the alteration or name contained in the proclamation, in the case of a proclamation required to be registered under section 16A (2); or
- (b) stating that that area of land has ceased to be, or to form part of, the conservation area declared by the proclamation previously registered in respect of that conservation area, in any other case.

4 No fee is payable in respect of the registration of a proclamation in accordance with this Schedule.”.

**20** The sections of the Principal Act that are specified in Schedule I are amended as respectively specified in that Schedule. Consequential amendments.

**21** The provisions set out in Schedule II have effect for the purposes of the transition to the provisions of the Principal Act, as amended by this Act, from the law in force before the commencement of this Act. Transitional provisions.

SCHEDULE I

(Section 20)

CONSEQUENTIAL AMENDMENTS

Section amended	How amended
3	(a) By omitting from subsection (1) the definition of "Commissioner"; and (b) By omitting from the definition of "Public Service" in that subsection the numeral "1923" and substituting the numeral "1973".
5	By omitting from subsection (5) the numeral "1923" and substituting the numeral "1973".
7	By omitting from subsections (1) and (4) the numeral "1923" (wherever occurring) and substituting, in each case, the numeral "1973".
10	By omitting from subsection (7) the numeral "1923" and substituting the numeral "1973".
18	By omitting from subsection (5) the numeral "1935" and substituting the numeral "1976".
50	By omitting from subsection (1) the word "Commissioner" and substituting the words "Minister, the Minister for Crown Lands,".

SCHEDULE II

(Section 21)

TRANSITIONAL PROVISIONS

1—(1) A proclamation made under section 14 (1) of the Principal Act before the commencement of this Act in which a name is given to land declared to be a conservation area by that proclamation shall be deemed to have been made as if the provisions of section 14 (1A) of the Principal Act had then been in force. Validation of names given to conservation areas and State reserves before the commencement of this Act.

(2) A proclamation made under section 15 (1) of the Principal Act before the commencement of this Act in which a prescribed name is given to an area of land declared to be a State reserve by that proclamation shall be deemed to have been made as if section 15 of that Act had then authorized the proclamation to give the prescribed name to that State reserve.

(3) In sub-paragraph (2), "prescribed name" means a name that includes one of the expressions specified in section 15B (2) of the Principal Act as inserted therein by this Act.

Registration of existing proclamations relating to private reserves and proclamations revoking them.

2—(1) Subject to sub-paragraph (2), where at the commencement of this Act land that is, or forms part of, a conservation area is a private reserve within the meaning of the Principal Act, the Minister shall, as soon as practicable after that commencement, cause to be registered in accordance with section 16A (4) of the Principal Act the proclamation under section 14 (1) of the Principal Act by virtue of which that land is, or forms part of, a conservation area.

(2) The Minister is not required to comply with sub-paragraph (1) in relation to a proclamation referred to in that sub-paragraph if, at the time when, apart from this sub-paragraph, he would be required to cause the proclamation to be registered as provided in that sub-paragraph, the relevant land has ceased to be, or form part of, a conservation area pursuant to a proclamation under section 16 (1) of the Principal Act.

(3) The Minister is not required to comply with section 16A (3) of the Principal Act in relation to a proclamation under section 16 (1) of that Act referred to in sub-paragraph (2).

Assignments in respect of certain leases and licences granted under the Principal Act.

3—(1) The Minister for Crown Lands may, by agreement with the Minister, assign to him the benefit of the first-mentioned Minister in, and his rights, powers, and obligations under, a lease or licence granted under section 26 of the Principal Act and in force immediately before the commencement of this Act.

(2) An assignment under sub-paragraph (1) in relation to a lease or licence does not operate so as to affect or alter the period for which, or the terms and conditions on which, the lease or licence was granted to the lessee or licensee.

(3) Where an assignment is made under sub-paragraph (1) in relation to a lease or licence, the Minister shall forthwith cause written notice of the assignment to be given to the lessee or licensee.