



Western Australia

Conservation and Land Management Act 1984

Conservation and Land Management Act 1984

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Defined Terms

Western Australia

Conservation and Land Management Act 1984

An Act to make better provision for the use, protection and management of certain public lands and waters and the flora and fauna thereof, to establish authorities to be responsible therefor, and for incidental or connected purposes.

Part I — Preliminary

1. Short title

This Act may be cited as the *Conservation and Land Management Act 1984* ¹.

2. Commencement

This Act shall come into operation on a day to be fixed by proclamation ¹.

3. Terms used

In this Act, unless the contrary intention appears —

Aboriginal person means a person wholly or partly descended from the original inhabitants of Australia;

aquaculture has the same meaning as in the *Fish Resources Management Act 1994*;

associated body means each person or body that, jointly with either the Conservation Commission or the Marine Authority —

- (a) is vested with land, or land and waters; or
- (b) has the care, control and management of land, or land and waters;

biodiversity means the variability among living biological entities and the ecosystems and ecological complexes of which those entities are a part and includes —

- (a) diversity within native species and between native species; and
- (b) diversity of ecosystems; and
- (c) diversity of other biodiversity components;

biodiversity components includes habitats, ecological communities, genes and ecological processes;

CEO means the chief executive officer of the Department;

commercial fishing has the same meaning as in the *Fish Resources Management Act 1994*;

conservation and land management officer means an officer of the Department designated as a conservation and land management officer under section 45(1)(d);

Conservation Commission means the Conservation Commission of Western Australia established by section 18;

conservation park means land that is a conservation park under section 6(4) or is treated as a conservation park under section 8B(2);

Department means the department of the Public Service principally assisting in the administration of this Act;

exclusive native title, in relation to an area of land or waters, means native title rights and interests (as defined in section 223 of the NT Act) —

- (a) that exist in relation to the area, whether or not they have been determined under the NT Act to exist; and
- (b) that confer possession, occupation, use and enjoyment of the area on the holders of the native title rights and interests to the exclusion of all others;

Executive Body means the Conservation and Land Management Executive Body established by section 36;

fauna means fauna for the time being within the meaning of that term in the *Wildlife Conservation Act 1950*;

firewood includes parts of trees of all species made up into bundles, billets, or loads, or cut up in the manner it is usual to cut wood for burning, and residue wood generally;

Fisheries Department means the Department for the purposes of the *Fish Resources Management Act 1994*;

flora means flora for the time being within the meaning of that term in the *Wildlife Conservation Act 1950*;

forest lease means a lease granted under section 97;

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forest officer means an officer of the Department designated as a forest officer under section 45(1)(b);

forest produce includes trees, parts of trees, timber, sawdust, chips, firewood, charcoal, gum, kino, resin, sap, honey, seed, bees-wax, rocks, stone and soil but, subject to the foregoing, does not in Division 1 of Part VIII include minerals within the meaning of the *Mining Act 1978*;

forest products has the same meaning as it has in the *Forest Products Act 2000*;

Forest Products Commission means the Forest Products Commission established by the *Forest Products Act 2000*;

intertidal zone means the land, or the land and waters, below the high water mark and above the low water mark;

land includes —

- (a) tidal land; and
- (b) tidal waters in any inlet, estuary, lagoon, river, stream or creek; and
- (c) the waters of any inlet, estuary, lake, lagoon or swamp or of any river, stream or creek whether flowing continuously or intermittently;

Land Administration Minister means the Minister to whom the administration of the *Land Administration Act 1997* is committed;

land to which this Act applies has the meaning given in sections 5(1) and 8B(2) and (3);

management plan means a management plan approved under section 60 or an indicative management plan approved under section 14;

Marine Authority means the Marine Parks and Reserves Authority established by section 26A;

Marine Committee means the Marine Parks and Reserves Scientific Advisory Committee established by section 26F;

marine management area means waters, land, or land and waters, that are a marine management area under section 6(6);

marine nature reserve means waters, land, or land and waters, that are a marine nature reserve under section 6(6);

marine park means waters, land, or land and waters, that are a marine park under section 6(6);

marine reserve means a marine nature reserve, a marine park or a marine management area;

member means a member of the Conservation Commission, the Marine Authority or the Marine Committee;

Minister for Fisheries means the Minister to whom the administration of the *Fish Resources Management Act 1994* and the *Pearling Act 1990* is committed, or each of the Ministers to whom their administration is committed;

Minister for Forest Products means the Minister to whom the administration of the *Forest Products Act 2000* is committed;

Minister for Indigenous Affairs means the Minister to whom the administration of the *Aboriginal Affairs Planning Authority Act 1972* and the *Aboriginal Heritage Act 1972* is committed, or each of the Ministers to whom their administration is committed;

Minister for Mines means the Minister to whom the administration of the *Mining Act 1978*, the *Offshore Minerals Act 2003*, the *Petroleum and Geothermal Energy Resources Act 1967*, the *Petroleum (Submerged Lands) Act 1982* and the *Petroleum Pipelines Act 1969* is committed, or each of the Ministers to whom their administration is committed;

Minister (Water Resources) means the Minister administering the *Water Agencies (Powers) Act 1984*;

national park means land that is a national park under section 6(3) or is treated as a national park under section 8B(2);

nature reserve means land that is a nature reserve under section 6(5) or is treated as a nature reserve under section 8B(2);

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non-exclusive native title, in relation to an area of land or waters, means native title rights and interests (as defined in section 223 of the NT Act) —

- (a) that exist in relation to the area, whether or not they have been determined under the NT Act to exist; and
- (b) that do not confer possession, occupation, use and enjoyment of the area on the holders of the native title rights and interests to the exclusion of all others;

NT Act means the *Native Title Act 1993* (Commonwealth);

pearling activity means pearling or hatchery activity within the meaning of the *Pearling Act 1990*;

public water catchment area means —

- (a) land which is reserved under Part 4 of the *Land Administration Act 1997* for water supply purposes and the care, control and management of which are placed with the Minister (Water Resources) under that Act; or
 - (b) a catchment area or water reserve constituted by order in council or proclamation under —
 - (i) the *Country Areas Water Supply Act 1947*; or
 - (ii) the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*; or
 - (iii) the *Water Boards Act 1904*;
- or
- (c) an Underground Water Pollution Control Area constituted by proclamation under the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*;

ranger means an officer of the Department designated as a ranger under section 45(1)(c);

recreational fishing has the same meaning as in the *Fish Resources Management Act 1994*;

section 8A agreement means an agreement made under section 8A;

section 8A land means land, waters, or land and waters, that are the subject of a section 8A agreement;

section 8C land means land that, under an order made under section 8C, is managed by the CEO;

State forest means land that is a State forest under section 6(1) or is treated as a State forest under section 8B(2);

timber includes trees when they have fallen or have been felled, and whether sawn, hewn, split or otherwise fashioned;

timber reserve means land that is a timber reserve under section 6(2) or is treated as a timber reserve under section 8B(2);

tree includes shrubs, bushes, seedlings, saplings, and re-shoots of all kinds and of all ages;

wildlife officer means an officer of the Department designated as a wildlife officer under section 45(1)(a).

[Section 3 amended by No. 113 of 1987 s. 32; No. 20 of 1991 s. 4; No. 49 of 1993 s. 4; No. 14 of 1996 s. 4; No. 5 of 1997 s. 4; No. 35 of 2000 s. 4; No. 12 of 2003 s. 12; No. 74 of 2003 s. 39(2); No. 28 of 2006 s. 183; No. 77 of 2006 Sch. 1 cl. 29(1); No. 35 of 2007 s. 92(2); No. 38 of 2007 s. 191(2); No. 36 of 2011 s. 4.]

4. Relationship of this Act to other Acts

- (1) Subject to section 13A(3) and 13B(9) and without limiting section 86, 96, or 128(1)(h), nothing in this Act shall derogate from the operation of the *Mining Act 1978*, the *Offshore Minerals Act 2003*, the *Petroleum and Geothermal Energy Resources Act 1967*, the *Petroleum (Submerged Lands) Act 1982*, any other Act relating to minerals or petroleum, or any Government agreement within the meaning of the *Government Agreements Act 1979*.
- (2) The reservation of land as a State forest or a timber reserve shall not, except as provided in this Act, affect any permit, lease, or

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licence from the Crown current and in force at the time of such reservation.

- (3) Notwithstanding subsection (2), all pastoral leases of land situated within the boundaries of a State forest shall, at the expiration of 6 months from the reservation, and by force of this section, be surrendered to the Crown; but every lessee shall during such period of 6 months have the option to acquire a forest lease of the land demised by the surrendered lease for the remainder of the term thereof, at the rent thereby reserved.
- (4) Nothing in this Act shall affect any right conferred by the *Land Administration Act 1997* on pastoral lessees to such timber as may be required for domestic purposes, for the construction of buildings, fences, stockyards, or other improvements on the land occupied under the lease.
- (5) Nothing in this Act or in a management plan or in a section 8A agreement —
 - (a) prevents the CEO or any other person from taking any action permitted under the *Aboriginal Heritage Act 1972* —
 - (i) in respect of land to which this Act applies or section 8A land or section 8C land; or
 - (ii) in respect of any decision made under that Act in respect of that land;
 - or
 - (b) limits any action the CEO or any other person may take under that Act in respect of that land; or
 - (c) prevents the CEO, or any other person, who is authorised under that Act to do any act in respect of that land from doing the act.

[Section 4 amended by No. 66 of 1992 s. 4; No. 5 of 1997 s. 5; No. 31 of 1997 s. 141; No. 12 of 2003 s. 13; No. 35 of 2007 s. 92(3); No. 36 of 2011 s. 5.]

Part II — Land subject to this Act

[Heading inserted by No. 36 of 2011 s. 6.]

Division 1 — Categories of land

5. “Land to which this Act applies”, meaning of

- (1) Where in this Act reference is made to “land to which this Act applies”, the reference is to land, or land and waters, comprising —
- (a) State forest; and
 - (b) timber reserves; and
 - (c) national parks; and
 - (ca) conservation parks; and
 - (d) nature reserves; and
 - (e) marine nature reserves; and
 - (f) marine parks; and
 - (fa) marine management areas; and
 - (g) any other land reserved under the *Land Act 1933*² and vested by order under that Act in the Conservation Commission or the Marine Authority; and
 - (h) any other land, other than excluded waters, reserved under Part 4 of the *Land Administration Act 1997* the care, control and management of which are placed by order under that Part with the Conservation Commission or the Marine Authority, whether solely or jointly with another person.
- (2) In subsection (1)(h) —
- excluded waters*** means —
- (a) the marine waters referred to in the definition of ***land*** in section 3(1) of the *Land Administration Act 1997*; and

- (b) the coastal waters of the State referred to in section 13(8)(b).

[Section 5 amended by No. 20 of 1991 s. 5; No. 5 of 1997 s. 6; No. 31 of 1997 s. 15(1); No. 24 of 2000 s. 8(1); No. 74 of 2003 s. 39(3); No. 36 of 2011 s. 7.]

6. Categories of land, defined

- (1) State forest comprises all lands that —
 - (a) immediately before the commencement of this Act were dedicated as a State forest under section 20 of the *Forests Act 1918*³; or
 - (b) after such commencement —
 - (i) are reserved under section 8; or
 - (ii) are acquired and set apart under section 15, for the purpose of a State forest;or
 - (c) under any other Act become reserved for the purpose of a State forest.
- (2) Timber reserves comprise all lands that —
 - (a) immediately before the commencement of this Act were timber reserves under section 25 of the *Forests Act 1918*³; or
 - (b) after such commencement —
 - (i) are reserved under section 10; or
 - (ii) are acquired and set apart under section 15, for the purpose of a timber reserve; or
 - (c) under any other Act become reserved for the purpose of a timber reserve.
- (3) National parks, for the purposes of this Act, comprise all lands that —
 - (a) by section 7(3) are vested in the Conservation Commission; or

- (b) after the commencement of this Act are reserved under Part III of the *Land Act 1933*², or Part 4 of the *Land Administration Act 1997*, for the purpose of a national park and vested in the Conservation Commission by section 7(2); or
 - (c) under any other Act become reserved for the purpose of a national park and vested in the Conservation Commission.
- (4) Conservation parks, for the purposes of this Act, comprise all lands that are reserved under Part III of the *Land Act 1933*², or Part 4 of the *Land Administration Act 1997*, or become reserved under any other Act, for the purpose of a conservation park.
- (5) Nature reserves, for the purposes of this Act, comprise all lands that —
 - (a) by section 7(4), are vested in the Conservation Commission, either solely or jointly with some other person or persons; or
 - (b) after the commencement of this Act are reserved under Part III of the *Land Act 1933*², or Part 4 of the *Land Administration Act 1997*, for the conservation of flora or fauna, or both flora and fauna, and vested in the Conservation Commission by section 7(2); or
 - (c) under any other Act become reserved for the conservation of flora or fauna, or both flora and fauna, and vested in the Conservation Commission.
- (6) Marine nature reserves, marine parks and marine management areas respectively comprise —
 - (a) all waters that are reserved under section 13 as a marine nature reserve, a marine park or a marine management area; and
 - (b) all land reserved under Part III of the *Land Act 1933*², or Part 4 of the *Land Administration Act 1997*, for the purpose of a marine nature reserve, a marine park or a marine management area; and

- (c) all land and waters that under any other Act become reserved for the purpose of a marine nature reserve, a marine park or a marine management area,

and includes —

- (d) the airspace above such waters or land; and
- (e) in the case of waters, the sea-bed or other land beneath such waters and the subsoil below that sea-bed or other land to a depth of 200 m; and
- (f) in the case of land other than waters, the subsoil below such land to a depth of 200 m.

[Section 6 inserted by No. 20 of 1991 s. 6; amended by No. 5 of 1997⁴ s. 7; No. 31 of 1997 s. 15(2) and (3); No. 35 of 2000 s. 50.]

7. Categories of land, vesting of

- (1) A State forest or timber reserve is by this subsection vested in the Conservation Commission.
- (2) Lands which after the commencement of this Act are reserved under Part III of the *Land Act 1933*², or Part 4 of the *Land Administration Act 1997*, for the purpose of a national park or for the conservation of flora or fauna, or both flora and fauna, are by this subsection vested in the Conservation Commission unless —
 - (a) the reservation is made by order; and
 - (b) by that order —
 - (i) the national park or nature reserve is vested, within the meaning of the *Land Act 1933*², in; or
 - (ii) the care, control and management of the national park or nature reserve are placed under Part 4 of the *Land Administration Act 1997* with, some other person or persons.
- (2a) A conservation park is by this subsection vested in the Conservation Commission.

-
- (3) Lands which immediately before the commencement of this Act were national parks under section 17(1)(b) or 18 of the *National Parks Authority Act 1976*⁵ are by this subsection vested in the Conservation Commission.
- (4) A nature reserve under section 6(1) of the *Wildlife Conservation Act 1950* which immediately before the commencement of this Act —
- (a) was vested, within the meaning of the *Land Act 1933*², in the Western Australian Wildlife Authority constituted under the first-mentioned Act either solely or jointly with some other body or bodies; or
 - (b) was not vested, within the meaning of the *Land Act 1933*², in any person,
- is by this subsection vested in the Conservation Commission solely or jointly with that other body or those bodies, as the case may be, but in the case of a jointly vested nature reserve —
- (c) the functions of any associated body in relation to the nature reserve are limited to those conferred on an associated body by this Act; and
 - (d) if the interest in the reserve of an associated body is divested by order under the *Land Administration Act 1997* without another body being substituted for it by that order, that interest, notwithstanding that Act, by this paragraph becomes vested in the Conservation Commission.
- (5) A marine nature reserve, marine park or marine management area is by this subsection vested in the Marine Authority.
- (6) In this section, except where the contrary intention appears, **vested** has the meaning assigned to it by sections 19(3) and 26B(2), as the case may require.

[Section 7 amended by No. 20 of 1991 s. 7; No. 5 of 1997⁶ s. 8; No. 31 of 1997 s. 15(2), (4) and 141; No. 35 of 2000 s. 6 and 50; No. 74 of 2003 s. 39(4).]

8A. CEO may agree to manage private or other land

(1) In this section —

agreed area, in relation to an agreement made under this section, means the eligible land to which the agreement applies;

alienated land has the meaning given in the *Land Administration Act 1997* section 3(1);

Crown land has the meaning given in the *Land Administration Act 1997* section 3(1);

eligible land means land, waters, or land and waters, that are above the low water mark and are —

- (a) alienated land; or
- (b) Crown land unless it is —
 - (i) land to which this Act applies; or
 - (ii) section 8C land;

person responsible, for eligible land, means —

- (a) if the land is alienated land, each of these persons —
 - (i) the owner;
 - (ii) any person who has an interest in the land that is registered under the *Transfer of Land Act 1893* or the *Registration of Deeds Act 1856*;
 - (iii) the lessee, if any, of the land;
- (b) if the land is Crown land, each of these persons —
 - (i) the Land Administration Minister;
 - (ii) the management body (as defined in the *Land Administration Act 1997* section 3(1)), if any, of the land under that Act;
 - (iii) the person, if any, in whom the land is vested under a written law other than that Act;
 - (iv) the person, if any, who has the control and management of the land under a written law other than that Act;

- (v) the lessee, if any, of the land;
 - (vi) if exclusive native title has been determined under the NT Act to exist in relation to the land, the registered native title body corporate (as defined in section 253 of the NT Act) in respect of the native title rights and interests concerned.
- (2) This section does not affect the operation of the NT Act in relation to any person who claims or holds exclusive native title or non-exclusive native title.
- (3) An agreement may be made under this section in respect of Crown land that is the subject of an interest (as defined in the *Land Administration Act 1997* section 3(1)) granted or entered into under that Act, notwithstanding that Act.
- (4) An agreement made under this section cannot apply to any land, waters, or land and waters to which a mining lease, or a general purpose lease, granted under the *Mining Act 1978*, applies.
- (5) The CEO may enter into an agreement under which the CEO agrees to manage an area of eligible land, either alone or jointly with one or more other persons —
 - (a) as if the agreed area were one of these categories of land under this Act —
 - (i) a State forest;
 - (ii) a timber reserve;
 - (iii) a national park;
 - (iv) a conservation park;
 - (v) a nature reserve;
 - or
 - (b) for a public purpose that is consistent with this Act.
- (6) An agreement made under this section cannot agree to manage an area of eligible land as if it were —
 - (a) a marine management area; or

- (b) a marine nature reserve; or
 - (c) a marine park.
- (7) An agreement made under this section may require the Conservation Commission to assess the implementation of the management plan for the agreed area.
- (8) The parties to an agreement made under this section must include —
 - (a) the person responsible, or at least one of the persons responsible, for the agreed area; and
 - (b) the CEO; and
 - (c) if it provides for the CEO to manage the agreed area jointly with one or more other persons, each such person who is not already a party; and
 - (d) if it requires the Conservation Commission to assess the implementation of the management plan for the agreed area, the Conservation Commission.
- (9) An agreement made under this section has no effect unless the Minister for Fisheries, the Minister for Forest Products, the Minister for Indigenous Affairs, the Minister for Mines and the Minister (Water Resources) have each been given —
 - (a) in writing, notice of, and an invitation to give the CEO submissions about, the proposed agreement; and
 - (b) a reasonable time to respond.
- (10) An agreement made under this section has no effect unless the local government of each local government district in which the agreed area is situated —
 - (a) is a party to the agreement; or
 - (b) was given, before the agreement was made —
 - (i) in writing, notice of, and an invitation to give the CEO submissions about, the proposed agreement; and
 - (ii) a reasonable time to respond.

- (11) An agreement made under this section in respect of any eligible land has no effect unless —
- (a) each person responsible for the land is either a party, or has given written approval, to it; and
 - (b) the Minister has given written approval to it.
- (12) If the agreed area under an agreement made under this section is or includes the intertidal zone, the agreement has no effect in relation to that land unless —
- (a) the chief executive officer of the Fisheries Department is a party to it; or
 - (b) the Minister for Fisheries has given written approval to it.
- (13) An agreement made under this section that says the CEO is to manage the agreed area jointly with another person must include, in addition to any other terms, terms that do the following —
- (a) establish a joint management body to manage the area;
 - (b) state the members of the body which must include at least —
 - (i) the CEO or a person nominated by the CEO; and
 - (ii) a person to represent the interests of each other party to the agreement;
 - (c) establish the body's procedures.
- (14) An agreement made under this section for the management of land for a public purpose that is consistent with this Act must include, in addition to any other terms, terms that —
- (a) state the purpose for which the agreed area is to be managed; and
 - (b) state the policies or guidelines to be followed, and summarise the operations to be undertaken, in the management of the agreed area.

- (15) If an agreement made under this section applies to land to which a pastoral lease, or a lease for grazing purposes, granted under the *Land Administration Act 1997*, applies, the lessee remains entitled to use the land for grazing purposes in accordance with the lease, except to the extent that the agreement otherwise provides.

[Section 8A inserted by No. 36 of 2011 s. 8.]

8B. Effect of s. 8A agreements

- (1) A section 8A agreement has no effect to the extent it binds the CEO to do anything in relation to the section 8A land concerned that is inconsistent with or contrary to the provisions of section 56(1) that relate to the land by virtue of it being treated, under subsection (2), as if it were of a category of land referred to in section 56(1).
- (2) If under a section 8A agreement the section 8A land concerned is to be managed as if it were land of a category listed in section 8A(5)(a) —
- (a) the land is to be treated under this Act as if it were land, waters, or land and waters, as the case requires, of that category and reserved for that category's purpose; and
 - (b) the land becomes land to which this Act applies for the purposes of this Act,
- but —
- (c) the land does not become land of that category, or land reserved for that category's purpose, or land to which this Act applies, for the purposes of any written law other than this Act; and
 - (d) sections 9 and 17 do not apply to the land; and
 - (e) the land is not Crown land for the purposes of Part VIII Division 1 by reason only of paragraph (b) of the definition of **Crown land** in section 87(1); and
 - (f) the land does not vest in the Conservation Commission; and

- (g) a party to the agreement who is not a person responsible for the land (as defined in section 8A(1)) is not an occupier of the land for the purposes of the *Mining Act 1978*; and
 - (h) any right (whether arising before or after the agreement is made) a person has under this Act or another written law that may be exercised on or in relation to the land is not affected unless the person is a party to the agreement and the agreement provides otherwise; and
 - (i) any right a person has under the common law to carry out recreational fishing on the land is not affected.
- (3) If under an agreement made under section 8A(5)(b) the section 8A land concerned is to be managed for a public purpose that is consistent with this Act, the land becomes land to which this Act applies for the purposes of this Act but —
- (a) the land does not become land to which this Act applies for the purposes of any written law other than this Act; and
 - (b) section 17 does not apply to the land; and
 - (c) the land is not Crown land for the purposes of Part VIII Division 1 by reason only of paragraph (a) of the definition of **Crown land** in section 87(1); and
 - (d) a party to the agreement who is not a person responsible for the land (as defined in section 8A(1)) is not an occupier of the land for the purposes of the *Mining Act 1978*; and
 - (e) any right (whether arising before or after the agreement is made) a person has under this Act or another written law that may be exercised on or in relation to the land is not affected unless the person is a party to the agreement and the agreement provides otherwise; and
 - (f) any right a person has under the common law to carry out recreational fishing on the land is not affected.

[Section 8B inserted by No. 36 of 2011 s. 8.]

8C. Certain land may be put under CEO's management

- (1) In this section —

eligible land means any Crown land, as defined in the *Land Administration Act 1997* section 3, that is —

- (a) unallocated Crown land as defined in that section; or
 - (b) an unmanaged reserve as defined in that section.
- (2) On the recommendation of the Minister and the Land Administration Minister, the Governor, by order —
- (a) may place any eligible land under the management of the CEO; and
 - (b) may specify the CEO's functions in relation to managing the land.
- (3) On the recommendation of the Minister and the Land Administration Minister, the Governor, by order, may vary or cancel an order made under subsection (2).

[Section 8C inserted by No. 36 of 2011 s. 8.]

Division 2 — State forest and timber reserves

8. State forests, reservation of

- (1) The Governor may, by order published in the *Gazette*, reserve for the purpose of a State forest any Crown land, including any area which is a timber reserve.
- (2) The Minister shall cause a copy of any order made under subsection (1) to be laid before each House of Parliament within 6 sitting days of the House next following the publication of the order in the *Gazette*.
- (3) If each House of Parliament passes a resolution, of which notice has been given within the first 14 sitting days of the House after a copy of an order has been laid before the House under this section, that the order be disallowed, the order thereupon ceases to have effect.

- (4) The disallowance of the order does not affect or invalidate any act done in good faith by the Minister, or any officer performing any functions under this Act relating to the land referred to in the order, before the passing of the resolution.

9. State forest, restriction on abolition of

- (1) Land shall cease to be State forest only by virtue of an Act or in the manner provided for in subsection (2).
- (1a) The purpose, or combination of purposes, notified in respect of a State forest under section 60(3)(a) or 60A cannot be amended except by virtue of an Act or in the manner provided for in subsection (2).
- (2) The Governor may cause to be laid before each House of Parliament a proposal that —
- (a) land comprising the whole or part of a State forest shall cease to be State forest; or
 - (b) the purpose, or combination of purposes, notified in respect of a State forest under section 60(3)(a) or 60A be amended,

and if a resolution is passed by each House that the proposal be carried out, the Governor shall, by order published in the *Gazette*, declare the land to be no longer a State forest, or declare the amendment to be in operation, as the case may require.

- (3) On the making of an order declaring that land is no longer a State forest, the land shall —
- (a) in the case of land acquired under section 15 and set apart as a State forest, become vested in the CEO and section 131 shall apply to it; and
 - (b) in any other case, become Crown land within the meaning of the *Land Administration Act 1997*.

[Section 9 amended by No. 20 of 1991 s. 8; No. 31 of 1997 s. 141; No. 28 of 2006 s. 209.]

10. Timber reserves, reservation of

The Governor may, by order published in the *Gazette*, reserve any Crown land as a timber reserve.

[Section 10 inserted by No. 35 of 2000 s. 7.]

11. Term used: Crown land

In sections 8 and 10, **Crown land** means land vested in the Crown and not —

(a) reserved under Part III of the *Land Act 1933*² or Part 4 of the *Land Administration Act 1997*; or

(b) contracted to be granted or transferred in fee simple,

and includes —

(c) land of which pastoral leases are held under Part 7 of the *Land Administration Act 1997*, subject to the grazing rights of lessees; and

(d) land held as mining tenements under the *Mining Act 1978*, subject to the mining rights of the holders.

[Section 11 amended by No. 20 of 1991 s. 9; No. 31 of 1997 s. 15(5).]

[12. Deleted by No. 20 of 1991 s. 10.]

Division 3 — Marine reserves

13. Marine reserves, reservation of

- (1) Subject to section 14, the Governor may, by order published in the *Gazette*, reserve any part of Western Australian waters as a marine nature reserve, a marine park or a marine management area.

[(2), (3) deleted]

- (3a) The Minister shall consult the Swan River Trust established by the *Swan and Canning Rivers Management Act 2006* before any waters that are in the development control area or the Riverpark

within the meaning of that Act are reserved under this section as a marine nature reserve, marine park or marine management area.

- (4) Subject to subsection (4a), the Governor may by the order under subsection (1) which constitutes a marine nature reserve, a marine park or a marine management area, or by a subsequent order published in the *Gazette*, classify the reserve, park or management area as of Class A and, in that case, the purpose of the reserve, park or management area shall not be amended or cancelled, nor shall the boundary thereof be altered otherwise than by an addition thereto, except by Act or pursuant to subsection (6).
- (4a) A marine nature reserve, a marine park or marine management area shall not be classified as of Class A unless the Minister for Mines has agreed to a proposal by the Minister that it be so classified or, where the Minister for Mines does not agree, the Governor determines that it shall be so classified.
- (5) The Minister shall cause a copy of any order made under subsection (1) or (4) to be laid before each House of Parliament within 6 sitting days of the House next following publication of the order in the *Gazette*.
- (6) If either House of Parliament passes a resolution, of which notice has been given within the first 14 sitting days of the House after a copy of an order has been laid before the House under subsection (5), that the order be disallowed the order thereupon ceases to have effect.
- (7) The disallowance of the order does not affect or invalidate any act done in good faith by the Minister, or any officer performing any functions under this Act relating to the waters referred to in the order, before the passing of the resolution.
- (8) In subsection (1) ***Western Australian waters*** means all waters —
 - (a) that are within the limits of the State; or

- (b) that are *coastal waters of the State* as defined in the *Off-shore (Application of Laws) Act 1982*.
- (9) Without limiting section 6(6), the reservation of waters under this section as a marine nature reserve, marine park or marine management area extends to the airspace, sea-bed, land and subsoil referred to in section 6(6)(a) and (b).
- (10) A reference in this Act to the reservation of, or the reservation of waters as, a marine nature reserve, marine park or marine management area includes a reference to the alteration of any boundary of the reserve, park or management area to include additional waters.

[Section 13 amended by No. 21 of 1988 s. 4; No. 76 of 1988 s. 4; No. 20 of 1991 s. 11; No. 53 of 1994 s. 264; No. 5 of 1997 s. 9; No. 52 of 2006 s. 6.]

13A. Marine nature reserves, purpose of and prohibited acts in

- (1) The reservation of a marine nature reserve shall be for —
 - (a) the conservation and restoration of the natural environment; and
 - (b) the protection, care and study of indigenous flora and fauna; and
 - (c) the preservation of any feature of archaeological, historic or scientific interest.
- (2) Subject to section 13D, aquaculture, commercial fishing, recreational fishing and pearling activity shall not be carried out in a marine nature reserve.
- (3) Despite section 4(1) but subject to section 13E, exploratory drilling for, or production of, petroleum, geothermal energy resources or geothermal energy under the *Petroleum and Geothermal Energy Resources Act 1967* or petroleum under the *Petroleum (Submerged Lands) Act 1982* shall not be carried out in a marine nature reserve.

[Section 13A inserted by No. 5 of 1997 s. 10; amended by No. 35 of 2007 s. 92(4).]

13B. Marine parks, purpose of and prohibited acts in

- (1) The reservation of a marine park shall be for the purpose of allowing only that level of recreational and commercial activity which is consistent with the proper conservation and restoration of the natural environment, the protection of indigenous flora and fauna and the preservation of any feature of archaeological, historic or scientific interest.
- (2) As soon as practicable after the reservation of a marine park the Minister shall classify the park under section 62, or divide the park into areas and classify each area under section 62, as —
 - (a) a general use area; or
 - (b) a sanctuary area; or
 - (c) a recreation area; or
 - (d) a special purpose area,in accordance with a proposal for the classification publicly notified in accordance with section 14, modified as the Minister thinks fit to give effect to submissions made under section 14.
- (3) Subsections (5), (6) and (7) have effect despite anything in the *Fish Resources Management Act 1994*, but in the event of any other conflict or inconsistency between the purpose referred to in subsection (1) and a provision of, or an activity authorised by, the *Fish Resources Management Act 1994* that relates to aquaculture or to commercial or recreational fishing, the latter prevails.
- (4) Subsection (8) has effect despite anything in the *Pearling Act 1990*, but in the event of any other conflict or inconsistency between the purpose referred to in subsection (1) and a provision of, or an activity authorised by, the *Pearling Act 1990* that relates to pearling activity, the latter prevails.
- (5) Subject to section 13D, aquaculture shall not be carried out in any area of a marine park which is classified under section 62 as —
 - (a) a sanctuary area; or

- (b) a recreation area; or
- (c) a special purpose area which, or that part of such an area which, the Minister has declared in the classification notice to be an area where aquaculture would be incompatible with a conservation purpose specified in the classification notice,

but aquaculture may be carried out, in accordance with an authorisation issued under the *Fish Resources Management Act 1994*, in any other area of the marine park.

- (6) Subject to section 13D, commercial fishing shall not be carried out in any area of a marine park which is classified under section 62 as —

- (a) a sanctuary area; or
- (b) a recreation area; or
- (c) a special purpose area which, or that part of such an area which, the Minister has declared in the classification notice to be an area where commercial fishing would be incompatible with a conservation purpose specified in the classification notice,

but commercial fishing may be carried out, in accordance with an authorisation issued under the *Fish Resources Management Act 1994*, in any other area of the marine park.

- (7) Subject to section 13D, recreational fishing shall not be carried out in any area of a marine park which is classified under section 62 as —

- (a) a sanctuary area; or
- (b) a recreation area which, or that part of such an area which, the Minister has declared in the classification notice to be an area where recreational fishing would be incompatible with another recreational purpose specified in the classification notice; or

- (c) a special purpose area which, or that part of such an area which, the Minister has declared in the classification notice to be an area where recreational fishing would be incompatible with a conservation purpose specified in the classification notice,

but recreational fishing may be carried out, in accordance with the requirements of the *Fish Resources Management Act 1994*, in any other area of the marine park.

- (8) Subject to section 13D, pearling activity shall not be carried out in any area of a marine park which is classified under section 62 as —

- (a) a sanctuary area; or
- (b) a recreation area; or
- (c) a special purpose area which, or that part of such an area which, the Minister has declared in the classification notice to be an area where pearling activity would be incompatible with a conservation purpose specified in the classification notice,

but pearling activity may be carried out, in accordance with a licence or permit issued under the *Pearling Act 1990*, in any other area of the marine park.

- (9) Despite section 4(1) but subject to section 13E, exploratory drilling for, or production of, petroleum, geothermal energy resources or geothermal energy under the *Petroleum and Geothermal Energy Resources Act 1967* or petroleum under the *Petroleum (Submerged Lands) Act 1982* shall not be carried out in any area of a marine park which is classified under section 62 as —

- (a) a sanctuary area; or
- (b) a recreation area; or
- (c) a special purpose area which, or that part of such an area which, the Minister has declared in the classification notice to be an area where those activities would be

incompatible with a conservation purpose specified in the classification notice,

but those activities may be carried out, in accordance with those Acts, in any other area of the marine park.

- (10) The term **classification notice** used in this section refers to the relevant notice under section 62(1a).

[Section 13B inserted by No. 5 of 1997 s. 10; amended by No. 35 of 2007 s. 92(5).]

13C. Marine management areas, purpose of and permitted acts in

- (1aa) In this section —

geothermal energy and **geothermal energy resources** have the same meanings as they have in the *Petroleum and Geothermal Energy Resources Act 1967*.

- (1) The reservation of a marine management area shall be for the purpose of managing and protecting the marine environment so that it may be used for conservation, recreational, scientific and commercial purposes.

- (2) In subsection (1) —

commercial purposes includes —

- (a) aquaculture, commercial fishing and pearling activity; and
- (b) mining, within the meaning of the *Mining Act 1978*; and
- (ba) exploration for and recovery of minerals under the *Offshore Minerals Act 2003*; and
- (c) seismic surveys and exploratory drilling for petroleum or geothermal energy resources; and
- (d) production of petroleum or geothermal energy,

and associated activities.

- (3) Aquaculture, commercial fishing and recreational fishing may be carried out, in accordance with the *Fish Resources Management Act 1994*, in a marine management area.
- (4) In the event of any conflict or inconsistency between the management and protection purpose referred to in subsection (1) and a provision of, or an activity authorised by, the *Fish Resources Management Act 1994* that relates to aquaculture, commercial fishing or recreational fishing, the latter prevails.
- (5) Pearling activity may be carried out, in accordance with the *Pearling Act 1990*, in a marine management area.
- (6) In the event of any conflict or inconsistency between the management and protection purpose referred to in subsection (1) and a provision of, or an activity authorised by, the *Pearling Act 1990* that relates to pearling activity, the latter prevails.
- (7) Nothing in this section limits the operation of section 4(1) and, in particular —
 - (a) exploratory drilling for petroleum and production of petroleum under the *Petroleum and Geothermal Energy Resources Act 1967* or the *Petroleum (Submerged Lands) Act 1982*; and
 - (aa) exploration for and recovery of minerals under the *Offshore Minerals Act 2003*; and
 - (ab) exploratory drilling for geothermal energy resources and recovery of geothermal energy under the *Petroleum and Geothermal Energy Resources Act 1967*; and
 - (b) other activities authorised by the Acts mentioned in paragraphs (a) and (aa),

may be carried out, in accordance with those Acts, in a marine management area.

[Section 13C inserted by No. 5 of 1997 s. 10; amended by No. 12 of 2003 s. 14; No. 35 of 2007 s. 92(6)-(8).]

13D. Effect of s. 13A, 13B and 13C on certain licences etc. for fishing etc.

- (1) Sections 13A and 13B do not affect the validity of an authorisation under the *Fish Resources Management Act 1994* or a licence or permit under the *Pearling Act 1990* —
 - (a) which was issued or renewed before the commencement of section 10 of the *Acts Amendment (Marine Reserves) Act 1997*; or
 - (b) which authorises activity in relation to an area affected, after the issue or renewal of the authorisation, by a reservation under section 13 or by a notice under section 62.
- (2) Sections 13A and 13B do not prohibit activities authorised in an area by an authorisation, licence or permit to which subsection (1) applies.
- (3) Sections 13A and 13B do not affect the validity of an aquaculture lease under the *Fish Resources Management Act 1994* or a farm lease under the *Pearling Act 1990* —
 - (a) granted or renewed before the commencement of section 10 of the *Acts Amendment (Marine Reserves) Act 1997*; or
 - (b) granted or renewed in relation to an area which is affected, after the grant or renewal, by a reservation under section 13 or by a notice under section 62.
- (4) Sections 13A and 13B do not prevent the annual renewal under section 27 of the *Pearling Act 1990* of a farm lease to which subsection (3) applies, where the term specified in the lease has not expired.
- (5) Sections 13A and 13B do not prevent —
 - (a) the renewal of an aquaculture licence under the *Fish Resources Management Act 1994*, held by the holder of an aquaculture lease referred to in subsection (3), which authorises aquaculture activity in the area under the lease; or

(b) the renewal of —

- (i) a hatchery licence under the *Pearling Act 1990*; or
- (ii) a pearling licence under that Act, authorising the holder to carry out pearl culture techniques,

held by the holder of a farm lease referred to in subsection (3), which authorises pearling activity in the area under the lease,

and do not prohibit activities authorised by such a renewed licence in the area under the lease concerned.

(6) Sections 13A, 13B and 13C do not affect a management plan made under section 54 of the *Fish Resources Management Act 1994* —

- (a) which was made before the commencement of section 10 of the *Acts Amendment (Marine Reserves) Act 1997*; or
- (b) which was made in relation to an area affected, after the making of the plan, by a reservation under section 13 or by a notice under section 62,

except as they affect an authorisation issued in relation to the area under the management plan.

(7) Where a notice under section 19 of the *Pearling Act 1990*, for the purposes of a holding site or dump site —

- (a) was made before the commencement of section 10 of the *Acts Amendment (Marine Reserves) Act 1997*; or
- (b) was made in relation to an area which is affected, after the making of the notice, by a reservation under section 13 or by a notice under section 62,

the notice continues in force until repealed under section 19 of the *Pearling Act 1990*, and sections 13A and 13B do not prohibit pearling activities in the area to which the notice applies that are not prohibited by the terms of the notice.

[Section 13D inserted by No. 5 of 1997 s. 10.]

13E. Effect of s. 13A and 13B on certain licences etc. relating to petroleum

(1) In this section —

drilling reservation means a drilling reservation within the meaning of the *Petroleum and Geothermal Energy Resources Act 1967*;

lease means a lease within the meaning of a petroleum law;

licence means a licence within the meaning of a petroleum law other than a pipeline licence;

permit means a permit within the meaning of a petroleum law;

petroleum authorisation means a permit, drilling reservation, lease, licence or pipeline licence;

petroleum law means the *Petroleum and Geothermal Energy Resources Act 1967*, the *Petroleum (Submerged Lands) Act 1982* or the *Petroleum Pipelines Act 1969*;

pipeline licence means a pipeline licence within the meaning of the *Petroleum (Submerged Lands) Act 1982* or a licence within the meaning of the *Petroleum Pipelines Act 1969*;

renewal, in relation to a petroleum authorisation, has the same meaning as it has in the relevant petroleum law.

(2) Sections 13A and 13B do not affect the validity of a petroleum authorisation —

(a) granted, renewed or extended before the commencement of section 10 of the *Acts Amendment (Marine Reserves) Act 1997*; or

(b) granted, renewed or extended in relation to an area which is affected, after the grant, renewal or extension, by a reservation under section 13 or by a notice under section 62.

(3) Sections 13A and 13B do not prevent the renewal or extension under the relevant petroleum law of —

(a) a petroleum authorisation to which subsection (2) applies; or

- (b) a licence granted as referred to in subsection (4).
- (4) Sections 13A and 13B do not prevent the grant of a licence under the relevant petroleum law in respect of an area in respect of which —
 - (a) a permit, drilling reservation or lease to which subsection (2) applies; or
 - (b) a permit, drilling reservation or lease renewed or extended as referred to in subsection (3)(a),has been in force.
- (5) Sections 13A and 13B do not prohibit activities authorised in an area by —
 - (a) a petroleum authorisation to which subsection (2) applies; or
 - (b) a petroleum authorisation renewed or extended as referred in subsection (3)(a); or
 - (c) a licence granted as referred to in subsection (4) or renewed as referred to in subsection (3)(b).

[Section 13E inserted by No. 5 of 1997 s. 10; amended by No. 10 of 1998 s. 22(1); No. 35 of 2007 s. 92(9).]

13F. *Environmental Protection Act 1986* not limited by s. 13A to 13E

Nothing in section 13A, 13B, 13C, 13D or 13E limits the operation of the *Environmental Protection Act 1986*.

[Section 13F inserted by No. 5 of 1997 s. 10.]

14. Proposal for marine reserve, public notice of and submissions on

- (1) Public notification of a proposal to make an order under section 13(1) shall be given in accordance with subsection (2).

- (1a) Public notification of a proposal shall not be given unless —
- (a) the Minister has received a report from the Marine Authority in relation to the proposal; and
 - (b) the Minister for Fisheries and the Minister for Mines have approved the notification of the proposal.
- (2) Unless the Minister otherwise directs, the way in which public notification of a proposal is to be given is by the CEO causing the publication —
- (a) in the *Gazette*; and
 - (b) in 2 issues of a daily newspaper circulating throughout the State; and
 - (c) in 2 issues of a local newspaper circulating in the area within or contiguous to which the proposed reserve, park or management area is situated; and
 - (d) on such signs as the Minister may direct to be placed on or near the boundaries of the proposed reserve, park or management area,
- of a notice —
- (e) specifying the boundaries of the waters of the proposed reserve, park or management area; and
 - (f) specifying the purpose for which the reserve, park or management area is proposed to be constituted; and
 - (g) specifying whether or not the proposed order under section 13(1) will classify the reserve, park or management area as Class A; and
 - (h) specifying the places at which —
 - (i) a copy of a map of the proposed reserve, park or management area may be inspected; and
 - (ii) a copy of any indicative management plan for the proposed reserve, park or management area issued under subsection (2b) may be inspected; and

- (iii) copies of the map, and of any such indicative management plan, may be obtained;
- and
- (i) setting out, for the purpose of assisting persons who may wish to make submissions under subsection (4), such other information as the Minister considers relevant to the proposal; and
 - (j) stating the effect of subsection (4) and specifying the period and the address or addresses referred to in that subsection.
- (2a) Where a notice for the purposes of subsection (2) deals with a proposal to establish a marine park, the notice shall also specify the proposed classification under section 62 of the park, or of the areas of the park, for the purposes of section 13B(2) and —
 - (a) the purpose or purposes of any proposed recreation area, together with any declaration proposed to be made as to activities which are considered incompatible with the purpose or any of the purposes; and
 - (b) the purpose or purposes of any proposed special purpose area, together with any declaration proposed to be made as to activities which are considered incompatible with the purpose or any of the purposes.
- (2b) Where a notice for the purposes of subsection (2) deals with a proposal to establish a marine nature reserve or marine management area, the notice shall also specify any classification of the reserve or management area, or of areas of the reserve or management area, that is proposed to be made under section 62(1b) as soon as practicable after the reservation of the reserve or management area.
- (2c) Before public notification of a proposal to make an order under section 13(1) is given, the Minister shall cause an indicative management plan for the proposed reserve, park or management area to be prepared and issued.

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Division 3 Marine reserves

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- (2d) Sections 55(1) and (3) and 56(1)(da) and (db) and (2) apply to the preparation of an indicative management plan.
- (3A) Notification of a proposal to make an order under section 13(1) shall be given to the local government of each district which is contiguous to the proposed reserve, park or management area.
- (3B) Notwithstanding subsection (4) each local government notified pursuant to subsection (3A) shall be given a reasonable time in which to prepare written submissions on the proposal.
- (4) Written submissions on the proposal may be made by any person —
 - (a) within a period determined by the Minister, which period shall be not less than 3 months after the day on which the notice is published in the *Gazette*; and
 - (b) by delivering or posting them, so that they are received within that period at an address designated by the Minister.
- (5) Subject to this section, the Minister may submit the proposal, modified as he thinks fit to give effect to submissions made under this section, to the Governor for the making of an order under section 13.
- (6) The Minister shall not make a submission to the Governor under subsection (5) unless —
 - (a) the Minister has received a report from the Marine Authority in relation to any submissions received under this section; and
 - (b) the Minister for Fisheries and the Minister for Mines concur with the submission to the Governor.
- (7) If the Governor makes an order under section 13 in respect of a reserve, park or management area for which an indicative management plan was issued under subsection (2c), the Minister may approve the plan or approve it with such modifications as the Minister thinks fit to give effect to submissions made under this section.

- (8) Section 60(2a) and (2b) apply to the approval of an indicative management plan as if the references in those subsections to the controlling body were references to the Minister.
- (9) Notice that an indicative management plan has been approved by the Minister shall be published in the *Gazette*, together with a note showing —
 - (a) whether any modifications were made by the Minister under subsection (7); and
 - (b) where a copy of the plan may be inspected or obtained.
- (10) An indicative management plan comes into operation on the day of publication in the *Gazette* of a notice under subsection (9) or on such later day as is specified in the plan.
- (11) In the case of a proposal to alter a boundary of a reserve, park or management area as referred to in section 13(10), the provisions of this section, other than subsection (2)(f) and (g), apply to the proposed new boundaries of the reserve, park or management area and the additional waters proposed to be included in it —
 - (a) as if references to an indicative management plan were references to an amendment of the indicative or other management plan for the reserve, park or management area; and
 - (b) with any other necessary modifications.

[Section 14 amended by No. 76 of 1988 s. 5; No. 53 of 1994 s. 264; No. 14 of 1996 s. 4; No. 5 of 1997 s. 11; No. 28 of 2006 s. 209; No. 19 of 2010 s. 51; No. 36 of 2011 s. 9.]

Division 4 — Other procedures

15. Land for State forest etc., power to acquire

- (1) Where the Governor considers that any land is required for the purpose of, or incidental to, a State forest, timber reserve, national park, conservation park, nature reserve or marine

reserve, the Governor may authorise the Land Administration Minister to —

- (a) take the land compulsorily under and subject to Part 9 of that Act;
 - (b) purchase the land or acquire it by way of exchange for Crown land.
- (2) Where land is acquired under this section for the purpose of a State forest or timber reserve, the Governor shall, by order published in the *Gazette*, declare the land to be set apart as a State forest or timber reserve, as the case may be.
- (3) Subject to subsection (2), nothing in this section shall limit the operation of section 243 of the *Transfer of Land Act 1893*.

[Section 15 amended by No. 20 of 1991 s. 12; No. 5 of 1997 s. 12; No. 31 of 1997 s. 15(6); No. 28 of 2006 s. 184.]

[16-16B. Deleted by No. 36 of 2011 s. 10.]

Division 5 — Cancellation etc. of purpose

17. Purpose of certain land, cancelling or amending; area of certain land, changing

- (1) Nothing in this section applies to —
- (a) State forest; or
 - (b) conservation parks; or
 - (c) national parks referred to in section 6(3)(b); or
 - (d) land classified under the *Land Administration Act 1997* as a class A reserve or under section 13(4) as of Class A,

but otherwise this section applies to all land to which this Act applies.

- (2) Where it is proposed to —
- (a) cancel or amend the purpose of any land to which this section applies; or

- (b) alter any boundary of any such land otherwise than by an addition thereto,
- the Minister shall refer the proposal to the body in which the land is vested, or which has the care, control and management of the land, and any associated body.
- (3) The Conservation Commission or Marine Authority, as the case may be, and any associated body shall consider any proposal so referred to it and shall notify the Minister whether it —
- (a) approves the proposal; or
 - (b) declines to approve it; or
 - (c) approves it in a modified form; or
 - (d) approves it subject to any condition.
- (4) The Minister is not bound by the decision of the Conservation Commission or the Marine Authority or any associated body under subsection (3), but the Conservation Commission or the Marine Authority shall record in its annual report under section 31 any case where its decision is not acted on by the Minister in any respect and set out the reasons for its decision.
- (4a) Where a proposal referred to in subsection (2) relates to land that is in the development control area or the Riverpark as defined in the *Swan and Canning Rivers Management Act 2006* the Minister shall refer the proposal to the Swan River Trust and subsections (3) and (4) shall, with all the necessary changes, apply to that body in the same way as they apply to the Conservation Commission or the Marine Authority.
- (5) Except in the case of the waters of a marine reserve to which subsection (6) applies, or in the case of a timber reserve to which subsection (6a) applies, the Minister may, subject to this section, recommend to the Land Administration Minister that an order be made to give effect to the proposal, and, if that Minister agrees, the proposed cancellation, amendment or alteration shall then be carried into effect under Part 4 of that Act.

- (6) In the case of the waters of a marine reserve, other than a marine reserve comprising land reserved under Part 4 of the *Land Administration Act 1997*, the Minister, with the concurrence of the Minister for Fisheries and the Minister for Mines, may, subject to this section, recommend to the Governor that an order be made to give effect to the proposal, and thereupon the Governor shall by order published in the *Gazette* give effect to the proposed cancellation, amendment or alteration.
- (6a) In the case of a timber reserve (other than land reserved under Part 4 of the *Land Administration Act 1997* as a timber reserve), the Minister, with the concurrence of the Minister for Forest Products, may, subject to this section, recommend to the Governor that an order be made to give effect to the proposal, and thereupon the Governor shall by order published in the *Gazette* give effect to the proposed cancellation, amendment or alteration.
- (7) Where the purpose for which land is reserved or held is cancelled, the land shall become Crown land within the meaning of the *Land Administration Act 1997* and section 7 shall cease to apply to it.
- (8) In this section except subsection (7), **land** includes the waters comprised in a marine reserve.

[Section 17 amended by No. 21 of 1988 s. 5; No. 20 of 1991 s. 15; No. 5 of 1997 s. 14; No. 31 of 1997 s. 15(7), (8) and 141; No. 24 of 2000 s. 8(2); No. 35 of 2000 s. 9; No. 74 of 2003 s. 39(5); No. 28 of 2006 s. 186; No. 52 of 2006 s. 6; No. 36 of 2011 s. 11.]

Division 6 — Maps

[Heading inserted by No. 20 of 1991 s. 16.]

17A. Maps of categories of land, deposit and inspection of etc.

- (1) A map of every —
 - (a) timber reserve; and
 - (b) national park; and

- (c) conservation park; and
- (d) nature reserve; and
- (e) marine nature reserve; and
- (f) marine park; and
- (g) marine management area,

certified under the hand of an authorised land officer shall be deposited in the Department as defined in the *Land Administration Act 1997*.

- (2) A map of every State forest certified under the hand of an authorised land officer shall be deposited in the Department (as defined in section 3 of this Act).
- (3) A map deposited under subsection (1) or (2) shall be open to public inspection on payment of the prescribed fee.
- (4) Any land or waters excised from or added to any of the areas referred to in subsection (1) or (2) shall be indicated on such map and certified under the hand of an authorised land officer.
- (5) All maps and plans certified under the hand of an authorised land officer to be copies of the original maps or plans or of portions thereof deposited in the relevant Department, are admissible in evidence in any court or before any person having by law or the consent of parties authority to hear, receive, and examine evidence, and are evidence for the same purpose and to the same extent as the originals would be if they were produced.
- (6) Judicial notice shall be taken of the signature of an authorised land officer to any map or plan or certified copy of a map or plan or of a portion thereof.
- (7) Where it is impracticable at the time of the reservation of any land or waters referred to in subsection (1) or (2) to define by survey an area excluded therefrom —
 - (a) the area may be approximately specified in maps deposited under subsection (1); and

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Division 6 Maps

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- (b) plans of survey may be prepared, under the direction of an authorised land officer with the approval of the CEO, and deposited under subsection (1) or (2), as the case may require, after the reservation.
- (8) In this section ***authorised land officer*** has the meaning assigned to it by the *Land Administration Act 1997*.

[Section 17A inserted by No. 20 of 1991 s. 16; amended by No. 5 of 1997 s. 15; No. 31 of 1997 s. 141; No. 28 of 2006 s. 187 and 209.]

Part III — Controlling bodies established

Division 1 — Conservation Commission of Western Australia

[Heading inserted by No. 35 of 2000 s. 10.]

Subdivision 1 — Establishment and functions and powers of Conservation Commission

[Heading inserted by No. 35 of 2000 s. 10.]

18. Commission established and nature of

- (1) There is established by this section a commission by the name of the Conservation Commission of Western Australia.
- (2) The Conservation Commission is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the Commission in its corporate name.

[Section 18 inserted by No. 35 of 2000 s. 10.]

19. Functions

- (1) The functions of the Conservation Commission are as follows —
 - (a) to have vested in it State forest, timber reserves, national parks, conservation parks, nature reserves, relevant land referred to in section 5(1)(g) and to have the joint function provided for by section 7(4);
 - (b) to have the care, control and management of relevant land referred to in section 5(1)(h) placed with it, whether solely or jointly with another person;
 - (c) to develop policies —
 - (i) for the preservation of the natural environment of the State and the provision of facilities for the enjoyment of that environment by the community; and

- (ii) for promoting the appreciation of flora and fauna and the natural environment; and
 - (iii) to achieve or promote the objectives referred to in section 56(1)(a), (b), (c), (d) and (e) and (2);
- (d) to advise the Minister on the development of policies for the conservation and management of biodiversity and biodiversity components throughout the State;
- (e) in accordance with section 17, to consider any cancellation or change of purpose, or boundary alteration, of land vested in or under the care, control and management of the Conservation Commission, whether solely or jointly with an associated body;
- (f) in accordance with Part V, to prepare and deal with proposed management plans for land vested in or under the care, control and management of the Conservation Commission, whether solely or jointly with an associated body;
- (g) in relation to management plans for land vested in or under the care, control and management of the Conservation Commission, whether solely or jointly with an associated body —
 - (i) to develop guidelines for monitoring; and
 - (ii) to set performance criteria for evaluating; and
 - (iii) to conduct periodic assessments of, the implementation of the management plans by those responsible for implementing them, including the CEO and, if the land is State forest or a timber reserve, the Forest Products Commission;
- (ha) if a section 8A agreement requires the Conservation Commission to assess the implementation of the management plan for the section 8A land concerned, to do so in accordance with the agreement;

- (h) to advise the Minister on the application of the principles of ecologically sustainable forest management in the management of —
 - (i) State forest and timber reserves; and
 - (ii) forest produce throughout the State;
 - (i) to advise the Minister on the production and harvesting, on a sustained yield basis, of forest produce throughout the State;
 - (j) to inquire into and, subject to subsection (6), to advise the Minister on any matter on which the Minister requests advice;
 - (k) upon request, to provide advice on matters relating to land vested in or under the care, control and management of the Conservation Commission, whether solely or jointly with an associated body, to any body or person, if to do so is in the public interest and it is practicable for the Conservation Commission to provide it;
 - (l) with the approval of the Minister, to cause study or research to be undertaken for the purposes of paragraph (c).
- (2) For the purposes of subsection (1)(h) the principles of ecologically sustainable forest management are —
- (a) that the decision-making process should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations; and
 - (b) that if there are threats of serious or irreversible environmental damage, the lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation; and
 - (c) that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations; and

- (d) that the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making; and
 - (e) that improved valuation, pricing and incentive mechanisms should be promoted.
- (3) It is declared that the vesting in the Conservation Commission of State forest, timber reserves, national parks, conservation parks and nature reserves is only for the purposes of subsection (1)(c), (d), (e), (f), (g), (h), (i), (k) and (l) and does not otherwise limit the functions of the CEO under section 33.
- (4) Despite the *Land Act 1933*², land to which section 5(1)(g) applies that is vested in the Conservation Commission, including the land referred to in section 155, is only vested within the meaning in subsection (3).
- (5) Despite the *Land Administration Act 1997*, the placing of the care, control and management of land to which section 5(1)(h) applies with the Conservation Commission is only for the purposes referred to in subsection (3).
- (6) The Conservation Commission shall not advise the Minister on any matter to which this subsection applies unless, before the advice is tendered, it has —
 - (a) informed each local government in whose district land directly affected by the advice is situated of the general nature of its proposed advice; and
 - (b) afforded the local government a reasonable opportunity to make submissions on its proposed advice.
- (7) Subsection (6) applies to —
 - (a) any proposal to establish a new State forest, timber reserve, national park, conservation park or nature reserve; and
 - (ba) any proposal to enter into a section 8A agreement under which land will be managed as if it were a State forest,

timber reserve, national park, conservation park or nature reserve; and

- (b) any matter to which the Minister, by written direction to the Conservation Commission, applies that subsection.
- (8) Where a matter before the Conservation Commission is relevant to the functions of the Forest Products Commission, the Conservation Commission shall refer that matter to the Forest Products Commission for its comments and advice.
- (9) Where a matter before the Conservation Commission is relevant to the management of land or waters vested in or under the care, control and management of the Marine Authority, or is otherwise relevant to the functions of the Marine Authority, the Conservation Commission shall refer that matter to the Marine Authority for its comments and advice.
- (10) Where —
 - (a) the Conservation Commission has provided advice to the Minister which the Minister has requested under subsection (1)(j), or is required by this Act to consider or take into account; and
 - (b) the advice recommends that the Minister take or refrain from taking specified action; and
 - (c) the Minister decides to act otherwise than in accordance with the recommendation,

the Minister is to cause a copy of the advice and the decision to be laid before each House of Parliament within 14 sitting days of that House after the making of the decision.

[Section 19 inserted by No. 35 of 2000 s. 10; amended by No. 74 of 2003 s. 39(6)-(8); No. 28 of 2006 s. 208; No. 36 of 2011 s. 12.]

20. Powers

- (1) The Conservation Commission has power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this Act.

- (2) Without limiting subsection (1), the Conservation Commission has the power to engage and manage staff.
- (3) The power conferred by subsection (2) —
 - (a) includes the power to determine remuneration and other terms and conditions of service of staff, to remove, suspend and discipline staff and to terminate the employment of staff; and
 - (b) does not preclude the delegation of any matter under section 26AA.
- (4) The remuneration of and other terms and conditions of employment of staff are —
 - (a) not to be less favourable than is provided for in —
 - (i) an applicable industrial award, order or agreement; or
 - (ii) the *Minimum Conditions of Employment Act 1993*;and
 - (b) to be determined after consultation with the Public Sector Commissioner.
- (5) Nothing in this section affects the operation of Part VID of the *Industrial Relations Act 1979* or section 100 of the *Public Sector Management Act 1994*.
- (6) Without limiting subsection (1), the Conservation Commission has the rights to take water from land vested in or under the care, control and management of the Conservation Commission that would apply if —
 - (a) that land was land alienated from the Crown; and
 - (b) the Conservation Commission was the occupier of that land,

within the meaning of the *Rights in Water and Irrigation Act 1914*.

- (7) The rights referred to in subsection (6) may be assigned by the Conservation Commission to —
- (a) a member of the Conservation Commission; or
 - (b) a member of the staff of the Conservation Commission; or
 - (c) the CEO or a member of the staff of the Department.

[Section 20 inserted by No. 35 of 2000 s. 10; amended by No. 20 of 2002 s. 17; No. 28 of 2006 s. 209; No. 39 of 2010 s. 89; No. 36 of 2011 s. 13; amended in Gazette 15 Aug 2003 p. 3692.]

Subdivision 2 — Membership and meetings of Conservation Commission

[Heading inserted by No. 35 of 2000 s. 10.]

21. Membership

- (1) The Conservation Commission comprises 9 members appointed by the Governor on the nomination of the Minister.
- (2) Before making a nomination under subsection (1) the Minister is to publish in a daily newspaper circulating throughout the State a notice calling for expressions of interest in appointment to the office of Conservation Commission member.
- (3) Subject to subsection (4) and section 22, the members are to be persons who, in the opinion of the Minister —
 - (a) have knowledge of and experience in —
 - (i) the conservation or management of biodiversity; or
 - (ii) environmental management, including the management of the natural environment for use for recreational purposes; or
 - (iii) the sustainable use of natural resources;or

- (b) have a particular function or vocational interest relevant to the functions of the Conservation Commission,
- and who, in the opinion of the Minister, are able to make a contribution to the functions of the Conservation Commission.
- (4) One member is to be a person who, in the opinion of the Minister —
 - (a) has knowledge of and experience in Aboriginal cultural and Aboriginal heritage matters relevant to the functions of the Conservation Commission; and
 - (b) is able to make a contribution to the functions of the Conservation Commission.
- (5) The Governor is to appoint, on the nomination of the Minister, 2 of the members to be the chairman of the Conservation Commission and the deputy chairman of the Conservation Commission respectively.

[Section 21 inserted by No. 35 of 2000 s. 10.]

22. Persons not eligible to be members

- (1) A person is not eligible to be appointed as, or be, a member of the Conservation Commission if the person —
 - (a) is the CEO, a member of the staff of the Conservation Commission or an officer of the Department; or
 - (b) holds office as a commissioner, the General Manager or a member of the staff of the Forest Products Commission; or
 - (c) has a material personal interest in a production contract or in a company or business that is a party to a production contract.
- (2) A reference in this section to a person who holds an office includes a reference to a person who acts in the office.

- (3) In subsection (1)(c) —

production contract has the same meaning as it has in the *Forest Products Act 2000*.

[Section 22 inserted by No. 35 of 2000 s. 10; amended by No. 28 of 2006 s. 188.]

23. Meetings of Commission, CEO of Department etc. entitled to attend

- (1) Reasonable notice of a meeting of the Conservation Commission is to be given to the CEO and, if in the view of the chairman any matter proposed to be put before the meeting concerns the functions of a Director, to that Director, and no resolution purportedly passed at a meeting is valid unless such notice of the meeting was duly given.
- (2) For the purposes of subsection (1), the CEO is to notify the chairman as to the functions of the Directors and any changes to those functions.
- (3) Subject to subsection (5), the CEO, or the CEO's representative, is entitled to attend any meeting and to take part in the consideration and discussion of any matter before a meeting, but cannot vote on any matter.
- (4) Subject to subsection (5), a Director who receives notice under subsection (1), or that Director's representative, is entitled to attend the meeting to which the notice applies and to take part in the consideration and discussion of any matter before the meeting that concerns the functions of the Director, but cannot vote on any matter.
- (5) The Conservation Commission may decide to exclude the persons referred to in subsections (3) and (4) (but not some of them only) from a meeting while it is considering a matter that relates to the functions or actions of the CEO or the Department.

- (6) In this section —

Director means a senior executive officer (within the meaning of the *Public Sector Management Act 1994*) designated by the CEO to be a Director for the purposes of this section.

[Section 23 inserted by No. 35 of 2000 s. 10; amended by No. 28 of 2006 s. 189 and 209.]

Subdivision 3 — Relationship with the Minister

[Heading inserted by No. 35 of 2000 s. 10.]

24. Minister may give Commission directions

- (1) The Minister may give directions in writing to the Conservation Commission with respect to the exercise or performance of its functions, either generally or in relation to a particular matter, and the Conservation Commission is to give effect to any such direction.
- (2) The text of any direction given under subsection (1) is to be included in the annual report of the Conservation Commission under section 31.

[Section 24 inserted by No. 35 of 2000 s. 10.]

25. Minister to have access to information

- (1) The Minister is entitled —
- (a) to have information in the possession of the Conservation Commission; and
 - (b) if the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —
- (a) request the Conservation Commission to furnish information to the Minister;
 - (b) request the Conservation Commission to give the Minister access to information;

- (c) for the purposes of paragraph (b), make use of staff to obtain the information and furnish it to the Minister.
- (3) The Conservation Commission is to comply with a request under subsection (2) and make staff and facilities available to the Minister for the purposes of subsection (2)(c).
- (4) In this section —
- document** includes any tape, disc or other device or medium on which information is recorded or stored;
- information** means information specified, or of a description specified, by the Minister that relates to the functions of the Conservation Commission;
- staff** means the staff of the Conservation Commission or the staff provided by the CEO under section 33(1)(ba).
- [Section 25 inserted by No. 35 of 2000 s. 10; amended by No. 28 of 2006 s. 208.]*

Subdivision 4 — General

[Heading inserted by No. 35 of 2000 s. 10.]

26. Consultants, Commission may engage

The Conservation Commission may engage persons under contracts for services to provide any professional, technical or other assistance that the Conservation Commission considers necessary for the performance of its functions under this Act.

[Section 26 inserted by No. 35 of 2000 s. 10.]

26AA. Delegation by Commission

- (1) The Conservation Commission may, by instrument, delegate the performance of any of its functions except this power of delegation.
- (2) A delegation under subsection (1) may be made to —
- (a) a member of the Conservation Commission; or

- (b) a member of the staff of the Conservation Commission;
or
 - (c) a member of the staff of the Department provided under section 33(1)(ba).
- (3) A delegate cannot subdelegate the performance of any function unless the delegate is expressly authorised by the instrument to do so.
- (4) A function performed by a delegate of the Commission is taken to be performed by the Commission.
- (5) A delegate performing a function under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.

[Section 26AA inserted by No. 35 of 2000 s. 10.]

26AB. Documents, execution of by Commission

- (1) The Conservation Commission is to have a common seal.
- (2) A document is duly executed by the Conservation Commission if —
 - (a) the common seal of the Conservation Commission is affixed to it in accordance with subsections (3) and (4);
or
 - (b) it is signed on behalf of the Conservation Commission by one or more persons authorised to do so under subsection (5).
- (3) The common seal of the Conservation Commission is not to be affixed to any document except as authorised by the Conservation Commission.
- (4) The common seal of the Conservation Commission is to be affixed to a document in the presence of 2 of its members, and each of them is to sign the document to attest that the common seal was so affixed.
- (5) The Conservation Commission may, by writing under its seal, authorise one or more of its members to sign documents on its

behalf, either generally or subject to any conditions or restrictions specified in the authorisation.

- (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is proved.
- (7) A document executed by a person under this section without the common seal of the Conservation Commission is not to be regarded as a deed unless the person executes it as a deed and is authorised under subsection (5) to do so.
- (8) Where a document is produced bearing a seal purporting to be the common seal of the Conservation Commission, it is to be presumed that the seal is the common seal of the Conservation Commission until the contrary is proved.

[Section 26AB inserted by No. 35 of 2000 s. 10.]

26AC. Review of operations etc. of Commission

- (1) The Minister is to carry out a review of the operations and effectiveness of the Conservation Commission as soon as is practicable after the expiration of 5 years from the commencement of the *Conservation and Land Management Amendment Act 2000* and in the course of that review is to have regard to —
 - (a) the need for the continuation of the Conservation Commission; and
 - (b) any other matters that appear to the Minister to be relevant.
- (2) The Minister is to prepare a report based on the review under subsection (1) and is to cause the report and the review to be laid before each House of Parliament within 6 months after the completion of the review.

[Section 26AC inserted by No. 35 of 2000 s. 10.]

[Divisions 2 and 3 deleted by No. 35 of 2000 s. 10.]

Division 3A — Marine Parks and Reserves Authority

[Heading inserted by No. 5 of 1997 s. 17.]

26A. Authority established

There is established by this section an authority by the name of the Marine Parks and Reserves Authority.

[Section 26A inserted by No. 5 of 1997 s. 17.]

26B. Functions

- (1) The functions of the Marine Authority are as follows —
- (a) to have vested in it marine reserves and relevant land referred to in section 5(1)(g);
 - (aa) to have the care, control and management of relevant land referred to in section 5(1)(h) placed with it, whether solely or jointly with another person;
 - (b) to develop policies —
 - (i) to preserve the natural marine and estuarine environments of the State; and
 - (ii) to provide facilities for the enjoyment of those environments by the community; and
 - (iii) to promote appreciation of marine and estuarine flora and fauna and natural marine and estuarine environments; and
 - (iv) to achieve or promote the objectives referred to in section 56(1)(da), (db) and (e) and (2);
 - (c) in accordance with section 17, to consider any cancellation or change of purpose, or boundary alteration, of land and waters vested in or under the care, control and management of the Marine Authority, whether solely or jointly with an associated body;
 - (d) to advise the Minister in relation to proposals for reservations for the purposes of section 14;

- (e) in accordance with Part V, to prepare and deal with proposed management plans for land and waters vested in or under the care, control and management of the Marine Authority, whether solely or jointly with an associated body;
 - (f) in relation to management plans for land and waters vested in or under the care, control and management of the Marine Authority, whether solely or jointly with an associated body —
 - (i) to develop guidelines for monitoring; and
 - (ii) to set performance criteria for evaluating; and
 - (iii) to conduct periodic assessments of, the implementation of the management plans by those responsible for implementing them, including the CEO;
 - (g) upon request, to provide advice on matters relating to land and waters vested in or under the care, control and management of the Marine Authority, whether solely or jointly with an associated body, to any body or person, if to do so is in the public interest and it is practicable for the Marine Authority to provide it;
 - (h) with the approval of the Minister, to cause study or research to be undertaken for the purposes of paragraph (b);
 - (i) to inquire into and to advise the Minister on any matter on which the Minister requests advice;
 - (j) to advise the Minister on any other matter relevant to its functions which it thinks calls for advice.
- (2) It is declared that the vesting in the Marine Authority of marine reserves is only for the purpose of subsection (1)(b), (c), (d), (e), (f), (g) and (h) and does not otherwise limit the functions of the CEO under section 33.
- (3) Despite the *Land Act 1933*², land to which section 5(1)(g) applies and which is vested in the Marine Authority is only vested within the meaning in subsection (2).

(3a) Despite the *Land Administration Act 1997*, the placing of the care, control and management of land to which section 5(1)(h) applies with the Marine Authority is only for the purpose referred to in subsection (2).

(4) If the Minister, in writing, directs the Marine Authority to advise the Minister on a matter, it must not advise the Minister on the matter unless before the advice is tendered it has informed the council of each local government under the *Local Government Act 1995* in whose district land or waters directly affected by the advice is situated of the general nature of its proposed advice and afforded any such council a reasonable opportunity to make submissions thereon.

[(5) *deleted*]

(6) The Marine Authority shall not advise the Minister on any matter which relates to marine archaeology unless before the advice is tendered it has informed The Western Australian Museum of the general nature of its proposed advice and afforded it a reasonable opportunity to make submissions thereon.

(7) Where a matter before the Marine Authority is relevant to the management of land vested in or under the care, control and management of the Conservation Commission or is otherwise relevant to the functions of the Conservation Commission, the Marine Authority shall refer that matter to the Conservation Commission for its comment and advice.

(8) Where —

- (a) the Marine Authority has provided advice to the Minister which the Minister has sought under subsection (1)(i), or is required by this Act to consider or take into account; and
- (b) the advice recommends that the Minister take or refrain from taking specified action; and

- (c) the Minister decides to act otherwise than in accordance with the recommendation,

the Minister shall cause a copy of the advice and the decision to be laid before each House of Parliament within 14 sitting days of that House after the making of the decision.

[Section 26B inserted by No. 5 of 1997 s. 17; amended by No. 10 of 1998 s. 22(2); No. 24 of 2000 s. 8(3) and (6); No. 35 of 2000 s. 11; No. 28 of 2006 s. 208; No. 36 of 2011 s. 14.]

26C. Minister may give Authority directions

- (1) The Minister may give directions in writing to the Marine Authority with respect to the exercise or performance of its functions, either generally or in relation to a particular matter, and the Marine Authority shall give effect to any such direction.
- (2) The text of any direction given under subsection (1) shall be included in the annual report of the Marine Authority under section 31.

[Section 26C inserted by No. 5 of 1997 s. 17.]

26D. Membership

- (1) The Marine Authority comprises 7 members, appointed by the Governor on the nomination of the Minister.
- (2) The members are to be persons who, in the opinion of the Minister, have knowledge and experience or a particular function or vocational interest which is relevant to the functions of the Marine Authority.
- (3) One of the members shall, on the nomination of the Minister, be appointed by the Governor as chairman of the Marine Authority and another as deputy chairman.
- (4) Reasonable notice of meetings of the Marine Authority shall be given to the CEO and to the chief executive officer of any other agency which, in the view of the chairman, is concerned with a

matter to be considered at the meeting, and no resolution purportedly passed at a meeting shall be valid unless such notice of the meeting was duly given.

- (5) Subject to subsection (6) —
- (a) the CEO, or the CEO's representative, is entitled to attend any meeting and to take part in the consideration and discussion of any matter before a meeting, but shall not vote on any matter; and
 - (b) a chief executive officer of another agency who receives notice under subsection (4), or that chief executive officer's representative, is entitled to attend any meeting and to take part in the consideration and discussion of any matter before a meeting that concerns that agency, but shall not vote on any matter.
- (6) The Marine Authority may decide to exclude the persons referred to in subsection (5) (but not some of them only) from a meeting while it is considering a matter that relates to the functions or actions of any agency in relation to management plans for lands and waters vested in or under the care, control and management of the Marine Authority.
- (7) In this section —
- agency* has the meaning given to it by the *Public Sector Management Act 1994*;
- chief executive officer* includes chief employee within the meaning of the *Public Sector Management Act 1994*.
- [Section 26D inserted by No. 5 of 1997 s. 17; amended by No. 28 of 2006 s. 190, 208 and 209; No. 36 of 2011 s. 15.]

26E. Review of operations etc. of Authority

- (1) The Minister shall carry out a review of the operations and effectiveness of the Marine Authority as soon as is practicable after the expiration of 5 years from the commencement of

section 17 of the *Acts Amendment (Marine Reserves) Act 1997* and in the course of that review shall have regard to —

- (a) the need for continuation of the Marine Authority; and
 - (b) such other matters as appear to the Minister to be relevant.
- (2) The Minister shall prepare a report based on the review under subsection (1) and shall, as soon as is practicable after the preparation, cause the report to be laid before each House of Parliament.

[Section 26E inserted by No. 5 of 1997 s. 17.]

Division 3B — Marine Parks and Reserves Scientific Advisory Committee

[Heading inserted by No. 5 of 1997 s. 17.]

26F. Committee established

There is established by this section a committee to be known as the Marine Parks and Reserves Scientific Advisory Committee.

[Section 26F inserted by No. 5 of 1997 s. 17.]

26G. Functions

- (1) The functions of the Marine Committee are —
- (a) to provide scientific advice to the Minister, where the Minister has sought that advice, on issues relevant to the conservation of —
 - (i) marine and estuarine fauna, flora and environments; and
 - (ii) marine reserves,
- both generally, and as those issues relate to the functions of the Marine Authority; and

- (b) to provide scientific advice to the Marine Authority —
 - (i) where the functions of the Marine Authority may be affected by a matter being considered by the Marine Committee; and
 - (ii) on matters referred to the Marine Committee by the Marine Authority; and
 - (iii) on matters which, in the opinion of the Marine Committee, should be brought to the attention of the Marine Authority.
- (2) The Marine Committee shall provide the Marine Authority with a copy of any advice it provides to the Minister under subsection (1)(a).
- (3) Where the Minister seeks advice from the Marine Committee the Minister shall —
 - (a) advise the Marine Authority of the precise nature of the advice sought; and
 - (b) give the Marine Authority reasonable opportunity to comment on the advice provided by the Marine Committee.

[Section 26G inserted by No. 5 of 1997 s. 17.]

26H. Membership

- (1) The Marine Committee shall comprise not more than 7 members appointed by the Minister of whom —
 - (a) one shall be a senior scientific officer of the Department; and
 - (b) one shall be a senior scientific officer of the Fisheries Department; and
 - (c) one shall be a senior scientific officer employed and nominated by the Trustees of the Western Australian Museum under the *Museum Act 1969*; and
 - (d) one shall be a person employed by or affiliated with a tertiary educational institution or research institution in

the State who has special knowledge and experience in a discipline relevant to the functions of the Marine Committee; and

- (e) one shall be a scientist, not employed by the State or Commonwealth Government or a State or Commonwealth Government instrumentality, who has special knowledge and experience in a discipline relevant to the functions of the Marine Committee; and
 - (f) one or 2 shall be scientists who, in the opinion of the Minister have knowledge and experience which is relevant to the functions of the Marine Committee.
- (2) One of the members, other than a member appointed under subsection (1)(f), shall be appointed as chairman of the Marine Committee and another as deputy chairman.
- (3) In subsection (1)(a), (b) and (c) —
- scientific officer** means an officer qualified to provide scientific advice applicable to the functions of the Marine Committee.

[Section 26H inserted by No. 5 of 1997 s. 17.]

Division 4 — Provisions applicable to the Conservation Commission, the Marine Authority and the Marine Committee

[Heading amended by No. 5 of 1997 s. 18; No. 35 of 2000 s. 12.]

27. Term used: controlling body

In this Division and in the Schedule **controlling body** means the Conservation Commission, the Marine Authority or the Marine Committee.

[Section 27 amended by No. 5 of 1997 s. 19; No. 35 of 2000 s. 13.]

28. Relationship to Public Service

Appointment of a person as a member of a controlling body does not —

- (a) render Part 3 of the *Public Sector Management Act 1994* or any Act applying to persons as officers of the Public Service of the State, applicable to that person; or
- (b) affect or prejudice the application to him of those provisions if they applied to him at the time of his appointment.

[Section 28 amended by No. 32 of 1994 s. 19.]

29. Constitution and proceedings (Sch.)

The provisions of the Schedule shall have effect with respect to the constitution and proceedings of a controlling body.

30. Remuneration and allowances of members

A member of a controlling body, other than an employee within the meaning of the *Public Sector Management Act 1994*, shall be paid such remuneration and travelling and other allowances as the Minister from time to time determines, on the recommendation of the Public Sector Commissioner.

[Section 30 amended by No. 5 of 1997 s. 20; No. 35 of 2000 s. 14; No. 39 of 2010 s. 89.]

31. Annual report

- (1) Notwithstanding the provisions of the *Financial Management Act 2006*, each controlling body shall, not later than 30 November in each year, prepare and furnish to the Minister a report on its proceedings for the year ending on the preceding 30 June.
- (2) The Minister shall cause the report of each controlling body to be laid before each House of Parliament as soon as practicable after its receipt by him.

[Section 31 amended by No. 98 of 1985 s. 3; No. 77 of 2006 Sch. 1 cl. 29(2).]

Part IV — Administration

[Heading inserted by No. 28 of 2006 s. 191.]

Division 1 — Functions and powers

[Heading inserted by No. 28 of 2006 s. 191.]

[32. Deleted by No. 28 of 2006 s. 192.]

33. CEO, functions of

- (1) The functions of the CEO are, subject to the direction and control of the Minister —
 - (a) to manage —
 - (i) land to which this Act applies; and
 - (ii) subject to the relevant section 8A agreement, section 8A land; and
 - (iii) subject to the relevant order made under section 8C, section 8C land,
and the associated fauna, flora and forest produce;
 - (b) to provide the Conservation Commission, the Marine Authority and the Marine Committee with such assistance as they may reasonably require to perform their functions;
 - (ba) without limiting paragraph (b) or section 20(2), to provide the Conservation Commission with any staff and facilities of the Department that it may reasonably require to perform its functions;
 - (bb) to enter into a memorandum of understanding with the Forest Products Commission relating to the performance of the CEO's and that Commission's respective functions and to any other prescribed matter;
 - [(c) deleted]*
 - (ca) to promote and encourage the use of flora for therapeutic, scientific or horticultural purposes for the

good of people in this State or elsewhere, and to undertake any project or operation relating to the use of flora for such a purpose;

- (cb) to use, for the purposes of making improvements to any land to which this Act applies, any forest produce that becomes available for use from the carrying out of —
 - (i) necessary operations, within the meaning in section 33A(1), on nature reserves; or
 - (ii) compatible operations, within the meaning in section 33A(2), on national parks and conservation parks; or
 - (iii) operations, in accordance with the provisions of section 56(1) applicable to the land, on land vested in or under the care, control and management of the Conservation Commission, whether solely or jointly with an associated body, that is State forest, a timber reserve or land referred to in section 5(1)(g) or (h);
- (cc) to promote and encourage the planting of trees and other plants for the purposes of the rehabilitation of land or the conservation of biodiversity throughout the State, and to undertake any project or operation relating to the planting of trees or other plants for such a purpose;
- (d) to be responsible for the conservation and protection of flora and fauna throughout the State;
- (da) to promote and facilitate public recreation, in accordance with this Act, on land to which this Act applies;
- (db) to be responsible for the permanent preservation of the plant collections of the Western Australian Herbarium and to care for and extend those collections;
- (dc) subject to paragraph (dd), to promote the conservation of water, as to both quantity and quality, on land referred to in paragraph (a);
- (dd) to develop policies that provide for water to be taken from land referred to in paragraph (a);

- (e) to carry out or cause to be carried out such study or research of or into —
 - (i) the management of land to which this Act applies; and
 - (ii) the conservation and protection of flora and fauna; and
 - (iii) the taxonomy of flora and introduced plants; and
 - (iv) any other matter related to a function of the CEO,as the Minister may approve;
 - (f) to provide advice to, or undertake work for or jointly with, and to supply services or facilities to, any department, public or private body or other person, whether in the State or elsewhere if the Minister is of the opinion that the provision of that advice or the undertaking of that work is in the public interest;
 - (g) upon request by the Land Administration Minister, to advise him on the reservation, alienation, and disposal of Crown land in rural areas under that Act;
 - (h) to perform any other function prescribed for the purposes of this paragraph.
- (2) If any land to which this Act applies or any section 8A land —
- (a) is not the subject of a management plan; or
 - (b) is the subject of a management plan that, due to an exemption given under section 57A(2), was not prepared in accordance with section 56(2),
- then, despite subsections (1) and (3), the management of it and the associated forest produce, fauna and flora shall be carried out in a manner that —
- (c) protects and conserves the value of the land to the culture and heritage of Aboriginal persons, in particular from any material adverse effect caused by —
 - (i) entry on or the use of the land by other persons;or

- (ii) the taking or removal of the land's fauna, flora or forest produce;
 - but
 - (d) does not have an adverse effect on the protection or conservation of the land's fauna and flora.
- (3A) Functions the CEO has in relation to managing section 8C land in accordance with the relevant order made under section 8C shall be performed in a manner that —
- (a) protects and conserves the value of the land to the culture and heritage of Aboriginal persons from any material adverse effect caused by performing the functions; but
 - (b) does not have an adverse effect on the protection or conservation of the land's fauna and flora.
- (3) The management of land referred to in subsection (1)(a)(i) and the associated forest produce, flora and fauna shall be carried out —
- (a) where there is a management plan for the land, in accordance with that plan; or
 - (b) where there is for the time being no such plan —
 - (i) in the case of nature reserves and marine nature reserves, in such a manner that only necessary operations, within the meaning in section 33A(1) are undertaken; or
 - (ii) in the case of national parks, conservation parks, marine parks and marine management areas, in such a manner that only compatible operations, within the meaning in section 33A(2), are undertaken; or
 - (iii) in any other case, in accordance with the provisions of section 56(1) applicable to the land.
- (4) A function referred to in paragraph (dc) or (dd) of subsection (1) shall be carried out, where there is a management plan for land

to which that paragraph applies, in accordance with that plan and without limiting the operation of the *Rights in Water and Irrigation Act 1914*.

- (5) Nothing in subsection (1) shall be read as limiting the functions of the Conservation Commission or the Marine Authority under sections 19 and 26B respectively.
- (6) To promote and encourage the use of flora for therapeutic, scientific or horticultural purposes mentioned in subsection (1)(ca) the Minister and the CEO may enter into an agreement with another person under which the Minister and the CEO agree to exercise the powers under the *Wildlife Conservation Act 1950* and this Act to grant, issue or refuse licences or permits to take or remove forest produce or other flora in a manner that has the effect to conferring on the other person an exclusive or preferential right to take or remove forest produce or other flora referred to in the agreement from land (other than private land) referred to in the agreement.
- (7) The exercise of powers in accordance with an agreement under subsection (6) is valid and effective.
- (8) In subsection (1)(ca) and subsection (6) **use** includes use or development on a commercial basis, and in subsection (6) **private land** has the same meaning as it has in the *Wildlife Conservation Act 1950*.
- (9) A copy of a memorandum of understanding made under subsection (1)(bb) must be tabled in each House of Parliament not later than 14 sitting days of each House from the day on which that memorandum of understanding was executed.

[Section 33 amended by No. 20 of 1991 s. 21; No. 49 of 1993 s. 7; No. 5 of 1997 s. 21; No. 31 of 1997 s. 15(14) and 141; No. 35 of 2000 s. 15; No. 74 of 2003 s. 39(9); No. 28 of 2006 s. 193, 208 and 209; No. 36 of 2011 s. 16.]

33A. Terms used

- (1) In section 33(1)(cb) and (3)(b) ***necessary operations*** on land or waters, means those that are necessary —
 - (a) to protect or preserve persons, property, land, waters, flora or fauna; or
 - (b) in the case of land or waters for which a management plan is required but not yet approved under this Act, for the preparation of a management plan for the land or waters; or
 - (c) to protect or conserve the value of the land or waters to the culture and heritage of Aboriginal persons.
- (2) In section 33(1)(cb)(ii) and (3)(b) ***compatible operations*** means —
 - (a) necessary operations as defined in subsection (1); and
 - (b) operations approved by the Minister as being in his opinion compatible with the purposes for which the park or management area is managed under this Act.
- (3) Before any proposed operation is approved by the Minister under subsection (2)(b) —
 - (a) the proposal shall be publicly notified by the CEO in the manner specified in section 57(2)(a), (b) and (c); and
 - (b) an opportunity shall be given for written submissions on the proposal to be made in accordance with section 58, as if the proposal were a proposed management plan.
- (4) Subject to this section, the Minister may, under subsection (2)(b), approve the proposal with or without modifications and may attach conditions to his approval.
- (5) The Minister may at any time revoke, or amend the terms or conditions of, an approval under subsection (2)(b).

[Section 33A inserted by No. 20 of 1991 s. 22; amended by No. 5 of 1997 s. 22; No. 35 of 2000 s. 16; No. 28 of 2006 s. 209; No. 36 of 2011 s. 17.]

[34. Deleted by No. 28 of 2006 s. 194.]

34A. Business undertakings, CEO may form etc.

- (1) The powers of the CEO include power, for or in connection with schemes for the establishment, management, or utilization of tree plantations or for or in connection with a project or operation undertaken for a purpose mentioned in section 33(1)(ca) or (cc) —
 - (a) to form, promote or establish, or participate in the formation, promotion or establishment of, any business undertaking; and
 - (b) to subscribe for, invest in or otherwise acquire, and to dispose of shares, units or other interests in, or debentures or other securities of, a business undertaking; and
 - (c) to enter into any partnership or arrangement for sharing of profits; and
 - (d) to acquire, hold and dispose of real and personal property; and
 - (e) to manage, or participate in the management of, a business undertaking; and
 - (f) to exercise any power conferred on or available to the CEO in connection with a business undertaking, including power to appoint or hold office as a director or other office-holder of a business undertaking; and
 - (g) to enter into an agreement to do anything authorised by this section; and
 - (h) to do anything incidental to the exercise of a power conferred by this section.
- (2) The approval of the Treasurer is required to the exercise of any power referred to in subsection (1) unless the power is exercised under section 34B.
- (3) In subsection (1) ***business undertaking*** means any person, corporation, trust, joint venture, government agency or other

entity engaging or intending to engage in any scheme, project or operation referred to in subsection (1).

[Section 34A inserted by No. 76 of 1988 s. 6; amended by No. 49 of 1993 s. 5 and 8; No. 35 of 2000 s. 17; No. 28 of 2006 s. 195 and 209.]

34B. Timber sharefarming agreements, CEO may enter etc.

- (1) The powers of the CEO include power to enter into, or enter into and carry out, whether as a principal or an agent, a timber sharefarming agreement in respect of any land with the owner of that land.
- (2) For the purposes of this section a timber sharefarming agreement is an agreement —
 - (a) by which the right to harvest a crop of trees on land is acquired by a person through the CEO acting as an agent and the right to establish and maintain, or the right to maintain, the crop may be acquired —
 - (i) by the CEO; or
 - (ii) by another person through the CEO acting as an agent; or
 - (iii) by the CEO and by another person through the CEO acting as an agent;and
 - (b) which provides for rights, obligations and powers relating to —
 - (i) payment of money or the giving of other consideration by the parties to the agreement; and
 - (ii) access to the land and, where appropriate, the undertaking of work or the provision of facilities on the land by those parties,and may provide for rights, obligations and powers relating to the division of the crop or the proceeds of the

crop between parties to the agreement (other than the CEO).

- (2a) A timber sharefarming agreement may also contain other matters in addition to those referred to in subsection (2).
- (2b) The references in subsection (2)(a) to the harvesting of a crop of trees include reference to the harvesting of forest produce from the crop, and the references in subsection (2)(b) to the crop include reference to forest produce from the crop.
- (3) The CEO shall not enter into any agreement under this section with the lessee or licensee of any land unless the owner of the freehold, and any person occupying the land with the consent of the owner of the freehold, has given approval in writing to the agreement.
- (4) The right acquired as referred to in subsection (2)(a) is a *profit a prendre* and an interest in the land to which the right relates and, except as otherwise provided or permitted under this Act, has all the attributes of a *profit a prendre* including, but not limited to, assignability.
- (4a) Subsection (4) has effect despite any rule of law or equity to the contrary and has effect even if the right acquired as referred to in subsection (2)(a) is accompanied by an obligation to exercise that right.
- (4b) If the right acquired as referred to in subsection (2)(a) is assigned or otherwise disposed of —
 - (a) the CEO or other person assigning or disposing of the right is no longer required to carry out obligations under the timber sharefarming agreement;
 - (b) the timber sharefarming agreement continues to be a timber sharefarming agreement for the purposes of this section even if the person to whom the right passes is not the CEO and does not acquire the right through the CEO acting as an agent.

- (4c) Without limiting subsection (4), a timber sharefarming agreement may be registered as a *profit a prendre* under the *Transfer of Land Act 1893*.
- (5) The obligations and restrictions that bind the owner of any land under a timber sharefarming agreement that is registered under the *Transfer of Land Act 1893* are binding also on his heirs, executors, administrators and successors in title, except to the extent that the agreement otherwise provides.
- (6) Where a timber sharefarming agreement in respect of any land is registered under the *Transfer of Land Act 1893* and bears the written consent of a mortgagee or chargee of the land whose mortgage or charge was registered before the timber sharefarming agreement, the estate or interest of the owner of the land passing to and vesting in a purchaser on a sale by the mortgagee or chargee is subject to the timber sharefarming agreement.
- (6a) The CEO may enter into a contract with any person for the doing by that person of anything that the CEO is authorised or required to do under a timber sharefarming agreement.
- (7) A timber sharefarming agreement is not a lease or licence to which section 136 of the *Planning and Development Act 2005* applies.
- (7a) The CEO may exercise rights under or in relation to a timber sharefarming agreement.
- (8) In subsections (1), (5) and (6) **owner** includes a lessee or licensee.

[Section 34B inserted by No. 76 of 1988 s. 6; amended by No. 66 of 1992 s. 5; No. 49 of 1993 s. 6; No. 35 of 2000 s. 18; No. 38 of 2005 s. 15; No. 28 of 2006 s. 196 and 209.]

35. CEO, remuneration of for advice etc.

- (1) Any arrangement made by the CEO for the provision of advice, performance of work or supply of services or facilities by the

CEO may, with the approval of the Minister, provide for an agreed amount by way of payment to the CEO for the advice, work or services or the use of the facilities.

- (2) If an arrangement is made under subsection (1) with the Forest Products Commission, the agreed amount by way of payment is not to exceed the full cost to the CEO of providing the advice, performing the work or supplying the services or facilities.

[Section 35 inserted by No. 20 of 1991 s. 23; amended by No. 35 of 2000 s. 19; No. 28 of 2006 s. 208 and 209.]

Division 2 — The Conservation and Land Management Executive Body

[Heading inserted by No. 28 of 2006 s. 197.]

36. Executive Body established and nature of

- (1) The Conservation and Land Management Executive Body is established.
- (2) The Executive Body is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the Executive Body in its corporate name.
- (4) The Executive Body is to be governed by the CEO.
- (5) The Executive Body is an agent of the State and has the status, immunities and privileges of the State.

[Section 36 inserted by No. 28 of 2006 s. 197.]

37. Purpose

The Executive Body is established to provide a body corporate through which the CEO can perform any of the CEO's functions under this Act or the *Wildlife Conservation Act 1950* that can more conveniently be performed by a body corporate than an individual.

[Section 37 inserted by No. 28 of 2006 s. 197.]

38. Documents, execution of by Executive Body

- (1) The Executive Body is to have a common seal.
- (2) A document is duly executed by the Executive Body if —
 - (a) the common seal of the Executive Body is affixed to it in accordance with subsections (3) and (4); or
 - (b) it is signed on behalf of the Executive Body by the CEO; or
 - (c) it is signed on behalf of the Executive Body, as authorised under subsection (5), by an officer of the Department.
- (3) The common seal of the Executive Body is not to be affixed to a document except as authorised by the Executive Body.
- (4) The common seal of the Executive Body is to be affixed to a document in the presence of the CEO, and the CEO is to sign the document to attest that the common seal was so affixed.
- (5) The Executive Body may, by writing under its common seal, authorise an officer of the Department to sign documents on behalf of the Executive Body, either generally or subject to any conditions or restrictions specified in the authorisation.
- (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.
- (7) A document executed by the CEO or another person under this section without the common seal of the Executive Body is not to be regarded as a deed unless it is executed as a deed as authorised under subsection (5).
- (8) When a document is produced bearing a seal purporting to be the common seal of the Executive Body, it is to be presumed that the seal is the common seal of the Executive Body until the contrary is shown.

(9) For the purposes of this Act, a facsimile of —

- (a) the Executive Body's common seal; or
- (b) the signature of the CEO or a person authorised under subsection (5) to execute deeds or other documents,

may be used, and a deed or other document purporting to be endorsed with such a facsimile is, until the contrary is shown, to be regarded as bearing the facsimile under this subsection.

[Section 38 inserted by No. 28 of 2006 s. 197.]

[39-41. Deleted by No. 113 of 1987 s. 32.]

Division 3 — Other officers and staff

[42. Deleted by No. 28 of 2006 s. 198.]

43. Staff, appointment etc. of

- (1) There shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* such other officers as may be necessary to provide administrative, professional, scientific, technical, and other services to the Department.
- (2) The CEO may engage persons as wages or field staff otherwise than under Part 3 of the *Public Sector Management Act 1994*, and persons so engaged shall, subject to any relevant industrial award or agreement, be employed on such terms and conditions as the Minister determines.

[Section 43 amended by No. 32 of 1994 s. 19; No. 28 of 2006 s. 209.]

44. Services, research etc., Minister's powers to engage etc.

The Minister may —

- (a) engage any person under a contract for services to provide any of the services referred to in section 43(1);

- (b) enter into arrangements with —
 - (i) a Minister of the Crown of any State or Territory, a Minister of State of the Commonwealth, a department, instrumentality, or agency of the Commonwealth or of any State or Territory; or
 - (ii) a university or other educational institution; or
 - (iii) any other body or person,with respect to the conduct of any study or research referred to in section 33(1)(e) or the carrying out of any work that may be necessary or desirable for the purposes of this Act.

45. Enforcement officers, designation and functions of

- (1) The CEO may, by instrument which is at any time revocable by him, designate any person employed in the Department to be —
 - (a) a wildlife officer;
 - (b) a forest officer;
 - (c) a ranger;
 - (d) a conservation and land management officer,for the whole of the State.
- (2) Persons employed by the Crown or an agency of the Crown in right of this State or of another State or of a Territory are eligible for designation as wildlife officers under subsection (1)(a) as if they were employed in the Department.
- (3) Wildlife officers, forest officers, rangers and conservation and land management officers have the functions conferred on them respectively by or under this Act.
- (3a) In addition, wildlife officers, forest officers, rangers and conservation and land management officers who are authorised by the CEO for the purposes of this subsection have the functions conferred on them by the *Bush Fires Act 1954*.
- (4) In addition, wildlife officers, have the functions conferred on them by the *Wildlife Conservation Act 1950*.

- (5) In this section and in sections 46, 48(1)(b) and 49 the State includes the coastal waters of the State referred to in section 13(8)(b).

[Section 45 inserted by No. 20 of 1991 s. 24; amended by No. 38 of 2002 s. 41(2); No. 28 of 2006 s. 209.]

46. Honorary enforcement officers, appointment and functions of

- (1) The CEO may, by instrument which is at any time revocable by him, appoint any person to be —
- (a) an honorary wildlife officer;
 - (b) an honorary forest officer;
 - (c) an honorary ranger;
 - (d) an honorary conservation and land management officer,
- for the whole or a specified part of the State.
- (2) A person may at any time hold more than one of the offices referred to in subsection (1).
- (3) A person appointed under subsection (1)(a), (b), (c) or (d) has, in respect of the State, or the part of the State for which he is appointed, such of the functions conferred by or under this Act or the *Wildlife Conservation Act 1950* on the corresponding officer referred to in section 45(1), as are specified in the instrument of his appointment.

[Section 46 inserted by No. 20 of 1991 s. 25; amended by No. 28 of 2006 s. 209.]

47. Public Sector Management Act 1994, application of to enforcement officers

The engagement or appointment of a person under section 44 or 46 does not —

- (a) render Part 3 of the *Public Sector Management Act 1994* or any Act applying to persons as officers of the Public Service of the State, applicable to that person; or

- (b) affect or prejudice the application to him of those provisions if they applied to him at the time of his engagement or appointment.

[Section 47 amended by No. 32 of 1994 s. 19.]

48. Certificates for enforcement officers, issue of etc.

- (1) The CEO shall furnish to a person designated or appointed under section 45 or 46 a certificate under his hand stating —
 - (a) that he has been designated or appointed under that section; and
 - (b) in the case of a person appointed under section 46, whether he may exercise his functions in the whole or a part of the State and, if the latter, the part of the State in which he may do so; and
 - (c) the general nature of his duties,and the certificate shall, on demand, be produced by the holder to any person who is affected by the performance by the holder of any of his functions under this Act, the *Bush Fires Act 1954* or the *Wildlife Conservation Act 1950*, as the case requires.
- (2) In any proceedings production of a certificate purporting to be issued under this section shall be sufficient evidence of the matters appearing therein without proof of those matters or of the signature of the CEO.
- (3) Where a person ceases to be designated or appointed under section 45 or 46, he shall forthwith surrender the certificate to the CEO or other person authorised to receive it.

Penalty applicable to subsection (3): \$500.

[Section 48 amended by No. 20 of 1991 s. 26; No. 38 of 2002 s. 41(3); No. 28 of 2006 s. 209.]

49. *Ex officio* wildlife officers etc.

A person shall *ex officio* be a wildlife officer and a ranger for the whole of the State if, and so long as, he holds, or acts in, any of the following offices —

- (a) a member of the Conservation Commission; and
- (b) a police officer; and
- (c) the CEO as defined in section 4(1) of the *Fish Resources Management Act 1994*; and
- (d) a fisheries officer referred to in the *Fish Resources Management Act 1994*.

[Section 49 amended by No. 53 of 1994 s. 264; No. 35 of 2000 s. 22; No. 28 of 2006 s. 199.]

Division 4 — General

50. Officers not to trade in timber etc.

- (1) Subject to subsection (2), a person employed in the Department shall not hold or be interested in any permit, licence, or lease under this Act, nor as principal or agent trade in, or be interested in, any contract or agreement for the working or removal of any forest produce.
- (2) For the purposes of section 34A or 34B, the Minister may in writing approve of the CEO or other officer of the Department, on behalf of or as representative of the CEO, entering into any transaction or holding any right, title or interest or accepting appointment to any office; and subsection (1) does not apply to the CEO or other officer of the Department while he is acting in accordance with such an approval.

[Section 50 amended by No. 76 of 1988 s. 7; No. 28 of 2006 s. 200 and 209.]

51. Forest produce, auctions of etc.

A person employed in the Department may, in the performance of his functions, hold an auction of forest produce, and may conduct a public auction for the purposes of section 92(3) without a licence under the *Auction Sales Act 1973*.

[52. Deleted by No. 98 of 1985 s. 3.]

Part V — Management of land

Division 1 — Management plans

53. Terms used

In this Division —

controlling body means the Conservation Commission or the Marine Authority;

land includes the waters comprised in a marine reserve;

relevant water utility, in relation to a public water catchment area, means a public utility that holds —

- (a) a licence under Part III of the *Rights in Water and Irrigation Act 1914* for the taking, use or disposal of water from that area; and
- (b) an operating licence under the *Water Services Licensing Act 1995*;

responsible body for land means —

- (a) if the land is vested in or under the care, control and management of a controlling body solely, the controlling body;
- (b) if the land is vested in or under the care, control and management of a controlling body jointly with an associated body, the controlling body and the associated body acting jointly;
- (c) if the land is section 8A land and, under the relevant section 8A agreement, is to be managed by the CEO alone as if the land were of a category listed in section 8A(5)(a), the Conservation Commission;
- (d) if the land is section 8A land and, under the relevant section 8A agreement, is to be managed by the CEO alone for a public purpose that is consistent with this Act, the CEO;

- (e) if the land is section 8A land and, under the relevant section 8A agreement, is to be managed jointly, the joint management body established by the agreement.

[Section 53 amended by No. 76 of 1988 s. 8; No. 53 of 1994 s. 264; No. 5 of 1997 s. 23; No. 35 of 2000 s. 23; No. 43 of 2002 s. 4; No. 67 of 2003 s. 62; No. 38 of 2007 s. 191(3); No. 36 of 2011 s. 18.]

54. Plans, when required and who has to prepare

- (1) A management plan prepared and approved under this Part is required for —
 - (a) all land that is vested in or under the care, control and management of a controlling body, whether solely or jointly with an associated body; and
 - (b) all section 8A land.
- (2) The responsible body for land referred to in subsection (1) is responsible for —
 - (a) the preparation of the initial and every other proposed management plan; and
 - (b) the review of each expiring management plan,
for the land.
- (3) Proposed management plans for any land shall be prepared —
 - (a) by —
 - (i) the responsible body for that land through the agency of the CEO; or
 - (ii) if the land is State forest or a timber reserve, the responsible body for that land through the agency of the CEO in consultation with the Forest Products Commission; or
 - (iii) if the land is or includes a public water catchment area, the responsible body for that land through the agency of the CEO in

consultation with the Minister (Water Resources)
and any relevant water utility;

and

- (b) within such period after the commencement of this Act as is reasonably practicable having regard to the resources of the CEO available for the purpose.
- (4) Without limiting subsection (3), proposed management plans for section 8A land that, under the relevant section 8A agreement, is to be managed jointly as if it were land of a category listed in section 8A(5)(a) shall be prepared by the responsible body for the land through the agency of the CEO in consultation with the controlling body in which the land would be vested under section 7 if the land were of that category.

[Section 54 amended by No. 35 of 2000 s. 24; No. 43 of 2002 s. 5; No. 28 of 2006 s. 208; No. 38 of 2007 s. 191(4); No. 36 of 2011 s. 19.]

55. Contents of plans

- (1) A management plan for any land shall contain —
 - (a) a statement of the policies or guidelines proposed to be followed; and
 - (b) a summary of the operations proposed to be undertaken, in respect of that land during a specified period, which shall not exceed 10 years.
- (1a) A management plan for an indigenous State forest or timber reserve shall specify the purpose, or combination of purposes, for which it is reserved being one or more of the following purposes —
 - (a) conservation; or
 - (b) recreation; or
 - (c) timber production on a sustained yield basis; or
 - (d) water catchment protection; or

- (e) other purpose being a purpose prescribed by the regulations.
- (2) A management plan shall state the date on which it will expire, unless it is sooner revoked, but notwithstanding anything in this section or in the plan, a plan which would otherwise expire shall, unless it is revoked, remain in force until a new plan is approved.
- (3) A management plan shall not disclose any information or matter communicated in confidence for the purposes of this Act or which would or might reasonably be expected to cause damage to the interests of the person from whom the information was received.

[Section 55 amended by No. 20 of 1991 s. 27.]

56A. Plan may require CEO to manage land jointly

- (1) A management plan for land (other than section 8A land) may require the CEO to manage the land jointly with one or more other persons specified in the plan.
- (2) Subsection (1) applies even if the land is vested in or under the care, control and management of a controlling body solely.
- (3) If under subsection (1) a management plan for land requires the CEO to manage the land jointly, the plan must have attached to it an agreement (a **section 56A agreement**) for the joint management of the land to be signed as soon as practicable after the plan is approved under section 60.
- (4) The parties to a section 56A agreement for the joint management of the land must be the CEO and each person who is to manage the land jointly with the CEO.
- (5) If land is vested in or under the care, control and management of a controlling body jointly with an associated body, this section does not prevent the associated body from being a party to a section 56A agreement for the land.

- (6) A section 56A agreement for land must include, in addition to any other terms, terms that do the following —
- (a) establish a joint management body to manage the land;
 - (b) specify the members of the body which must include at least —
 - (i) the CEO or a person nominated by the CEO; and
 - (ii) a person to represent the interests of each other party to the agreement;
 - (c) establish the body's procedures.
- (7) A section 56A agreement for land has no effect unless —
- (a) the controlling body in which the land is vested or that has the care, control and management of the land has given written approval to the agreement; and
 - (b) any associated body in which the land is vested, or that has the care, control and management of the land, jointly with the controlling body, is either a party, or has given written approval, to the agreement; and
 - (c) the Minister has given written approval to the agreement.

[Section 56A inserted by No. 36 of 2011 s. 20.]

56. Objectives of plans

- (1) In preparing a proposed management plan for any land, the responsible body for the land shall have the objective of achieving or promoting the purpose for which the land is reserved and in particular the proposed plan shall be designed —
- (a) in the case of indigenous State forests or timber reserves, to achieve the purpose, or combination of purposes, provided for in the proposed management plan under section 55(1a); and
 - (b) in the case of State forest or timber reserves planted with exotic species, to achieve the optimum yield in

- production consistent with the satisfaction of long-term social and economic needs; and
- (c) in the case of national parks and conservation parks, to fulfil so much of the demand for recreation by members of the public as is consistent with the proper maintenance and restoration of the natural environment, the protection of indigenous flora and fauna and the preservation of any feature of archaeological, historic or scientific interest; and
 - (d) in the case of nature reserves to maintain and restore the natural environment, and to protect, care for, and promote the study of, indigenous flora and fauna, and to preserve any feature of archaeological, historic or scientific interest; and
 - (da) in the case of marine nature reserves, marine parks and marine management areas reserved under section 13, to achieve the purposes set out in sections 13A(1), 13B(1) and 13C(1) respectively; and
 - (db) in the case of marine nature reserves, marine parks and marine management areas reserved under the Acts referred to in section 6(6)(b) and (c), to achieve, or to promote as far as possible, the purposes set out in sections 13A(1), 13B(1) and 13C(1) respectively; and
 - (e) in the case of other land referred to in section 5(1)(g) or (h), to achieve the purpose for which the land was vested in, or for which the care, control and management of the land were placed with, the controlling body, whether solely or jointly.
- (2) In preparing a proposed management plan for any land, the responsible body for the land shall have the objectives of —
- (a) protecting and conserving the value of the land to the culture and heritage of Aboriginal persons, in particular from any material adverse effect caused by —
 - (i) entry on or the use of the land by other persons;
or

- (ii) the taking or removal of the land's fauna, flora or forest produce;
 - but
 - (b) in a manner that does not have an adverse effect on the protection or conservation of the land's fauna and flora.
- (3) If an objective set out in subsection (1) conflicts or is inconsistent with an objective set out in subsection (2), the objective set out in subsection (2) prevails.

[Section 56 amended by No. 76 of 1988 s. 9; No. 20 of 1991 s. 28; No. 5 of 1997 s. 24; No. 31 of 1997 s. 15(15); No. 24 of 2000 s. 8(6); No. 36 of 2011 s. 21.]

57A. Aboriginal persons, ascertaining value of land to

- (1) In preparing a proposed management plan for any land, the responsible body for the land may consult any person for the purposes of determining the value of the land to the culture and heritage of Aboriginal persons.
- (2) If the Minister is satisfied that the time needed to determine the value of any land to the culture and heritage of Aboriginal persons is likely to delay unreasonably the process provided in sections 57 to 60 in relation to a management plan for the land, the Minister, in writing, may exempt the responsible body from complying with section 56(2) in relation to the proposed management plan for the land.
- (3) If the responsible body is exempted from complying with section 56(2) in relation to the proposed management plan for any land, the proposed management plan must state that the exemption has been given.
- (4) A responsible body that is exempted from complying with section 56(2) must, within the period (if any) specified by the Minister in the exemption or, if no period is specified, as soon as practicable after being exempted —
 - (a) amend the proposed management plan; or

- (b) subject to section 61, take steps to have the management plan amended or to have it revoked and a new plan substituted for it,

as the case requires, and in doing so comply with section 56(2).

- (5) The Minister, in writing, may vary or cancel an exemption given under this section.

[Section 57A inserted by No. 36 of 2011 s. 22.]

57. Proposed plan to be publicly notified

- (1) Public notification that a proposed management plan has been prepared shall be given in accordance with subsection (2).
- (2) The plan shall be publicly notified by the publication —
 - (a) in the *Gazette*; and
 - (b) in 2 issues of a daily newspaper circulating throughout the State; and
 - (c) in 2 issues of a local newspaper circulating within the area in which the land is situated; and
 - (d) on such signs as the responsible body for that land may direct to be placed on or near the boundaries of the land;

of a notice —

- (e) describing in general terms the type of land to which the plan applies and the purpose for which it is to be made; and
- (f) specifying the places at which —
 - (i) a copy of the plan may be inspected; and
 - (ii) copies of the plan may be obtained;and
- (g) stating the effect of section 58 and specifying the period and the address or addresses referred to in that section.

[Section 57 amended by No. 20 of 1991 s. 29; No. 36 of 2011 s. 23.]

58. Public submissions on proposed plans

- (1) Written submissions on the proposed management plan may be made by any person —
 - (a) within a period determined by the CEO, which period shall be not less than 2 months after the day on which the notice is published in the *Gazette*; and
 - (b) by delivering or posting them, so that they are received within that period at an address designated by the CEO.
- (2) If the proposed management plan is for State forest or a timber reserve, the CEO shall give a copy of any written submission on the plan to the Forest Products Commission.
- (3) If the proposed management plan is for land that is or includes a public water catchment area, the CEO shall give a copy of any written submission on the plan to the Minister (Water Resources) and to any relevant water utility.

[Section 58 amended by No. 35 of 2000 s. 25; No. 28 of 2006 s. 209; No. 38 of 2007 s. 191(5).]

59. Plans to be referred to other bodies

- (1) The responsible body may submit the proposed management plan, modified if it thinks fit after considering submissions made under section 58, to any organization or body it thinks appropriate, together with a summary of those submissions.
- (2) The responsible body shall submit the proposed management plan to the local government of each district within which the land in question is situated and any such local government shall, notwithstanding section 58, be given a reasonable time in which to prepare written submissions on the proposed plan.
- (3) In the case of section 8A land, the responsible body must submit the proposed management plan —
 - (a) to any party to the relevant section 8A agreement who, under the agreement, is not involved in managing the land; and

- (b) if the land is or includes the intertidal zone, to the Minister for Fisheries; and
 - (c) if the land includes an Aboriginal site, as defined in the *Aboriginal Heritage Act 1972* section 4, to the Minister for Indigenous Affairs.
- (4) If a person to whom a proposed plan is referred under subsection (1) or (3) considers the responsible body should vary the plan or make any addition to or delete any provision from the plan, the person, within one month after the date of receiving the plan, may request the responsible body in writing to make the variation, addition or deletion.
- (5) The responsible body shall submit a proposed management plan for a marine park or a marine management area to the Minister for Fisheries and the Minister for Mines.
- (6) The responsible body shall submit a proposed management plan for State forest or a timber reserve to the Minister for Forest Products.
- (7) The responsible body shall submit a proposed management plan for land that is or includes a public water catchment area to the Minister (Water Resources).
- (8) If a proposed management plan is relevant to the functions of the Western Australian Tourism Commission under the *Western Australian Tourism Commission Act 1983*, the responsible body shall submit the plan to the Minister administering that Act.

[Section 59 amended by No. 76 of 1988 s. 10; No. 14 of 1996 s. 4; No. 5 of 1997 s. 25; No. 35 of 2000 s. 26 and 50; No. 38 of 2007 s. 191(6); No. 36 of 2011 s. 24.]

59A. Plans to be submitted to Minister

- (1) Subject to this Part, the responsible body for land must submit a proposed management plan for the land, modified as it thinks fit to give effect to submissions made under section 58 and any request made under section 59(4), to the Minister for approval together with a copy of all requests so made.

- (2) If a plan submitted under subsection (1) relates to section 8A land that, under the relevant section 8A agreement, is to be managed jointly as if it were land of a category listed in section 8A(5)(a), the Minister may refer the plan to the Conservation Commission with a request that the Commission give the Minister a written report about the plan to enable the Minister to make a decision under section 60(2) about the plan.

[Section 59A inserted by No. 36 of 2011 s. 25.]

60. Approval of proposed plan by Minister

[(1) deleted]

- (2) Subject to subsections (2a) and (2b), the Minister may approve a proposed management plan submitted under section 59A or approve it with such modifications as he thinks fit.
- (2a) If the Minister for Fisheries has made submissions to the relevant responsible body on a proposed management plan for a marine park, or a marine management area, or section 8A land that is or includes the intertidal zone, the Minister shall not approve the proposed plan unless —
- (a) the Minister —
 - (i) is satisfied that the proposed plan gives effect to those submissions; or
 - (ii) having referred the proposed plan to the Governor, is satisfied that it gives effect to the decision of the Governor,so far as those submissions or the Governor's decision relate to aquaculture, commercial or recreational fishing or pearling activity in the park or management area or intertidal zone; and
 - (b) the Minister is satisfied that consideration has been given to those submissions so far as they are about other matters relating to the administration of the *Fish Resources Management Act 1994* or the *Pearling Act 1990*.

- (2b) If the Minister for Mines has made submissions to the Marine Authority on a proposed management plan for a marine park or a marine management area, the Minister shall not approve the proposed plan unless the Minister —

- (a) is satisfied that the proposed plan gives effect to those submissions; or
- (b) having referred the proposed plan to the Governor, is satisfied that it gives effect to the decision of the Governor,

so far as those submissions or the Governor's decision relate to mining or petroleum or geothermal energy related exploration or production activities or the administration of the *Mining Act 1978*, the *Offshore Minerals Act 2003*, the *Petroleum and Geothermal Energy Resources Act 1967*, the *Petroleum (Submerged Lands) Act 1982* or the *Petroleum Pipelines Act 1969*.

- (3) Notice that a management plan has been approved by the Minister shall be published in the *Gazette*, together with —
- (a) in the case of a State forest, a notification of the purpose or combination of purposes specified in the plan for that State forest; and
 - (b) a note showing —
 - (i) whether any modifications were made by the Minister under subsection (2); and
 - (ii) where a copy of the plan may be inspected or obtained.
- (4) A management plan shall come into operation on the day of publication in the *Gazette* of a notice under subsection (3) or on such later day as is specified in the plan.

[Section 60 amended by No. 76 of 1988 s. 11; No. 20 of 1991 s. 30; No. 53 of 1994 s. 264; No. 5 of 1997 s. 26; No. 35 of 2000 s. 27; No. 43 of 2002 s. 6; No. 12 of 2003 s. 15; No. 35 of 2007 s. 92(10); No. 36 of 2011 s. 26.]

60A. Conservation and Land Management Amendment Act 1991, transitional provision for

The Minister shall as soon as is practicable after the commencement of section 31 of the *Conservation and Land Management Amendment Act 1991* publish in the *Gazette* a notification of the purpose, or combination of purposes, specified in a management plan for a State forest approved under section 60(2) before such commencement.

[Section 60A inserted by No. 20 of 1991 s. 31.]

61. Plans, amending and revoking

Subject to compliance, *mutatis mutandis*, with sections 57 to 60, a management plan may be amended, or revoked and a new plan substituted for it.

Division 2 — Classification of land

[Heading inserted by No. 20 of 1991 s. 32.]

62. Land may be classified

- (1) Subject to this section, the Minister may, on the recommendation of the responsible body (as defined in section 53) for land to which this subsection applies, by notice published in the *Gazette*, classify the land or a part of it as —
 - (a) a wilderness area; or
 - (b) a prohibited area; or
 - (c) a limited access area; or
 - (d) a temporary control area; or
 - (da) a forest conservation area; or
 - (e) a recreation area for a purpose or purposes specified in the notice; or

- (f) such other class of area as the Minister, on the recommendation of the responsible body, thinks necessary to give effect to the objects of this Act,

and, subject to section 62A, may in like manner amend or cancel a notice previously so published.

(1aaa) Subsection (1) applies to land that is —

- (a) a State forest; or
- (b) a timber reserve; or
- (c) a national park; or
- (d) a conservation park; or
- (e) a nature reserve; or
- (f) land referred to in section 5(1)(g) and vested in the Conservation Commission; or
- (g) land referred to in section 5(1)(h) and under the care, control and management of the Conservation Commission; or
- (h) land that, under an agreement made under section 8A(5)(b), is managed for a public purpose that is consistent with this Act.

(1aa) Subject to this section, the Minister may, on the recommendation of the Minister for Forest Products, by notice published in the *Gazette*, classify any land in State forest or a timber reserve as a forest products temporary control area and may in like manner amend or cancel a notice previously so published.

(1a) Subject to this section, the Minister may, by notice published in the *Gazette*, classify any land or waters in a marine park vested in the Marine Authority as —

- (a) a recreation area for a purpose or purposes specified in the notice; or
- (b) a general use area; or
- (c) a sanctuary area; or

- (d) a special purpose area for a purpose or purposes specified in the notice,
- and may in like manner amend or cancel a notice previously so published.
- (1b) Subject to this section, the Minister may, by notice published in the *Gazette*, classify any land or waters in a marine nature reserve or marine management area or land mentioned in section 5(1)(g) or (h) as such class of area as the Minister thinks necessary to give effect to the objects of this Act, and may in like manner amend or cancel a notice previously so published.
- (1ba) Before making a notice under subsection (1aa), the Minister shall, unless satisfied that the urgency of the case requires this subsection to be dispensed with, give the Conservation Commission an opportunity to make a submission on the matter, and shall take that submission into account.
- (1bb) For the purposes of section 19(10), a decision under subsection (1ba) that the urgency of the case requires the provision of advice by the Conservation Commission to be dispensed with shall be treated as a decision to act otherwise than in accordance with a recommendation.
- (1c) Before making a notice under subsection (1a) or (1b), the Minister shall, unless satisfied that the urgency of the case requires this subsection to be dispensed with, give the Marine Authority an opportunity to make a submission on the matter, and shall take that submission into account.
- (1d) For the purposes of section 26B(8), a decision under subsection (1c) that the urgency of the case requires the provision of advice by the Marine Authority to be dispensed with shall be treated as a decision to act otherwise than in accordance with a recommendation.
- (1e) Before making a notice under subsection (1aa), (1a) or (1b) the Minister shall, unless satisfied that the urgency of the case requires this subsection to be dispensed with, give members of

the public an opportunity to make written submissions on the matter, and shall consider those submissions.

- (1f) Written submissions under subsection (1e) may be made by any person —
- (a) within a period determined by the Minister, which period shall be not less than 2 months after the day on which an advertisement calling for submissions is published by the Minister in the *Gazette*; and
 - (b) by delivering or posting them, so that they are received within that period at an address designated by the Minister.
- (1g) Subsection (1e) does not apply in relation to a notice which gives effect to a management plan.
- (2) A classification of land as a temporary control area under subsection (1)(d) —
- (a) shall be made for only one or more of these purposes —
 - (i) public safety;
 - (ii) protecting flora or fauna, or both flora and fauna;
 - (iii) protecting the value of the land to the culture and heritage of Aboriginal persons;and
 - (b) shall not have effect for more than 90 days but may be made more than once for the same purpose and for the same land.
- (2a) A classification of land as a forest products temporary control area under subsection (1aa) shall only be made for the purposes of public safety or the safety of persons engaged in the harvesting or stockpiling of forest products, or in the construction or maintenance of roads, under the *Forest Products Act 2000*, and a notice of classification —
- (a) shall not have effect for a period exceeding 90 days; but
 - (b) may be made more than once for the same purpose and for the same area.

- (3) A classification, or amendment of classification, of any land or waters shall not be made under this section —
- (a) unless it is in conformity with the provision of section 56(1) which is relevant to, or any management plan for, that land or those waters; and
 - (ba) unless it is in conformity with section 56(2); and
 - (b) in the case of section 8A land, unless each person responsible (as defined in section 8A) for the land, has given written approval to the classification or the amended classification; and
 - (c) in the case of a marine park or marine management area, except with the concurrence of the Minister for Fisheries and the Minister for Mines.

[Section 62 inserted by No. 20 of 1991 s. 32; amended by No. 5 of 1997 s. 27; No. 24 of 2000 s. 8(4); No. 35 of 2000 s. 28; No. 36 of 2011 s. 27.]

62A. Forest conservation area classification, procedure for amending or cancelling

- (1) If the Minister proposes to publish a notice (a ***proposed notice***) under section 62(1)(da) to amend or cancel a notice that classifies land as a forest conservation area, the Minister is to cause the proposed notice to be laid before each House of Parliament.
- (2) Section 42(2), (3) and (5) of the *Interpretation Act 1984* apply to a proposed notice laid before each House of Parliament under subsection (1) as if the proposed notice was a regulation, and the notice can only be published under section 62(1)(da) if —
- (a) it has not ceased to have effect; and
 - (b) there is no longer any possibility of it ceasing to have effect,

under section 42(2) of that Act as applied by this subsection.

[Section 62A inserted by No. 35 of 2000 s. 29.]

Part VI — Financial provisions

[Division 1 heading deleted by No. 77 of 2006 Sch. 1 cl. 29(3).]

[63. Deleted by No. 77 of 2006 Sch. 1 cl. 29(4).]

64. Certain moneys to be credited to Department

- (1) The account established for the purposes of the operations of the Department is to be credited with —

[(a)-(c) deleted]

- (d) moneys from time to time derived under this Act by the CEO from dealing with or the management of any land which is vested in or under the care, control and management of the Conservation Commission, whether solely or jointly with an associated body; and
- (da) moneys from time to time derived under this Act by the CEO from dealing with or from the management of any land or waters vested in or under the care, control and management of the Marine Authority, whether solely or jointly with an associated body; and

[(e)-(g) deleted]

- (ga) subject to any direction of the Treasurer, moneys received by the CEO by way of —
 - (i) payments under section 42(2)(d) of the *Forest Products Act 2000*; and
 - (ii) recovery of the costs referred to in section 59(1)(c) and (d) of that Act.

[(2) deleted]

[Section 64 amended by No. 18 of 1992 s. 10; No. 5 of 1997 s. 28; No. 57 of 1997 s. 36; No. 35 of 2000 s. 30 and 50; No. 28 of 2006 s. 201, 208 and 209; No. 77 of 2006 Sch. 1 cl. 29(5) and (6); No. 36 of 2011 s. 28.]

[65-67. Deleted by No. 77 of 2006 Sch. 1 cl. 29(7).]

68. Nature Conservation and National Parks Account

- (1) An agency special purpose account called the Nature Conservation and National Parks Account (the **NCNP Account**) is established under section 16 of the *Financial Management Act 2006*.
- (2) The NCNP Account is to be credited with —
 - (a) fees paid for licences referred to in the *Wildlife Conservation Act 1950* sections 23C and 23D(2); and
 - (b) royalties paid under section 23C of that Act; and
 - (c) the net proceeds of the sale of any skins or carcasses of fauna taken by or on behalf of the CEO from a nature reserve; and
 - (d) gifts, devises, bequests and donations made to the NCNP Account.
- (3) The CEO may apply money standing to the credit of the NCNP Account provided for by subsection (1) for the purpose of scientific research relating to flora and fauna.

[Section 68 amended by No. 20 of 1991 s. 33; No. 49 of 1996 s. 64; No. 28 of 2006 s. 209; No. 77 of 2006 Sch. 1 cl. 29(8)-(10).]

69. Other accounts

- (1) There may, with the approval of the Treasurer, be established under section 16 of the *Financial Management Act 2006* other agency special purpose accounts.
- (2) Without limiting subsection (1), there shall be established under section 16 of the *Financial Management Act 2006* an agency special purpose account to which shall be credited the net proceeds received by the CEO in respect of forest produce taken or removed under section 99A, and from which moneys shall be applied only for the purposes of land to which Division 2 of Part VIII applies.

[Section 69 amended by No. 20 of 1991 s. 34; No. 28 of 2006 s. 209; No. 77 of 2006 Sch. 1 cl. 29(11)-(12).]

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[70. Deleted by No. 77 of 2006 Sch. 1 cl. 29(13).]

[Divisions 2, 3 (s. 71-75) deleted by No. 77 of 2006 Sch. 1 cl. 29(14).]

[76-78. Deleted by No. 98 of 1985 s. 3.]

Part VII — Control and eradication of forest diseases

79. Purposes of this Part

The purposes of this Part are to identify the areas of public land in which trees may be, may become, or are infected with any forest disease and to control and eradicate such forest diseases as are detected in such areas.

80. Application of this Part

This Part and the regulations made under it shall —

- (a) apply notwithstanding any other Part of this Act, or any other Act; and
- (b) bind the Crown.

81. Terms used

In this Part and in section 129 and the regulations made under that section, unless the contrary intention appears —

authorised person means any police officer or officer of the Department;

disease area means a forest disease area constituted under this Part;

infected means actually affected with a forest disease, or liable, by reason of contact, to be so affected;

owner, when used in relation to a potential carrier, means the person to whom it belongs or the hirer, lessee, borrower, bailee, or mortgagee in possession thereof;

potential carrier means anything capable of carrying and transmitting forest disease and includes —

- (a) soil, trees, timber, firewood, and forest products; and
- (b) tools; and
- (c) vehicles; and
- (d) machinery; and

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- (e) equipment or implements designed and used or capable of being used for forestry, the production of forest products, timber cutting, timber gathering, the cutting or gathering of firewood, or earth moving;

public land means —

- (a) a State forest or timber reserve; and
 - (b) any land vested in the Crown and not contracted to be granted or transferred in fee simple and includes —
 - (i) land of which pastoral leases are held under Part 7 of the *Land Administration Act 1997*;
 - (ii) land held as mining tenements under the *Mining Act 1978*;
- and
- (c) any land reserved or dedicated under the *Land Administration Act 1997* but the care, control and management of which are placed with in some person other than the Crown;

risk area means a forest disease risk area constituted under this Part;

road has the meaning assigned to it in section 6 of the *Main Roads Act 1930*, but does not include a main road as defined in that section; and

vehicle includes —

- (a) every conveyance and every object capable of being propelled or drawn on wheels or tracks by any means, but not including a train;
- (b) an animal being driven or ridden.

[Section 81 amended by No. 20 of 1991 s. 35; No. 31 of 1997 s. 15(16).]

82. Forest disease risk areas, constituting

- (1) Where the CEO considers that earth, soil, or trees in any area of public land may be, or may become, infected with a forest

disease and gives notice in writing thereof to the Minister, the Minister may, subject to section 84, recommend to the Governor that the area be constituted a forest disease risk area.

- (2) Upon the recommendation of the Minister under subsection (1), the Governor may, by order wherein the area and the forest disease is specified, constitute the area a forest disease risk area with such name as may be specified in the order.

[Section 82 amended by No. 28 of 2006 s. 209.]

83. Forest disease areas, constituting

- (1) Where the CEO considers that earth, soil, or trees in any area of public land are infected with a forest disease and gives notice in writing thereof to the Minister, the Minister may, subject to section 84, recommend to the Governor that the area be constituted a forest disease area.
- (2) Upon the recommendation of the Minister under subsection (1), the Governor may, by order wherein the area and the forest disease is specified, constitute the area a forest disease area with such name as may be specified in the order.

[Section 83 amended by No. 28 of 2006 s. 209.]

84. Procedure before area constituted under s. 82(1) or 83(1)

- (1) Where pursuant to section 82(1) or 83(1) the CEO gives notice in respect of any area of public land the care, control and management of which are not placed with the Crown or the CEO, the CEO shall forthwith give a copy of the notice to the person with whom the care, control and management of the area of public land are placed.
- (2) Before he makes a recommendation under section 82(1) or 83(1), the Minister shall consult the Minister to whom the administration of the *Mining Act 1978* is for the time being committed.

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- (3) The Minister shall not make a recommendation under section 82(1) or 83(1) unless he has given the person referred to in subsection (1) the opportunity to make a submission in writing on the matter within reasonable time of receiving the copy of the notice under that subsection.

[Section 84 amended by No. 31 of 1997 s. 15(17); No. 28 of 2006 s. 208 and 209.]

85. Risk areas and disease areas, changing and abolishing

- (1) A risk area or a disease area —
- (a) may be extended in the manner in which it was constituted; or
 - (b) may be reduced by order of the Governor made on the recommendation of the Minister,

and the area as so extended or reduced is then constituted as the risk area or the disease area, as the case may be, in substitution for the former area but with the same name or such other name as may be specified in the order extending or reducing the area.

- (2) A risk area or a disease area may be abolished by order of the Governor.

86. Mining tenement in risk area or disease area

- (1) Where land held as a mining tenement under the *Mining Act 1978* is in a risk area or a disease area and the holder of the tenement intends to explore or exploit a part of it he shall, at least 3 months before the day on which he intends to commence to do so, give to the Minister notice in writing thereof in which the part of the tenement and that day are specified.
- (2) Where the holder of a mining tenement gives notice, under subsection (1), the Minister shall give him written authority to explore or exploit, as the case may be, the part specified in the notice on and after the day so specified unless the Minister, after consultation with the Minister to whom the administration of the *Mining Act 1978* is for the time being committed, has good and

sufficient reason to the contrary, but the holder may do so only —

- (a) by entering that part by a route described in the written authority; and
 - (b) subject to such conditions as are specified in the written authority.
- (3) A holder of a mining tenement shall not contravene or fail to comply with the terms of a written authority given under this section.

Penalty: \$500.

Part VIII — Permits, licences, contracts, leases, etc.

[Heading amended by No. 66 of 1992 s. 6.]

Division 1A — General matters

[Heading inserted by No. 36 of 2011 s. 29.]

86A. Restrictions on Minister and CEO performing functions under this Part

- (1) Subsection (2) does not apply in relation to land if it is the subject of a management plan prepared in accordance with section 56(2).
- (2) The functions of the Minister and the CEO under this Part in relation to land must be performed in a manner that —
 - (a) protects and conserves the value of the land to the culture and heritage of Aboriginal persons, in particular from any material adverse effect caused by —
 - (i) entry on or the use of the land by other persons; or
 - (ii) the taking or removal of the land's fauna, flora or forest produce,under any permit, licence, contract, lease or other authority granted under this Part; but
 - (b) does not have an adverse effect on the protection or conservation of the land's fauna and flora.

[Section 86A inserted by No. 36 of 2011 s. 29.]

Division 1 — State forests, timber reserves, and certain Crown land

87. Terms used

- (1) In this Division —

contract means a contract entered into under section 88(1)(b);

contract of sale means a contract entered into under section 88(1)(b)(i) for the sale of forest produce on or from Crown land;

Crown land means —

- (a) Crown land within the meaning in section 11; and
- (b) State forest and timber reserves; and
- (c) land which is the subject of a declaration under subsection (2);

forest produce does not include —

- (a) trees, parts of trees, timber, sawdust, chips, charcoal, gum, kino, resin or sap; or
- (b) firewood to which regulations made under section 128(1)(d)(ix) apply;

licence means, except in section 97A, a licence described in section 90;

permit means, except in section 97A, a permit described in section 89.

- (2) Despite subsection (1) and section 11, the Governor, by order, may declare to be Crown land, for the purposes of this Division, any land that is section 8C land.

[Section 87 amended by No. 66 of 1992 s. 7; No. 31 of 1997 s. 15(18); No. 35 of 2000 s. 31; No. 28 of 2006 s. 208; No. 36 of 2011 s. 30.]

87A. Restriction on CEO exercising powers under this Division

- (1) Subject to subsection (2), the powers conferred on the CEO by this Division are exercisable only —
 - (a) with the approval of the Minister; and
 - (b) in the case of land vested in the Conservation Commission, after consultation with the Conservation Commission; and
 - (c) in the case of land classified under Division 2 of Part V as a forest conservation area, consistently with any management plan for the land concerned; and

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Division 1 State forests, timber reserves, and certain Crown land

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- (da) in the case of section 8A land, consistently with the relevant section 8A agreement; and
 - (db) in the case of section 8C land, consistently with the order made under section 8C that relates to the land; and
 - (d) in the case of land in a public water catchment area, consistently with the provisions of the *Country Areas Water Supply Act 1947* and the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909* relating to the protection of water quality; and
 - (e) in conformity with section 33(3).
- (2) In the case of land other than land classified under Division 2 of Part V as a forest conservation area, subsection (1)(a) and (b) do not apply to the grant or renewal of a permit, licence or lease, or the entering into or renewal of a contract, under this Division where the appropriate approval has been given under paragraph (a) and, if applicable, the appropriate consultation has taken place under paragraph (b) for —
- (a) the grant under this Division of certain kinds of permits, licences or leases or certain numbers of permits, licences or leases; or
 - (b) the entering into under this Division of certain kinds of contracts or certain numbers of contracts; or
 - (c) the renewal, transfer, cancellation or suspension of, or the imposition or variation of terms or conditions attached to, a permit or licence granted, or a contract entered into, under this Division; or
 - (d) the renewal of a lease granted under this Division,
- and the permit, licence or lease granted or renewed, or the contract entered into or renewed, is covered by the terms of that approval and, if applicable, that consultation.

[Section 87A inserted by No. 35 of 2000 s. 32; amended by No. 28 of 2006 s. 209; No. 36 of 2011 s. 31.]

88. Permits etc. for taking etc. forest produce, CEO's powers as to

- (1) Subject to this Part, the CEO may —
- (a) grant permits and licences to take; and
 - (b) contract on such terms and conditions as the CEO thinks fit for —
 - (i) the sale of; or
 - (ii) the doing by any person of any other act or thing in relation to,

forest produce on or from Crown land.

- (1a) Without limiting the generality of subsection (1)(b)(ii), the CEO may, under that subsection, enter into a contract with any person for that person to fell, cut, prepare, take, remove or measure forest produce on or from Crown land and deliver the forest produce to a buyer under a contract of sale or move the forest produce to a place where it can be collected by a buyer under a contract of sale.
- (2) No permit or licence shall be granted and no contract shall be entered into in respect of forest produce on any land in a State forest or timber reserve unless there is a management plan in force for that land.
- (3) If a permit or licence granted under subsection (1) to take forest produce on or from Crown land is transferable by the permit holder or licensee, in accordance with the *Personal Property Securities Act 2009* (Commonwealth) section 10 the definition of **licence** paragraph (d), the permit or licence is declared not to be personal property for the purposes of that Act.

[Section 88 amended by No. 66 of 1992 s. 8; No. 28 of 2006 s. 209; No. 42 of 2011 s. 65.]

89. Permits, form and effect of

- (1) A permit shall be in the prescribed form, and subject to the conditions and limitations expressed therein and to the

regulations, shall confer on the holder the exclusive right to take and remove any forest produce specified in the permit on and from that portion of Crown land defined in the permit.

- (2) A permit may, subject to subsection (1), confer on the holder the right —
- (a) to occupy land as the site of a sawmill or of other buildings, as a timber depot, and for any other purpose approved by the CEO;
 - (b) to operate a plant or other facilities for converting, treating or processing forest produce;
 - (c) to make roads and construct and work tramways, and, with the approval of the CEO, to extend such roads and tramways upon Crown lands beyond the boundaries of the permit area.

[Section 89 amended by No. 28 of 2006 s. 209.]

90. Licences, form and effect of

Licences shall be in the prescribed form and, subject to the conditions and limitations expressed therein and to the regulations, shall authorise the licensee, in common with other licensees if any, to take and remove forest produce specified in the licence on Crown land.

91. Permits, licences etc., duration of

- (1) The term of a permit shall not exceed 10 years.
- (2) The term of a licence or the period of operation of a contract shall not exceed 15 years, but the CEO may extend the term or period for a further period not exceeding 5 years on such terms and conditions as he thinks fit.
- (3) Subject to this section, a permit, licence, or contract may be renewed for a further term or period.

[Section 91 amended by No. 66 of 1992 s. 9; No. 28 of 2006 s. 209.]

92. Charges for forest produce taken

- (1) Every permit or licence shall be granted or renewed subject to the payment of forest produce charges for all forest produce taken.
- (2) Every contract for the sale of forest produce shall provide for payment of forest produce charges for all forest produce sold.
- (3) The forest produce charges payable may be established by public auction or tender.
- (4) A permit, licence, or contract of sale may provide for periodic review of forest produce charges during the currency thereof.

[Section 92 amended by No. 66 of 1992 s. 10; No. 35 of 2000 s. 33.]

93. No transfer of permit etc. without CEO's consent

A permit, licence or contract, or the benefit thereof, shall not be transferred unless the CEO has consented in writing to the transfer.

[Section 93 amended by No. 66 of 1992 s. 11; No. 28 of 2006 s. 209.]

94. Forest produce to be removed while permit etc. is current

- (1) All forest produce obtained under the authority of a permit, licence or contract shall be removed from the Crown land during the currency of the permit, licence or contract, unless the CEO extends the time for removal, which he may do on such conditions, if any, as he thinks fit.
- (2) Any forest produce not so removed is forfeited to the Crown and may be disposed of by the CEO.

[Section 94 amended by No. 66 of 1992 s. 12; No. 28 of 2006 s. 209.]

95. Permits etc., effects of contravening

- (1) A permit, licence or contract may be cancelled for contravention of any term or condition of the permit, licence or contract or of any provision of this Act, or in the case of a permit, licence or contract of sale, for default in the payment of the forest produce charges or other charges or fees payable under the permit, licence or contract of sale.
- (2) A permit, licence or contract may contain provision for —
 - (a) rights, obligations or privileges under the permit, licence or contract to be suspended; or
 - (b) the payment to the CEO of a sum by way of penalty (not exceeding such maximum as may be prescribed),

for contravention of any term or condition of the permit, licence or contract or of any provision of this Act, or in the case of a permit, licence or contract of sale, for default in the payment of the forest produce charges or other charges or fees payable under the permit, licence or contract of sale.

[Section 95 amended by No. 66 of 1992 s. 13; No. 35 of 2000 s. 34; No. 28 of 2006 s. 209.]

96. Permits etc., effect of as to forest produce on pastoral leases, mining tenements etc.

[(1)-(3) deleted]

- (4) Subject to the regulations, the privileges conferred by permits, licences and contracts shall extend to forest produce on —
 - (a) land which is subject to a pastoral or other lease, including a forest lease, which does not confer on the lessee the right to forest produce; and
 - (b) on mining tenements,

and a permit holder, licensee or contractor, if so authorised by his permit, licence or contract, may, subject to the regulations, enter upon the land comprised in any such lease or mining tenement and take and remove forest produce therefrom.

- (5) In subsection (4) **mining tenement** has the same meaning as in the *Mining Act 1978*.

[Section 96 amended by No. 66 of 1992 s. 14; No. 35 of 2000 s. 35.]

97. Forest leases, grant of etc.

- (1) The CEO may grant a lease of land within State forest or a timber reserve for a term not exceeding 21 years on such terms and conditions as the CEO thinks fit.
- (2A) The CEO cannot grant a lease under subsection (1) of any section 8A land.
- (2) A lease granted under subsection (1) may include an option or options to renew that lease for a further term or terms not exceeding, in the aggregate, 21 years.
- (3) A lease granted under this section shall be laid before each House of Parliament within 14 sitting days of its execution by all parties to the grant or renewal.
- (4) No compensation shall be payable to a lessee under a forest lease, on the expiration of the lease, for any improvements to the land comprised in the lease; but the lessee shall be entitled, at any time before the expiration of the lease, to remove any buildings or fences erected by the lessee or to dispose of them to an incoming tenant.

[Section 97 inserted by No. 35 of 2000 s. 36; amended by No. 28 of 2006 s. 209; No. 36 of 2011 s. 32.]

97A. Licences etc. for use etc. of State forest or timber reserve

- (1) The CEO may grant a licence in writing to any person to enter and use any land within State forest or a timber reserve.
- (2) The Minister, after consultation with the Conservation Commission and on the recommendation of the CEO, may, by notice published in the *Gazette*, declare that a permit is required

for the carrying on of any activity specified in the notice on land within State forest or a timber reserve.

- (3) The CEO may grant to a person a permit of the kind required by a declaration made under subsection (2).
 - (4) A person shall not, on any land within State forest or a timber reserve, carry on any activity for which a permit is required by a declaration made under subsection (2) unless the person is —
 - (a) the holder of a permit of the kind required by the declaration; or
 - (b) authorised to carry on that activity on the land under this Act or another written law.
- Penalty: \$4 000.
- (5) Subsections (2) to (4) do not affect the operation of section 128 or 129 or regulations made under either section.
 - (6) If a permit is granted under this section that authorises the removal of water from land within State forest or a timber reserve —
 - (a) the granting of the permit does not limit the operation of the *Rights in Water and Irrigation Act 1914*; and
 - (b) the permit can apply only to land for which there is a management plan in force that provides for water to be taken from the land; and
 - (c) the permit cannot authorise an activity to be carried on for the purposes of the removal of water from land unless the activity is consistent with that management plan.
 - (7) The CEO may renew the period of operation of a licence or permit under this section from time to time, or transfer the authority it confers from one person to another, or, where its operation relates to any place, may transfer that operation to another place of the same kind.

- (8) A licence or permit under this section may be granted, renewed or transferred subject to such conditions as the CEO thinks fit, and those conditions —
- (a) are to be endorsed on or attached to the licence or permit when granted, renewed or transferred, as the case may be; and
 - (b) may be added to, cancelled, suspended and otherwise varied by the CEO from time to time during the operation of the licence or permit.
- (9) The holder of a licence or permit under this section shall not contravene or fail to comply with any condition endorsed on or attached to the licence or permit.
Penalty: \$4 000.
- (10) Where the holder of a licence or permit under this section contravenes or fails to comply with any condition endorsed on or attached to the licence or permit, the CEO may, by notice in writing to the holder, cancel the licence or permit or suspend it for such period as the CEO thinks fit.
- (11) If a licence granted under subsection (1) or a permit granted under subsection (3) is transferable by the licensee or permit holder, in accordance with the *Personal Property Securities Act 2009* (Commonwealth) section 10 the definition of ***licence*** paragraph (d), the licence or permit is declared not to be personal property for the purposes of that Act.
- [Section 97A inserted by No. 35 of 2000 s. 36; amended by No. 28 of 2006 s. 209; No. 36 of 2011 s. 33; No. 42 of 2011 s. 66.]*

Division 2 — Other land

98. Application of this Division

- (1) This Division applies to —
- (a) all land to which this Act applies, other than —
 - (i) State forest and timber reserves; and

- (ii) any land classified under Division 2 of Part V as a wilderness area;

and

- (b) section 8C land,

and so applies, subject to paragraph (a)(ii), whether or not the land is classified under section 62.

- (2) In this Division —

land includes waters comprised in a marine nature reserve, marine park or marine management area.

[Section 98 amended by No. 20 of 1991 s. 36; No. 5 of 1997 s. 29; No. 36 of 2011 s. 34.]

99. Restriction on CEO exercising powers under this Division

- (1) Subject to subsection (2), the powers conferred on the CEO by this Division are exercisable only —
 - (a) with the approval of the Minister; and
 - (aa) in the case of land vested in or under the care, control and management of the Conservation Commission, after consultation with the Conservation Commission and, where applicable, an associated body; and
 - (ab) in the case of land vested in or under the care, control and management of the Marine Authority, after consultation with the Marine Authority and, where applicable, an associated body; and
 - (ac) in the case of land that is in the development control area or the Riverpark as defined in the *Swan and Canning Rivers Management Act 2006*, after consultation with the Swan River Trust; and
 - (b) in the case of section 8A land, consistently with the relevant section 8A agreement; and
 - (baa) in the case of section 8C land, consistently with the order made under section 8C that relates to the land; and

- (ba) in the case of land in a public water catchment area, consistently with the provisions of the *Country Areas Water Supply Act 1947* and the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909* relating to the protection of water quality; and
 - (c) in conformity with section 33(3).
- (2) Subsection (1)(a), (aa) and (ab) do not apply to the grant or renewal of a licence or lease under this Division where the appropriate approval has been given under paragraph (a) and, if applicable, the appropriate consultation has taken place under paragraph (aa) or (ab) for —
- (a) the grant under this Division of certain kinds of licences or leases or certain numbers of licences or leases; or
 - (b) the renewal, transfer, cancellation or suspension of, or the imposition or variation of conditions attached to, a licence granted under this Division; or
 - (c) the renewal of a lease granted under this Division,
- and the licence or lease granted or renewed is covered by the terms of that approval and, if applicable, that consultation.

[Section 99 amended by No. 21 of 1988 s. 6; No. 20 of 1991 s. 37; No. 5 of 1997 s. 30; No. 35 of 2000 s. 37; No. 28 of 2006 s. 209; No. 52 of 2006 s. 6; No. 36 of 2011 s. 35.]

99A. Certain acts on land vested in Commission, licences etc. for

- (1) The CEO may —
- (a) grant a licence to any person to take or remove exotic trees, honey, bees-wax or pollen; or
 - (b) grant a licence under and in accordance with regulations made under section 130 for a person to take forest produce for use for therapeutic, scientific or horticultural purposes (including use to which section 33(1)(ca) applies); or

- (c) where in the opinion of the CEO essential works are required to be carried out, grant a licence to any person to take or remove forest produce as part of those works, from land which is vested in or under the care, control and management of the Conservation Commission, whether solely or jointly with an associated body.
- (2) In subsection (1)(c) *essential works* are works that in the opinion of the CEO are required —
 - (a) to establish or re-establish public access to land in accordance with a management plan relating to that land; or
 - (b) to provide a fire-break.
- (3) The CEO may exercise the power in subsection (1)(c) in respect of any land only if and to the extent that he is of the opinion that the purposes referred to in section 56(1) applicable to the land will be better served by the taking or removal of forest produce from the land than by not taking or removing the same.
- (4) Forest produce shall not be taken in connection with essential works carried out under subsection (1)(c) in circumstances where it is intended to sell the forest produce taken unless, not less than 14 days before the produce is taken, the CEO has given notice of the proposed taking —
 - (a) in 2 issues of a newspaper circulating in the area in which the land is situated; and
 - (b) by placing a sign at or near the land from which the forest produce is to be taken.
- (5) Regulations made under section 130 may authorise the use of firewood, in accordance with those regulations, by persons who are in a national park or conservation park for the purpose of recreation.
- (6) Subject to this section —
 - (a) the CEO shall not authorise any person; and

- (b) regulations shall not be made under section 130 so as to authorise any person,

to take or remove forest produce or other flora from land which is vested in or under the care, control and management of the Conservation Commission, whether solely or jointly with an associated body.

- (7) If a licence granted under subsection (1) is transferable by the licensee, in accordance with the *Personal Property Securities Act 2009* (Commonwealth) section 10 the definition of **licence** paragraph (d), the licence is declared not to be personal property for the purposes of that Act.

[Section 99A inserted by No. 20 of 1991 s. 38; amended by No. 49 of 1993 s. 9; No. 5 of 1997 s. 31; No. 35 of 2000 s. 50; No. 74 of 2003 s. 39(10); No. 28 of 2006 s. 209; No. 36 of 2011 s. 36; No. 42 of 2011 s. 67.]

100. Leases of land, grant of by CEO

- (1) The CEO may grant a lease of any land to which this Division applies for a term not exceeding 21 years on such terms and conditions as he thinks fit.
- (2A) The CEO cannot grant a lease under subsection (1) of any section 8A land.
- (2B) The CEO cannot grant a lease under subsection (1) of any section 8C land.
- (2) A lease granted under subsection (1) may include an option or options to renew that lease for a further term or terms not exceeding, in the aggregate, 21 years.
- (3) A lease granted under this section shall be laid before each House of Parliament within 14 sitting days of its execution by all parties to the grant or renewal.

[Section 100 inserted by No. 20 of 1991 s. 39; amended by No. 28 of 2006 s. 209; No. 36 of 2011 s. 37.]

101. Licences etc. for use etc. of land

- (1) The CEO may grant a licence in writing to any person to enter and use any land to which this Division applies.
 - (1a) The Minister, after consultation with the Conservation Commission or the Marine Authority, as the case requires, and on the recommendation of the CEO, may, by notice published in the *Gazette*, declare that a permit is required for the carrying on of any activity specified in the notice on land to which this Division applies.
 - (1b) The CEO may grant to a person a permit of the kind required by a declaration made under subsection (1a).
 - (1c) A person shall not, on any land to which this Division applies, carry on any activity for which a permit is required by a declaration made under subsection (1a) unless the person is —
 - (a) the holder of a permit of the kind required by the declaration; or
 - (b) authorised to carry on that activity on the land under this Act or another written law.
- Penalty: \$4 000.
- (1d) Subsections (1a) to (1c) do not affect the operation of section 130 or regulations made under that section.
 - (1e) If a permit is granted under this section that authorises the removal of water from land —
 - (a) the granting of the permit does not limit the operation of the *Rights in Water and Irrigation Act 1914*; and
 - (b) the permit can apply only to land vested in or under the care, control and management of the Conservation Commission, whether solely or jointly with an associated body, for which there is a management plan in force that provides for water to be taken from the land; and
 - (c) the permit cannot authorise an activity to be carried on for the purposes of the removal of water from land unless the activity is consistent with the management plan.

- (2) The CEO may renew the period of operation of a licence or permit under this section from time to time, or transfer the authority it confers from one person to another, or, where its operation relates to any place, may transfer that operation to another place of the same kind.
- (3) A licence or permit under this section may be granted, renewed or transferred subject to such conditions as the CEO thinks fit, which conditions —
- (a) shall be endorsed upon or attached to the licence or permit when granted, renewed or transferred, as the case may be; and
 - (b) may be added to, cancelled, suspended and otherwise varied by the CEO from time to time during the operation of the licence or permit.
- (4) The holder of a licence or permit under this section shall not contravene or fail to comply with any condition endorsed upon or attached to the licence or permit.
Penalty: \$4 000.
- (5) Where the holder of a licence or permit under this section contravenes or fails to comply with any condition endorsed upon or attached to the licence or permit, the CEO may, by notice in writing to him, cancel the licence or permit or suspend it for such period as he thinks fit.
- (6) If a licence granted under subsection (1) to enter and use any land to which this Division applies is transferable by the licensee, in accordance with the *Personal Property Securities Act 2009* (Commonwealth) section 10 the definition of **licence** paragraph (d), the licence is declared not to be personal property for the purposes of that Act.

[Section 101 amended by No. 5 of 1997 s. 32; No. 35 of 2000 s. 38; No. 28 of 2006 s. 209; No. 36 of 2011 s. 38; No. 42 of 2011 s. 68.]

Division 3 — Marine reserves

[Heading inserted by No. 76 of 1988 s. 12; amended by No. 5 of 1997 s. 33.]

101A. Term used: take

In this Division —

take includes —

- (a) to injure, destroy or otherwise interfere with, or cause or permit the doing of any of those things; and
- (b) to hunt any fauna even though no fauna is actually taken; and
- (c) an attempt to take.

[Section 101A inserted by No. 76 of 1988 s. 12; amended by No. 20 of 1991 s. 40; No. 5 of 1997 s. 34.]

101B. Flora and fauna, taking of not to be authorised etc.

(1) Subject to subsection (2a) —

- (a) the CEO shall not under this Act authorise any person; and
- (b) regulations shall not be made under section 130 so as to authorise any person,

to take any flora or fauna in a marine nature reserve, marine park or marine management area.

[(2) deleted]

(2a) A person may, notwithstanding any other Act, take any flora or fauna (including fish and pearl oyster) in a marine nature reserve, marine park or marine management area for scientific purposes in accordance with a licence granted by the CEO under regulations made under section 130 or by the Minister to whom the administration of the *Wildlife Conservation Act 1950* is committed, under regulations made under that Act.

(3) In the event of any conflict or inconsistency between a provision of —

- (a) the *Fish Resources Management Act 1994*; or
- (b) the *Pearling Act 1990*,

on the one hand and a provision of —

- (c) regulations made under section 130 in respect of a marine nature reserve; or
- (d) notices issued or regulations made under the *Wildlife Conservation Act 1950* in respect of a marine nature reserve,

on the other hand, the latter shall prevail.

[Section 101B inserted by No. 76 of 1988 s. 12; amended by No. 20 of 1991 s. 41; No. 53 of 1994 s. 264; No. 5 of 1997 s. 35; No. 28 of 2006 s. 209.]

101C. Taking flora or fauna, offence

A person shall not, without lawful authority, take any flora or fauna in a marine nature reserve, marine park or marine management area.

Penalty: \$10 000 and imprisonment for one year.

[Section 101C inserted by No. 76 of 1988 s. 12; amended by No. 5 of 1997 s. 36.]

Part IX — Offences and enforcement

Division 1 — Preliminary

[Heading inserted by No. 20 of 1991 s. 42.]

102. Terms used

- (1) In this Part unless the contrary intention appears —
authorised officer means a wildlife officer, forest officer, ranger, conservation and land management officer and a person appointed to an honorary office under section 46; and
land to which this Part applies means —
- (a) land to which this Act applies; and
 - (b) section 8C land; and
 - (ca) land owned by, vested in or under the care, control and management of the Executive Body, whether solely or jointly with another body; and
 - (c) land to which section 131 applies.
- (2) In order to avoid any doubt and without limiting the meaning of the expression “without lawful authority”, it is declared that, for the purposes of this Part, an act is done without lawful authority if it is done in contravention of any term or condition of a contract, permit, lease, licence or other authority under this Act.
[Section 102 inserted by No. 20 of 1991 s. 42; amended by No. 66 of 1992 s. 15; No. 28 of 2006 s. 208; No. 36 of 2011 s. 39.]

Division 2 — Offences

[Heading inserted by No. 20 of 1991 s. 42.]

103. Taking forest produce

- (1) A person shall not, without lawful authority, fell, cut, injure, destroy, obtain, or remove any forest produce in, on, or from any land to which this section applies.
Penalty: \$10 000 and imprisonment for one year.

- (2) Any person found within any land to which this section applies, or on any road in the vicinity thereof, and having in his possession any forest produce, who on being required to do so by an authorised officer refuses or fails to give an account to the satisfaction of such officer of the manner in which he became possessed of such forest produce, commits an offence, and is liable to a fine of \$200.
- (2a) A person has lawful authority for the purposes of subsection (1) in relation to land that is classified under Division 2 of Part V as a forest conservation area only if the person fells, cuts, injures, destroys, obtains, or removes any forest produce in, on, or from that land in accordance with —
- (a) a written authorisation given by the CEO; or
 - (b) a Part VIII Division 1 authorisation.
- (2b) The power of the CEO to give an authorisation under subsection (2a)(a) is exercisable only —
- (a) consistently with any management plan for the land concerned; and
 - (b) with the approval of the Minister; and
 - (c) in the case of section 8A land, consistently with the relevant section 8A agreement; and
 - (d) in conformity with section 33(2) and (3).
- (2c) In subsection (2a)(b) —
- Part VIII Division 1 authorisation** means —
- (a) a contract entered into under section 88(1)(b); or
 - (b) a permit described in section 89; or
 - (c) a licence described in section 90; or
 - (d) a licence or permit granted under section 97A.
- (3) Where a person is convicted of an offence against this section the forest produce in respect of which the offence was committed is the property of the Crown and may be disposed of as the CEO may direct.

- (4) This section applies to —
- (a) land to which this Part applies; and
 - (b) Crown land within the meaning in section 11.

[Section 103 inserted by No. 20 of 1991 s. 42; amended by No. 35 of 2000 s. 39; No. 28 of 2006 s. 209; No. 36 of 2011 s. 41.]

104. Lighting fires

- (1) A person shall not without lawful authority —
- (a) light or kindle, or assist another person in lighting or kindling, any fire within the boundaries or within 20 m of any boundary of land to which this Part applies; or
 - (b) leave, without taking due precaution against its spreading or causing injury, a fire lighted or kindled as mentioned in paragraph (a),

if in either case any forest produce is burnt or injured, or is in danger of being burnt or injured.

Penalty: \$10 000 and imprisonment for one year.

- (2) A reward not exceeding \$250 may be paid by the CEO to any person, not being a person employed in the Department, who shall give such information as may lead to a conviction under this section.

[Section 104 inserted by No. 20 of 1991 s. 42; amended by No. 28 of 2006 s. 209.]

105. Setting fire to tree etc. without notifying forest officer

- (1) A person shall not set fire in the open air to any tree, wood, bush or grass on any land that is contiguous to a State forest or timber reserve, without giving notice of his intention to a forest officer, so as to allow a forest officer to be present at the firing.

Penalty: \$4 000.

- (2) Subsection (1) does not apply to a fire for the purpose of camping or cooking that is allowed by section 25(1)(a) of the *Bush Fires Act 1954*.

[Section 105 inserted by No. 20 of 1991 s. 42; amended by No. 50 of 2003 s. 47(2).]

106. Unlawful activities on land

A person shall not, except under a permit, licence, or lease under this Act, or a grant, lease, licence, or other authority from the Crown —

- (a) depasture any cattle on land to which this Part applies;
- (b) hunt, shoot, or destroy or set snares for the purpose of capturing any indigenous fauna on land to which this Part applies;
- (c) occupy, clear, or break up for cultivation, or any other purpose, land to which this Part applies.

Penalty: \$4 000.

[Section 106 inserted by No. 20 of 1991 s. 42; amended by No. 50 of 2003 s. 47(2).]

107. Miscellaneous offences

A person shall not —

- (a) counterfeit or without due authority issue any licence, permit, or order for the cutting, removal, or sale of forest produce;
- (b) unlawfully alter, obliterate, deface, pull up, remove, or destroy any boundary mark, or any stamp, mark, sign, licence, permit or order used or issued by the CEO or any authorised officer;
- (c) unlawfully cut, break, throw down or in any way destroy or damage any building, fence, or gate, in or enclosing any land to which this Part applies;

- (d) unlawfully cut through or break down or otherwise destroy the bank, dam, or wall of any part of any natural or artificial reservoir or pond of water within or partly within and adjoining any land to which this Part applies;
- (e) exercise compulsion upon any authorised officer by violence or threats;
- (f) corrupt or attempt to corrupt by promises, offers, gifts or presents any authorised officer for the purpose of obtaining a favourable report, recommendation, certificate, valuation, or assessment of forest produce charges whether in respect of any place, employment, sale, auction, permit, licence, lease, authority, or any other benefit whatsoever, or for the purpose of obtaining abstention on the part of any authorised officer from any act which forms part of his duties;
- (g) being an authorised officer accept any bribe or receive any gift or present in connection with the performance of the functions of his office;
- (h) fail or refuse to comply with any lawful direction of an authorised officer;
- (i) without lawful authority remove from any land to which this Part applies any forest produce without previously paying the proper forest produce charge or fee due thereon;
- (j) knowingly furnish an authorised officer with a false or incorrect statement of any forest produce felled, cut, split, sawn, or removed by him or by an agent or employee of his on which forest produce charges or other charges or fees are payable to the Crown;
- (k) receive any forest produce knowing it to have been unlawfully obtained;
- (l) knowingly make, or cause to be made, in any book, return, declaration or statement required by the

regulations to be kept or made, any entry or writing which is false in any material particular.

Penalty: \$10 000 and imprisonment for one year.

[Section 107 inserted by No. 20 of 1991 s. 42; amended by No. 66 of 1992 s. 16; No. 35 of 2000 s. 40; No. 28 of 2006 s. 209.]

108. Unlawful use of mark etc. on forest produce

A person shall not —

- (a) counterfeit upon or unlawfully affix to any forest produce a mark used by forest officers to indicate that such produce is the property of the Crown, or that it may be lawfully cut or removed, or that it has been inspected and passed as suitable for export;
- (b) without due authority make or cause to be made, or use or cause to be used, or have in his possession, a brand or stamp which resembles or purports to be a brand or stamp such as is usually used by forest officers.

Penalty: \$10 000 and imprisonment for one year.

[Section 108 inserted by No. 20 of 1991 s. 42.]

**Division 2a — Removal of unauthorised buildings etc.,
and trespassing cattle**

[Heading inserted by No. 20 of 1991 s. 42.]

108A. Unauthorised buildings etc., removal of

- (1) If any building, hut, tramline, fence, dam, weir, or standing crop is found within land to which this Part applies, and —
 - (a) the owner thereof does not on demand produce any lease, licence, permit, or authority therefor; or

- (b) after reasonable inquiries the owner is not known or cannot be found,

then the Magistrates Court, on the application of an authorised officer, may fix a time within which the building, hut, tramline, fence, dam, weir, or crop shall be removed.

- (2) If such removal is not effected within the time so fixed, the building, hut, tramline, fence, dam, weir, or crop becomes the property of the Crown and may be disposed of as the CEO may direct.
- (3) In any case where after reasonable inquiries an owner is not known or has not been found, it is sufficient service of the notice of removal if a copy is posted on some conspicuous part of the land on which the building, hut, tramline, fence, dam, weir, or crop is found.

[Section 108A inserted by No. 20 of 1991 s. 42; amended by No. 59 of 2004 s. 141; No. 28 of 2006 s. 209.]

108B. Cattle, impounding

Land to which this Part applies shall be deemed “land” within the meaning of that word as applied in Part XX of the *Local Government (Miscellaneous Provisions) Act 1960*, relating to trespass, and for the purposes of those provisions the CEO shall be deemed to be the owner of such land, and authorised officers to be his agents.

[Section 108B inserted by No. 20 of 1991 s. 42; amended by No. 14 of 1996 s. 4; No. 28 of 2006 s. 209.]

108C. Unbranded cattle, dealing with

- (1) The CEO may deal with unbranded cattle appearing to be over the age of 12 months found depasturing within the pastoral region on any land to which this Part applies as if they were the absolute property of the Crown and the exercise of such rights of property by the Crown shall not be called into question.

- (2) The CEO shall not deal with any cattle under subsection (1) without giving such opportunity as he considers reasonable in the circumstances to a relevant person to take possession of any cattle that person believes have strayed from adjoining lands onto land to which this Part applies.
- (3) In subsection (1) ***pastoral region*** means land other than land in —
- (a) the South-West division of the State as described in Schedule 1 to the *Land Administration Act 1997*; and
 - (b) the local government districts of Esperance and Ravensthorpe.

[Section 108C inserted by No. 20 of 1991 s. 42; amended by No. 14 of 1996 s. 4; No. 31 of 1997 s. 15(19); No. 28 of 2006 s. 209.]

Division 3 — General provisions as to offences

109. Aiding etc. offences, effect of

A person who aids, abets, counsels, or procures, or by any act is in any way directly or indirectly concerned in the commission of an offence against this Act, shall be deemed to have committed that offence, and shall be punishable accordingly.

110. Damage by offenders, liability for

Any person who commits an offence against this Act may, on conviction, be held by the court to be liable for any loss or damage caused by the offence in addition to the penalty for the offence, and the amount of such loss or damage or part thereof may be awarded by the court to the CEO in fixing the penalty, and may be recovered in the same manner as a pecuniary penalty.

[Section 110 amended by No. 28 of 2006 s. 209.]

111. Forest produce, presumption as to ownership of

When in any proceedings under this Act a question arises as to whether any forest produce is the property of the Crown, such forest produce shall be presumed to be the property of the Crown until the contrary is proved.

112. Offence, presumption as to place of

Where in a prosecution notice for an offence against this Act there is an averment that an act occurred within the boundaries of any category of land to which this Part applies or to which section 103 applies, on the act being proved, it shall be presumed, in the absence of proof to the contrary, that the act occurred within the boundaries of that category of land.

[Section 112 amended by No. 20 of 1991 s. 43; No. 84 of 2004 s. 80.]

113. Prosecutions, who may commence

- (1) Proceedings for an offence under this Act may be commenced by a police officer or a person authorised in writing for the purpose of the proposed proceedings by the CEO.
- (2) In any proceedings under this Act the authority of any person to prosecute for an offence shall be presumed unless the contrary is proved.

[Section 113 amended by No. 59 of 2004 s. 141; No. 28 of 2006 s. 209.]

114. Prosecutions under other laws not prevented etc.

Nothing in this Part shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act, or from being liable under such other law to any higher punishment or penalty than that provided by this Act, but no person shall be punished twice for the same offence.

114A. Infringement notices

- (1) A forest officer, wildlife officer, ranger or conservation and land management officer who has reasonable grounds to believe that a person has committed a prescribed offence against this Act or the regulations may give to that person an infringement notice in the prescribed form.
- (2) The infringement notice shall inform the person that if he does not wish to be prosecuted for the alleged offence in a court he may, within a period of 21 days after the giving of the notice, pay to the CEO the amount of money specified in the notice as being the modified penalty for that offence.
- (3) In an infringement notice for an alleged offence the amount of money specified as being the modified penalty for the offence shall be the amount that is, when the offence is committed, for the time being prescribed to apply to the offence if it is dealt with under this section.
- (4) An infringement notice may be given to an alleged offender by handing it to him personally at or about the time the alleged offence is believed to have been committed or by posting it to him at his last known address within 14 days after the occurrence giving rise to the allegation of an offence.
- (5) A person to whom an infringement notice is given may decline to be dealt with under this section and if the modified penalty is not paid within the period specified in the notice or within such further period as may, whether before or after the expiry of the specified period, be allowed by the CEO is deemed to have declined to be so dealt with.
- (6) The CEO may, whether or not the modified penalty has been paid, withdraw an infringement notice at any time within a period of 28 days after it was given by posting to the alleged offender at his last known address a notice of withdrawal in the prescribed form.
- (7) Any amount paid under an infringement notice that has been withdrawn shall be refunded.

- (8) Where the modified penalty has been paid in accordance with an infringement notice within the period specified therein or within such further period as is allowed and the infringement notice has not been withdrawn under subsection (6), punishment for the alleged offence by a court is barred in the same way as it would be if the person had been convicted by a court of, and punished for, that offence.
- (9) Payment of a modified penalty pursuant to an infringement notice shall not be regarded as an admission for the purposes of any proceedings, whether civil or criminal, arising out of the occurrence by reason of which the infringement notice was issued.

[Section 114A inserted by No. 20 of 1991 s. 44; amended by No. 84 of 2004 s. 80; No. 28 of 2006 s. 209.]

Division 4 — Enforcement powers

115. Obstructing officers etc., offence

- (1) No person shall wilfully obstruct an authorised officer performing any function under this Act.
- (2) A person who fails to give to any person performing any function under this Act any assistance which that person may reasonably request him to give, or any information which that person is expressly authorised by this Act to call for, or who, when required to give any such information, knowingly makes any false or misleading statement in relation thereto, shall be treated as having wilfully obstructed that person.

Penalty: \$500.

[Section 115 amended by No. 20 of 1991 s. 45.]

[Heading deleted by No. 19 of 2010 s. 44(3).]

116. Unbranded timber, seizure of etc.

- (1) Unbranded timber in course of conveyance without a permit in writing from a forest officer may be seized and detained by a

forest officer pending inquiry, and no damages shall be recoverable with regard to such seizure or detention should it afterwards appear that such timber has not been removed in contravention of this Act.

- (2) All such unbranded timber in course of conveyance without a permit shall be deemed to be the property of the Crown in the absence of proof to be furnished by the person in charge of such timber that the said timber is private property.

117. Forest produce is Crown property until charges paid

All forest produce cut or obtained, upon which any forest produce charges or other charges are payable under this Act, shall, until the payment thereof, remain the property of the Crown, and may be seized and detained or removed by any forest officer until such charges have been paid; and in default of payment within 10 days of seizure may be disposed of.

[Section 117 amended by No. 35 of 2000 s. 41.]

118. Forest produce subject of offence, seizure of etc.

- (1) A forest officer who finds a person committing an offence against this Act in respect of any forest produce or who on reasonable grounds suspects that such an offence has been committed may seize such produce and stamp or mark it with a distinctive mark, and the forest produce shall thereupon become and remain the property of the Crown until the title of a lawful owner is established.
- (1a) The power to seize forest produce under subsection (1) does not apply to things that are forest products that may be seized under section 65 of the *Forest Products Act 2000*.
- (2) Any forest produce seized under this section may be sold or otherwise disposed of as the CEO may direct, and the proceeds of any such sale shall be paid into the Public Bank Account and credited to the Consolidated Account as revenue of the

Department, subject to the claim to such proceeds of any lawful owner of the forest produce.

[Section 118 amended by No. 6 of 1993 s. 11; No. 49 of 1996 s. 64; No. 35 of 2000 s. 42; No. 28 of 2006 s. 209; No. 77 of 2006 s. 4.]

119. Search warrant for secreted forest produce

On an application supported by evidence on oath of any forest officer stating his belief that forest produce liable to the payment of any forest produce charges or other charges or dues is secreted in any place, not being a State forest, timber reserve or premises to which section 119A applies, any justice may issue a warrant to enter and search for such produce.

[Section 119 amended by No. 20 of 1991 s. 46; No. 35 of 2000 s. 43; No. 84 of 2004 s. 80.]

119A. Sawmills etc., power to enter

A forest officer authorised by the CEO may enter any place where any operation for the purpose of preparing, treating or processing timber is carried on and make such inspection and enquiry as he thinks necessary to ascertain whether or not this Act and the regulations have been or are being complied with.

[Section 119A inserted by No. 20 of 1991 s. 47; amended by No. 74 of 2003 s. 21(2); No. 28 of 2006 s. 209.]

120. Land subject to permit etc., power to enter etc.

A forest officer authorised by the CEO may enter upon the land held or occupied by virtue of a permit, licence, agreement, or forest lease under this Act for the purpose of making inspections, carrying out silvicultural operations, or other forest work, and preventing or suppressing fires.

[Section 120 amended by No. 28 of 2006 s. 209.]

[121-123. Deleted by No. 20 of 1991 s. 48.]

[Heading deleted by No. 19 of 2010 s. 44(3).]

124. Rangers etc., powers of

- (1) A ranger or conservation and land management officer who finds a person committing a relevant offence on or in any land or waters or who on reasonable grounds suspects that such an offence has been committed or is about to be committed, may without warrant —
 - (a) stop, detain and search any vehicle, vessel or conveyance;
 - (b) remove any vehicle, vessel, animal or other thing from the land or waters;
 - [(c) deleted]*
 - (d) require the person to leave the land or waters,and, in addition, a ranger may enter and search any hut, tent, caravan or other erection which is not a permanent residence.
- (2) The offices of ranger and conservation and land management officer are each prescribed to be public officers for the purposes of the *Criminal Investigation (Identifying People) Act 2002* and as such may exercise the powers in Part 3 of that Act.
- [(3) deleted]*
- (4) A person shall not remain on or in any land or waters after being required to leave the same by a ranger or conservation and land management officer under subsection (1)(d).
Penalty: \$1 000.
- (5) A ranger or conservation and land management officer shall not exercise any power specified in subsection (1)(a) or (b) and a ranger shall not exercise the power to enter and search conferred by that subsection unless he has first taken all reasonable steps to communicate to the person who owns or is in charge of the vehicle, animal, vessel, conveyance, hut, tent, caravan or other thing concerned (if the identity of that person can reasonably be ascertained) his intention to exercise the power and his reasons for believing that he is authorised to exercise the power.

- (6) Nothing in this section derogates from the powers of a ranger who is a police officer.
- (7) In this section *relevant offence* means —
 - (a) in relation to a ranger, any offence against this Act or regulations made under section 130 relating to national parks;
 - (b) in relation to a conservation and land management officer, any offence against this Act or any regulations made under this Act.

[Section 124 inserted by No. 20 of 1991 s. 49; amended by No. 6 of 2002 Sch. 2 cl. 2.]

[Heading deleted by No. 19 of 2010 s. 44(3).]

125. Wildlife officers, powers of

The powers of a wildlife officer under sections 20 and 20A of the *Wildlife Conservation Act 1950*, and the other provisions of those sections, extend to offences against regulations made under Part X.

[Section 125 amended by No. 20 of 1991 s. 50.]

Part X — Regulations

126. Regulations, general provisions as to

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2A) The regulations may apply to any or all of the following —
 - (a) land to which this Act applies;
 - (b) section 8C land;
 - (c) land owned by, vested in or under the care, control and management of the Executive Body, whether solely or jointly with another body;
 - (d) public land as defined in section 81;
 - (e) Crown land as defined in section 87(1);
 - (f) land to which section 131 applies.
- (2) Regulations made under this section or section 127, 128 or 130 may provide for a penalty not exceeding \$2 000 for offences against such regulations.

[Section 126 amended by No. 20 of 1991 s. 52; No. 36 of 2011 s. 42.]

127. Regulations as to administration

The regulations may provide for —

- (a) the qualifications of officers of the Department, and for examinations for appointment or promotion; and
- [(b) deleted]*
- (c) the imposition and payment of rents, fees, dues, forest produce charges and other charges, and the method of recovery thereof; and
- (d) the permits, leases and licences authorised by this Act.

[Section 127 amended by No. 20 of 1991 s. 53; No. 35 of 2000 s. 44.]

s. 128A

128A. Regulations as to s. 8C land

Regulations that apply to section 8C land may prescribe only matters that are consistent with the functions that the CEO has in respect of the land under the relevant order made under section 8C.

[Section 128A inserted by No. 36 of 2011 s. 43.]

128. Regulations as to forestry, State forests etc.

- (1) The regulations may provide for —
- (a) the organization of a system of education and training in scientific forestry;
 - (b) the organization and establishment of a forest produce research laboratory and matters connected therewith;
 - (c) the protection of trees in parks and reserves under the control and management of a board under the *Parks and Reserves Act 1895* and for the regulation or prohibition of the cutting or removal of such trees and other forest produce;
 - (d) the protection, management and control of State forests and timber reserves, and flora and fauna therein, including provision as to —
 - (i) the sale of forest produce by auction or tender; and
 - (ii) a system for recording, making available, and otherwise dealing with information concerning forest produce taken and the destination thereof; and
 - (iii) a system for recording, making available, and otherwise dealing with information for the purposes of ascertaining forest produce charges payable; and
 - (iv) the inspection, grading, branding and marking of forest produce; and

- [(v) deleted]*
- (vi) the authority of forest officers to give directions as to the route for the movement of forest produce in a State forest or timber reserve or to stop or detain forest produce therein or on any road; and
- (vii) the weighing of forest produce or the use of any other method to determine the quantity of forest produce; and
- (viii) the identification of persons who fell timber in State forests and timber reserves and the registration of the means of identification; and
- (ix) the taking of firewood from State forests and timber reserves;
- (e) the prohibition or regulation of the export of any specified kind of forest produce;
- (f) the maintenance of Government timber depots and the terms and conditions for the use thereof;
- (g) the identification, by branding or otherwise, of timber and the registration of the means of identification;
- (ga) the registration of, and information relating to, persons who are engaged —
 - (i) in the harvesting of timber in State forests or timber reserves (including the doing of any thing normally required to be done to timber before removal therefrom); or
 - (ii) in the transport of harvested timber,or who are proposed to be so engaged, and the creation of offences for the purpose of ensuring that any such system of registration is effective;
- (h) for the purposes of section 26(2)(b), of the *Mining Act 1978*, the conditions and restrictions applicable to the marking out of mining tenements in State forests and timber reserves.

s. 129

- (2) In this section *State forests* includes land to which section 131 applies.

[Section 128 amended by No. 20 of 1991 s. 54; No. 66 of 1992 s. 17; No. 35 of 2000 s. 45.]

129. Regulations as to forest diseases

- (1) The regulations may provide for —
- (a) the prohibition or regulation of the admission to risk areas or disease areas, and the use or movement therein, of potential carriers or classes of potential carriers;
 - (b) the regulation of the conduct of persons in respect of potential carriers in risk areas or disease areas;
 - (c) the notification, and the manner of notification, of any occurrence, or suspected occurrence, of infection and the furnishing by persons of all information within their power in respect of any such occurrence or suspected occurrence;
 - (d) the conferral of power on an authorised person to stop and examine any potential carrier and to signpost and barricade roads for that purpose;
 - (e) the detention, control, removal, treatment, cleansing and quarantine of infected carriers, or potential carriers or infected earth, soil or trees;
 - (f) in respect of an alleged breach of the regulations or any condition, involving a potential carrier, the circumstances under which the owner of the potential carrier is deemed to be the person in charge of the potential carrier at the time of the offence;
 - (g) the furnishing by any person in a risk area or a disease area of particulars of his name and address whenever asked to do so by an authorised person.
- (2) Regulations made under this section may provide minimum penalties, not exceeding \$200 and maximum penalties, not

exceeding \$2 000 for offences against such regulations or any condition and may provide daily penalties not exceeding \$20 for every day that such an offence continues after the offender is convicted.

130. Regulations as to national parks etc.

- (1) The regulations may provide for the protection, management and control of national parks, conservation parks, nature reserves, marine nature reserves, marine parks, marine management areas and land referred to in section 5(1)(g) and (h), including provision as to the protection and conservation of fauna and flora therein whether indigenous or not.
- (2) Regulations made under subsection (1) that apply to section 8A land apply only to the extent the relevant section 8A agreement says they apply.
- (2a) The Governor shall not make regulations under subsection (1) that impose any restriction on the taking, in a marine park or marine management area —
 - (a) of fish within the meaning of the *Fish Resources Management Act 1994*, in accordance with the provisions of that Act relating to aquaculture or commercial or recreational fishing; or
 - (b) of pearl oyster within the meaning of the *Pearling Act 1990*, in accordance with that Act.
- (2b) The prohibition in subsection (2a) does not include a restriction that relates to conduct or activity other than the taking of fish but that incidentally affects the taking of fish.
- (3) In subsection (1), and regulations made thereunder ***nature reserves*** includes land that is reserved under section 29 of the *Land Act 1933*², whether before or after the commencement of this Act, or under Part 4 of the *Land Administration Act 1997* for the conservation of flora or fauna, or both flora and fauna,

s. 130A

but which is not a nature reserve within the meaning of sections 6(5) and 16B(3).

[Section 130 amended by No. 76 of 1988 s. 13; No. 20 of 1991 s. 55; No. 5 of 1997 s. 37; No. 31 of 1997 s. 15(20) and (21); No. 24 of 2000 s. 8(6); No. 36 of 2011 s. 44.]

130A. Regulations as to rights of holders of mining tenements to take forest produce

(1) The regulations may provide for —

- (a) the rights of the holder of a mining tenement to take forest produce from the land comprising the tenement; or
- (b) in the case of mining tenements within the boundaries of State forest or timber reserves, the forest produce charges to be paid for forest produce taken under regulations made under paragraph (a) and the application and expenditure of such charges.

(2) In subsection (1) —

mining tenement has the same meaning as it has in the *Mining Act 1978*.

[Section 130A inserted by No. 35 of 2000 s. 46.]

130B. Land Administration Act 1997 regulations subject to this Act's regulations as to s. 8A or 8C land

If a regulation made under this Act that applies to section 8A land or section 8C land is inconsistent with a regulation made under the *Land Administration Act 1997* that also applies to the land, the regulation made under this Act prevails to the extent of the inconsistency.

[Section 130B inserted by No. 36 of 2011 s. 45.]

Part XI — Miscellaneous

131. Land in name of Conservator of Forests at 22 Mar 1985 vested in CEO

- (1) Land that was immediately before the commencement of this Act registered in the name of the Conservator of Forests under the *Transfer of Land Act 1893* is by this section vested in the CEO and shall be held, disposed of or dealt with in such manner as the Governor may determine.
- (2) Subsection (1) also applies to land referred to in section 9(3).
[Section 131 amended by No. 76 of 1988 s. 14; No. 28 of 2006 s. 209.]

131A. Ministerial directions, tabling of

- (1) The Minister must cause the text of any direction under section 24(1) or 26C(1) to be laid before each House of Parliament, or dealt with under subsection (2), within 14 days after the direction is given.
- (2) If —
 - (a) at the commencement of the period referred to in subsection (1) a House of Parliament is not sitting; and
 - (b) the Minister is of the opinion that that House will not sit during that period,the Minister is to transmit a copy of the direction to the Clerk of that House.
- (3) A copy of a direction transmitted to the Clerk of a House is taken to have been laid before that House.
- (4) The laying of a copy of a direction that is taken to have occurred under subsection (3) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

[Section 131A inserted by No. 35 of 2000 s. 47; amended by No. 8 of 2009 s. 34.]

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132. Protection from personal liability

The Minister, the CEO, any person employed in the Department, a member of the Conservation Commission, Marine Authority or Marine Committee, and any person who performs functions under this Act or the *Wildlife Conservation Act 1950* is not personally liable for anything done or omitted to be done by him in good faith in, or in connection with, the performance or purported performance of his functions under this Act or the *Wildlife Conservation Act 1950*.

[Section 132 amended by No. 35 of 2000 s. 48; No. 28 of 2006 s. 209.]

133. Delegation by Minister and CEO

- (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to the CEO or a person employed in the Department any of his functions under this Act or the *Wildlife Conservation Act 1950*, other than this power of delegation or the power to make any instrument having legislative effect.
- (2) The CEO may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person employed in the Department any of his functions under this Act or the *Wildlife Conservation Act 1950*, other than this power of delegation or a function delegated to him under subsection (1).
- (3) Without limiting the things that may be delegated under subsection (2), they may include things that are to be done in the course of governing the affairs of the Executive Body under section 36(4).

[Section 133 amended by No. 28 of 2006 s. 206 and 209.]

134. Notices on land, erection of etc.

- (1) The CEO may erect or cause to be erected at such places, within or on the boundaries of any area of land or water to which this Act applies, notices of such form and construction as he

considers necessary or desirable for the purpose of indicating publicly —

- (a) that the area is one to which this Act applies; and
- (b) the general extent of the area; and
- (c) the nature of any conduct which is forbidden in the area; and
- (d) any other matters relating to the area; and
- (e) the liability of any person who contravenes this Act with respect thereto,

or any of those things.

- (2) A person is not relieved of any liability for a contravention of any provision of this Act by reason of the fact that a notice is not erected at any place under this section.
- (3) No person shall destroy, damage, deface, obliterate, move or interfere with a notice erected under this section.

Penalty: \$500.

[Section 134 amended by No. 28 of 2006 s. 209.]

135. Forest fires, forest officer may ask for help to extinguish

- (1) In the event of a fire occurring in or adjacent to any State forest or timber reserve, a forest officer may call upon any person residing or working within a radius of 8 km of the outbreak to assist in extinguishing the fire.
- (2) All persons who in response to such call render the assistance required shall be remunerated at the prescribed rate.

136. Export of certain timber prohibited except under permit

- (1) The Governor may, by notification in the *Gazette*, declare that certain species or classes of timber to be therein specified shall not be exported until after such timber has been inspected and the permission of the CEO to the exportation thereof has been obtained.

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- (2) No person shall export any such timber which does not bear a mark or brand, to be affixed by a forest officer, indicating that such permission has been given.

Penalty: \$40 per m³ of timber exported.

[Section 136 amended by No. 28 of 2006 s. 209.]

137. Forest produce in water catchment areas may be placed under CEO's control etc.

The Governor may order that the forest produce on any water catchment area vested in or controlled by the Crown or any public authority shall be placed under the management or control of the CEO, subject to such conditions as the Governor may think fit; and thereupon such areas shall be deemed Crown land for the purposes of Division 1 of Part VIII.

[Section 137 amended by No. 28 of 2006 s. 209.]

138. Forest produce in other parks and reserves, restrictions on permitting taking of

- (1) Notwithstanding anything contained in any other Act relating to parks or reserves, no licence, permit, or any other authority to cut or remove forest produce in any designated park or reserve, not being land to which this Act applies, shall be granted by any person having the control of the park or reserve, without the authority of the CEO.
- (2) The revenue to be derived from any such licence, permit, or other authority shall, if the Governor so directs, be apportioned between the body having the management and control of the park or reserve and the Department.
- (3) In subsection (1) *designated park or reserve* means a park or reserve to which the Governor may, by notice in the *Gazette*, apply this section.

[Section 138 amended by No. 28 of 2006 s. 209.]

139. Roads in State forests etc., status of and ownership of timber on etc.

- (1) Roads within State forests and timber reserves, and other roads to which the Governor may, by notice in the *Gazette*, apply to this section shall be deemed Crown land within the meaning of section 87; and, notwithstanding anything in the *Local Government Act 1995*, the timber thereon shall not vest in the local government of the district in which such roads are situated.
- (2) Notwithstanding subsection (1), the local government may fell timber in the process of clearing such roads, and may sell and dispose of the timber so felled, and may fell timber growing on roads within its district for use by the local government in the construction and repair of buildings, bridges, culverts, fences, and other works.

[Section 139 amended by No. 14 of 1996 s. 4.]

[140. Deleted by No. 70 of 2003 s. 20.]

141. Arbor Day

A day shall be set apart in every year for the planting of trees in the several land divisions of the State, and such day shall be called "Arbor Day".

142. Conditional purchase land, condition as to tree planting etc.

- (1) On the disposal of land under the conditional purchase provisions of the *Land Administration Act 1997*, it shall be a condition that the purchaser shall use an area of not less than 2% of the area of the holding acquired by him for the growth of timber or other forest produce.
- (2) The planting of trees, approved by the CEO, on not less than 2 hectares of any land acquired under the conditional purchase provisions of the *Land Administration Act 1997*, shall be deemed an improvement within the meaning of that Act, and the conservation and improvement, to the satisfaction of the CEO, of indigenous timber already growing on any portion of land

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acquired under those provisions may, with the approval of the Land Administration Minister, be deemed an improvement within the meaning of that Act.

[Section 142 amended by No. 31 of 1997 s. 141; No. 28 of 2006 s. 207 and 209.]

143. Conservation Legislation Amendment Act 2011, review of amendments of

- (1) The Minister must review the operation of the amendments made to this Act by the *Conservation Legislation Amendment Act 2011* (the **amendment Act**) as soon as is practicable after 5 years after the date on which the amendment Act receives the Royal Assent.
- (2) When doing the review the Minister must consider —
 - (a) whether the policy objectives upon which the amendments made to this Act by the amendment Act were based remain valid; and
 - (b) whether those amendments remain appropriate to achieve those objectives.
- (3) The Minister must prepare a report based on the review and, as soon as practicable after the report is prepared and in any event not more than 2 years after the expiry of the period referred to in subsection (1), cause it to be laid before each House of Parliament.

[Section 143 inserted by No. 36 of 2011 s. 46.]

[144. Deleted by No. 20 of 1991 s. 56.]

Part XII — Repeal, savings, transitional and validation

Division 1 — Preliminary

145. Terms used

In this Part —

Conservator means *The Conservator of Forests* under section 8 of the *Forests Act 1918*³;

Forests Department means the Forests Department established by section 7 of the *Forests Act 1918*³;

former authority means the Conservator, the Forests Department, the National Parks Authority or the Western Australian Wildlife Authority;

National Parks Authority means the Authority established by section 7 of the *National Parks Authority Act 1976*⁵;

repealed Act means an Act repealed by section 147(1);

Western Australian Wildlife Authority means the Authority established by section 10⁷ of the *Wildlife Conservation Act 1950*.

146. *Interpretation Act 1984* not affected

Nothing in this Part shall be construed so as to limit the operation of the *Interpretation Act 1984*.

Division 2 — Repeal, savings and transitional

147. Repeal

- (1) The following Acts are repealed —
 - (a) the *Forests Act 1918*; and
 - (b) the *National Parks Authority Act 1976*.
- (2) For the purposes of section 16 of the *Interpretation Act 1984* it is declared that this Act is in substitution for the repealed Acts.

- (3) Section 16 of the *Interpretation Act 1984* shall also have effect for the purposes of a reference to a repealed Act in any Government agreement within the meaning of the *Government Agreements Act 1979*.

148. Saving

- (1) The repeal of a former provision does not affect any document or appointment made or anything done under any provision so repealed so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act.
- (2) Each such document, appointment or thing shall have effect as if it had been made or done under the corresponding provision of this Act, and as if that provision had been in force when the document or appointment was made or the thing was done.
- (3) In particular, and without limiting the generality of subsections (1) and (2), those subsections apply to —
- (a) honorary wildlife officers and honorary rangers appointed; and
 - (b) any classification of land made; and
 - (c) any notice erected on any land; and
 - (d) any management scheme or working plan approved, (such management scheme or working plan being deemed to be a management plan under this Act); and
 - (e) any permit, licence or lease granted (a permit granted under section 12E of the *Wildlife Conservation Act 1950* being deemed to be a licence under Division 2 of Part VIII); and
 - (f) any map or plan certified; and
 - (g) any forest disease risk area or forest disease area constituted (the proclamation therefor being deemed to be an order under section 82 or 83 as the case may be); and
 - (h) any order or notice under section 67, 68 or 69 of the *Forests Act 1918*³.

- (4) In subsection (1) **former provision** means a provision of a repealed Act and a provision of the *Wildlife Conservation Act 1950* repealed by the *Acts Amendment (Conservation and Land Management) Act 1984*.

[Section 148 amended by No. 86 of 1985 s. 3; No. 18 of 1992 s. 11; No. 73 of 1994 s. 4.]

149. Saving of certain regulations

Until regulations are made under this Act to provide for a matter referred to in Part X or a matter which may be prescribed, the regulations made under the repealed Acts and the *Wildlife Conservation Act 1950* to make provision for that matter and in force immediately before the commencement of this Act shall apply as if they had been made under this Act.

150. Devolution of rights, assets and liabilities

Subject to, and without limiting, sections 7, 131 and 155, on the commencement of this Act —

- (a) all rights, obligations and liabilities of a former authority existing immediately before such commencement are vested in or imposed on the CEO;
- (b) all real and personal property of whatever kind vested in or belonging to a former authority immediately before such commencement is vested in the CEO;
- (c) any proceedings which immediately before such commencement might have been brought or continued against a former authority may be brought or continued against the CEO;
- (d) anything lawfully commenced by a former authority may, so far as it is not contrary to this Act, be carried on and completed by the CEO.

[Section 150 amended by No. 28 of 2006 s. 209.]

151. References in other laws etc.

Subject to, and without limiting, sections 7, 131 and 155, in any written law and in any agreement, whether in writing or not, and in every deed or other instrument unless the context is such that it would be incorrect or inappropriate —

- (a) a reference to —
 - (i) a former authority, other than the Forests Department, shall be read as a reference to the CEO; and
 - (ii) the Forests Department shall be read as a reference to the Department; and
 - (iii) a wildlife officer, forest officer or ranger shall be read as a reference to a wildlife officer, forest officer or ranger under this Act; and
 - (iv) the Minister for Forests shall be read as a reference to the Minister to whom the administration of this Act is committed;
- (b) a reference, relating to the performance of any function under the *Wildlife Conservation Act 1950* —
 - (i) to the Director of Fisheries and Wildlife or the Conservator of Wildlife shall be read as a reference to the CEO; or
 - (ii) to the Department of Fisheries and Wildlife shall be read as a reference to the Department.

[Section 151 amended by No. 28 of 2006 s. 209.]

152. Staff not under *Public Service Act 1978*

On the commencement of this Act all persons who were employed immediately before such commencement —

- (a) by a former authority; or
- (b) by the Department of Fisheries and Wildlife to perform any function under the *Wildlife Conservation Act 1950*,

not being persons subject to the *Public Service Act 1978*⁸, shall be deemed to have been engaged by the Executive Director

under section 43(2) on the same terms and conditions, including the salary payable, as those on which they were employed immediately before such commencement.

[153. Deleted by No. 77 of 2006 Sch. 1 cl. 29(15).]

154. Annual reports for part of year

- (1) As soon as is practicable after the commencement of this Act —
 - (a) the Conservator shall report as required by section 42 of the *Forests Act 1918*³; and
 - (b) the National Parks Authority shall report as required by section 39 of the *National Parks Authority Act 1976*⁵,
but limited to the period from the preceding 1 July to the date of commencement of this Act, and the reports shall be laid before both Houses of Parliament.
- (2) Notwithstanding section 147(1), the Conservator and the National Parks Authority shall continue in existence for the purposes of subsection (1).
- (3) For the purposes of sections 31 and 52 the period from the commencement of this Act to the succeeding 30 June shall be deemed to be a full financial year.

155. Devolution of certain land

- (1) Section 5(1)(g) shall be deemed to include land to which section 17(1)(b) of the *National Parks Authority Act 1976*⁵ applied and which immediately before the commencement of this Act was vested in, or under the control and management of, the National Parks Authority, but not as a national park.
- (2) The land referred to in subsection (1) shall be deemed, as from the commencement of this Act, to have been vested in the Authority by order under section 33 of the *Land Act 1933*² and may be dealt with accordingly.

[Section 155 amended by No. 24 of 2000 s. 8(5).]

Division 3 — Validation

156. Validation

Where after the commencement of the *National Parks Authority Act 1976*⁵ land was reserved as a national park under section 29 of the *Land Act 1933*² and was, by order under section 33(2) of that Act, purported to be vested in the National Parks Authority for the purpose of a national park, the land shall be deemed, notwithstanding that section 19 of the *National Parks Authority Act 1976*⁵ was not complied with —

- (a) to have been validly vested, as from the commencement of the order, in the National Parks Authority as if it had been vested under section 18 of the *National Parks Authority Act 1976*⁵; and
- (b) to have been, as from such commencement, a national park under that section.

**Schedule — Provisions as to constitution and proceedings
of the Conservation Commission, the Marine Authority
and the Marine Committee**

[s. 29]

*[Heading amended by No. 5 of 1997 s. 38(1); No. 35 of 2000 s. 49(2);
No. 19 of 2010 s. 4.]*

1. Term of office

- (1) Except as otherwise provided by this Act a member shall hold office for such term, being not more than 3 years, as is specified in his instrument of appointment, but he may from time to time be reappointed.
- (2) A member, unless he sooner resigns or is removed from office, shall continue in office until his successor comes into office, notwithstanding that the term for which he was appointed may have expired.

[Clause 1 amended by No. 35 of 2000 s. 49(3) and (4); No. 19 of 2010 s. 51.]

2. Vacation of office

The office of a member becomes vacant if —

- (a) he resigns his office by written notice addressed to the Minister; or
- (b) he is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
- (c) he is removed from office by the Governor on the grounds of neglect of duty, misbehaviour, incompetence or mental or physical incapacity impairing the performance of his duties.

*[Clause 2 amended by No. 73 of 1995 s. 188; No. 35 of 2000 s. 49(5);
No. 18 of 2009 s. 19; No. 19 of 2010 s. 51.]*

cl. 3

3. Acting chairman and members

- (1) Where the chairman and the deputy chairman of a controlling body are both unable to act as chairman by reason of sickness, absence or other cause, the Minister may appoint a person (including a person acting under subclause (2)) to act as chairman, and while so acting according to the tenor of his appointment that person has all the functions of the chairman.
- (2) Where a member is unable to act by reason of sickness, absence or other cause, the Minister may appoint another person to act in his place, and while so acting according to the tenor of his appointment that other person is deemed to be a member.

[(3) deleted]

- (4) No act or omission of a person acting in place of another under this clause shall be questioned on the ground that the occasion for his appointment or acting had not arisen or had ceased.
- (5) The appointment of a person as an acting member or an acting chairman may be terminated at any time by the Minister.

[Clause 3 amended by No. 5 of 1997 s. 38(2); No. 35 of 2000 s. 49(6)-(8); No. 19 of 2010 s. 51.]

4. Meetings

- (1) The first meeting of a controlling body shall be convened by the chairman of that body and thereafter, subject to subclause (2), meetings shall be held at such times and places as the body determines.
- (2) A special meeting of a controlling body may at any time be convened by —
 - (a) the chairman; or
 - (b) any 4 members.
- (3) At a meeting of a controlling body the chairman, the deputy chairman or the person appointed under clause 3(1) shall preside, but where all of those members are absent from a meeting the members of that body present shall appoint one of their number to preside at that meeting.

- (4) At any meeting of a controlling body —
- (a) a majority of the members constitute a quorum; and
 - (b) each member present is entitled to a deliberative vote on any question, and if there is an equality of votes the question shall be taken to have been answered in the negative.

- (5) A controlling body shall cause accurate minutes to be kept of the proceedings at its meetings.

[Clause 4 amended by No. 5 of 1997 s. 38(4) and (5); No. 35 of 2000 s. 49(9)-(11); No. 19 of 2010 s. 51.]

5. Committees

- (1) A controlling body may from time to time, by resolution, appoint committees of such members as it thinks fit and may discharge, alter, continue or reconstitute any committee so appointed.
- (2) Subject to the directions of a controlling body each committee may determine its own procedures.

[Clause 5 amended by No. 19 of 2010 s. 51.]

5A. Temporary advisory committees

- (1) The Conservation Commission may from time to time, by resolution, appoint temporary advisory committees of such persons as it thinks fit to advise it on matters relevant to its functions.
- (1a) The Marine Authority may from time to time, by resolution, appoint temporary advisory committees of such persons as it thinks fit to advise it on matters relevant to its functions, other than matters which fall within the functions of the Marine Committee.
- (2) A resolution appointing a committee under subclause (1) or (1a) shall set the terms of reference, membership, reporting requirements and term of operation of the committee.
- (3) Subject to the directions of the Conservation Commission or Marine Authority, as the case requires, such a committee may determine its own procedures.

[Clause 5A inserted by No. 5 of 1997 s. 38(6); amended by No. 35 of 2000 s. 49(12)-(15); No. 19 of 2010 s. 51.]

Conservation and Land Management Act 1984

Schedule Provisions as to constitution and proceedings of the
Conservation Commission, the Marine Authority and the
Marine Committee

cl. 6

6. Resolutions without meeting

A resolution in writing signed or assented to by letter, telegram or telex by each member shall be as valid and effectual as if it had been passed at a meeting of a controlling body.

[Clause 6 amended by No. 19 of 2010 s. 51.]

7. Member may be granted leave

A controlling body may grant leave of absence to a member on such terms and conditions as it thinks fit.

[Clause 7 amended by No. 19 of 2010 s. 51.]

8. Controlling body to determine own procedure

Subject to this Act, a controlling body shall determine its own procedures.

[Clause 8 amended by No. 19 of 2010 s. 51.]

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Notes

- ¹ This is a compilation of the *Conservation and Land Management Act 1984* and includes the amendments made by the other written laws referred to in the following table^{1a, 9}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Conservation and Land Management Act 1984</i>	126 of 1984	8 Jan 1985	s. 1 and 2: 8 Jan 1985; Act other than s. 1 and 2: 22 Mar 1985 (see s. 2 and <i>Gazette</i> 15 Mar 1985 p. 931)
<i>Conservation and Land Management Amendment Act 1985</i>	86 of 1985	4 Dec 1985	4 Dec 1985 (see s. 2)
<i>Acts Amendment (Financial Administration and Audit) Act 1985 s. 3</i>	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Acts Amendment (Public Service) Act 1987 s. 32</i>	113 of 1987	31 Dec 1987	16 Mar 1988 (see s. 2 and <i>Gazette</i> 16 Mar 1988 p. 813)
<i>Acts Amendment (Land Administration) Act 1987 Pt. XVI</i>	126 of 1987	31 Dec 1987	16 Sep 1988 (see s. 2 and <i>Gazette</i> 16 Sep 1988 p. 3637)
<i>Acts Amendment (Swan River Trust) Act 1988 Pt. 2</i>	21 of 1988	5 Oct 1988	1 Mar 1989 (see s. 2 and <i>Gazette</i> 27 Jan 1989 p. 264)
<i>Conservation and Land Management Amendment Act 1988</i>	76 of 1988	9 Jan 1989	s. 1 and 2: 9 Jan 1989; Act other than s. 1 and 2: 27 Jan 1989 (see s. 2 and <i>Gazette</i> 27 Jan 1989 p. 264)
<i>Conservation and Land Management Amendment Act 1991</i>	20 of 1991 (as amended by No. 8 of 2009 s. 35(2))	25 Jun 1991	s. 1 and 2: 25 Jun 1991; Act other than s. 1, 2 and 51: 23 Aug 1991 (see s. 2 and <i>Gazette</i> 23 Aug 1991 p. 4353) s. 51 deleted by No. 8 of 2009 s. 35(2)

Reprint of the *Conservation and Land Management Act 1984* as at 16 Jan 1992
(includes amendments listed above)

Conservation and Land Management Act 1984

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Game Birds Protection) Act 1992 Pt. 3</i>	18 of 1992	16 Jun 1992	16 Jun 1992 (see s. 2)
<i>Conservation and Land Management Amendment Act 1992</i> ¹⁰	66 of 1992	11 Dec 1992	11 Dec 1992 (see s. 2)
<i>Financial Administration Legislation Amendment Act 1993 s. 11 and 15</i>	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Conservation and Land Management Amendment Act 1993</i> ¹¹	49 of 1993	20 Dec 1993	20 Dec 1993 (see s. 2)
<i>Acts Amendment (Public Sector Management) Act 1994 s. 19</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and Gazette 30 Sep 1994 p. 4948)
<i>Fish Resources Management Act 1994 s. 264</i>	53 of 1994	2 Nov 1994	1 Oct 1995 (see s. 2 and Gazette 29 Sep 1995 p. 4649)
<i>Statutes (Repeals and Minor Amendments) Act 1994 s. 4</i>	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995 s. 188</i>	73 of 1995	27 Dec 1995	1 Jan 1996 (see s. 2(2) and Gazette 29 Dec 1995 p. 6291)
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Financial Legislation Amendment Act 1996 s. 51 and 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
Reprint of the Conservation and Land Management Act 1984 as at 20 Jan 1997 (includes amendments listed above)			
<i>Acts Amendment (Marine Reserves) Act 1997 Pt. 2</i> ^{4, 6}	5 of 1997	10 Jun 1997	29 Aug 1997 (see s. 2 and Gazette 29 Aug 1997 p. 4867)

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Land Administration) Act 1997</i> Pt. 13 and s. 141 ¹²	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 36	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 22	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
Reprint of the Conservation and Land Management Act 1984 as at 26 Mar 1999 (includes amendments listed above)			
<i>Statutes (Repeals and Minor Amendments) Act 2000</i> s. 8	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
<i>Conservation and Land Management Amendment Act 2000</i> ^{13, 14}	35 of 2000 (as amended by No. 74 of 2003 s. 39(11))	10 Oct 2000	16 Nov 2000 (see s. 2 and <i>Gazette</i> 15 Nov 2000 p. 6275)
<i>Criminal Investigation (Identifying People) Act 2002</i> Sch. 2 cl. 2	6 of 2002	4 Jun 2002	29 Jun 2002 (see s. 2 and <i>Gazette</i> 28 Jun 2002 p. 3037)
<i>Labour Relations Reform Act 2002</i> s. 17	20 of 2002	8 Jul 2002	15 Sep 2002 (see s. 2 and <i>Gazette</i> 6 Sep 2002 p. 4487)
<i>Fire and Emergency Services Legislation Amendment Act 2002</i> s. 41	38 of 2002	20 Nov 2002	30 Nov 2002 (see s. 2 and <i>Gazette</i> 29 Nov 2002 p. 5651-2)
<i>Conservation and Land Management Amendment Act 2002</i>	43 of 2002	11 Dec 2002	11 Dec 2002 (see s. 2)
<i>Offshore Minerals (Consequential Amendments) Act 2003</i> Pt. 3	12 of 2003	17 Apr 2003	1 Jan 2011 (see s. 2 and <i>Gazette</i> 17 Dec 2010 p. 6350)
Reprint 4: The Conservation and Land Management Act 1984 as at 24 Apr 2003 (includes amendments listed above except those in the <i>Offshore Minerals (Consequential Amendments) Act 2003</i> Pt. 3)			

Short title	Number and year	Assent	Commencement
<i>Sentencing Legislation Amendment and Repeal Act 2003 s. 47</i>	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Labour Relations Reform (Consequential Amendments) Regulations 2003 r. 20 published in Gazette</i>			15 Sep 2003 (see r. 2)
<i>Economic Regulation Authority Act 2003 s. 62</i>	67 of 2003	5 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5723)
<i>Acts Amendment and Repeal (Competition Policy) Act 2003 Pt. 5</i>	70 of 2003	15 Dec 2003	21 Apr 2004 (see s. 2 and <i>Gazette</i> 20 Apr 2004 p. 1297)
<i>Statutes (Repeals and Minor Amendments) Act 2003 s. 21(2) and 39(1)-(10)</i>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
Reprint 5: The Conservation and Land Management Act 1984 as at 24 Sep 2004 (includes amendments listed above except those in the <i>Offshore Minerals (Consequential Amendments) Act 2003</i>)			
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15</i>	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)
Reprint 6: The Conservation and Land Management Act 1984 as at 9 Jun 2006 (includes amendments listed above except those in the <i>Offshore Minerals (Consequential Amendments) Act 2003</i>)			
<i>Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 7 Div. 1</i> ¹⁵⁻¹⁷	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)

Short title	Number and year	Assent	Commencement
<i>Swan and Canning Rivers (Consequential and Transitional Provisions) Act 2006 s. 6</i>	52 of 2006	6 Oct 2006	25 Sep 2007 (see s. 2 and <i>Gazette</i> 25 Sep 2007 p. 4835)
<i>Financial Legislation Amendment and Repeal Act 2006 s. 4 and Sch. 1 cl. 29</i>	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Petroleum Amendment Act 2007 s. 92</i>	35 of 2007	21 Dec 2007	19 Jan 2008 (see s. 2(b) and <i>Gazette</i> 18 Jan 2008 p. 147)
<i>Water Resources Legislation Amendment Act 2007 s. 191</i>	38 of 2007	21 Dec 2007	1 Feb 2008 (see s. 2(2) and <i>Gazette</i> 31 Jan 2008 p. 251)
Reprint 7: The Conservation and Land Management Act 1984 as at 4 Apr 2008 (includes amendments listed above except those in the <i>Offshore Minerals (Consequential Amendments) Act 2003</i>)			
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 34</i>	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
<i>Acts Amendment (Bankruptcy) Act 2009 s. 19</i>	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))
<i>Standardisation of Formatting Act 2010 s. 4, 44(3) and 51</i>	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Public Sector Reform Act 2010 s. 89</i>	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
<i>Conservation Legislation Amendment Act 2011 Pt. 2 (other than s. 40)</i>	36 of 2011	13 Sep 2011	14 Mar 2012 (see s. 2(b) and <i>Gazette</i> 13 Mar 2012 p. 1033)
<i>Personal Property Securities (Consequential Repeals and Amendments) Act 2011 Pt. 6 Div. 1</i>	42 of 2011	4 Oct 2011	30 Jan 2012 (see s. 2(c) and Cwlth Legislative Instrument No. F2011L02397 cl. 5 registered 21 Nov 2011)
Reprint 8: The Conservation and Land Management Act 1984 as at 11 May 2012 (includes amendments listed above)			

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Conservation Legislation Amendment Act 2011</i> s. 40 ¹⁸	36 of 2011	13 Sep 2011	To be proclaimed (see s. 2(b))
<i>Water Services Legislation Amendment and Repeal Act 2012</i> s. 207 ¹⁹	25 of 2012	3 Sep 2012	To be proclaimed (see s. 2(b))

² The *Land Act 1933* was repealed by the *Land Administration Act 1997* s. 281.

³ The *Forests Act 1918* was repealed by s. 147(1) of this Act.

⁴ The *Acts Amendment (Marine Reserves) Act 1997* s. 7(2) reads as follows:

- (2) The application of section 6(6) of the principal Act [the *Conservation and Land Management Act 1984*] as amended by subsection (1)(d) extends to any waters or land reserved as or for the purpose of a marine nature reserve or marine park before the commencement of this section.

⁵ The *National Parks Authority Act 1976* was repealed by s. 147(1) of this Act.

⁶ The *Acts Amendment (Marine Reserves) Act 1997* s. 8(3) reads as follows:

- (3) To avoid doubt it is declared that section 7(5) of the principal Act [the *Conservation and Land Management Act 1984*], as inserted by subsection (1), applies to marine nature reserves and marine parks which, immediately before the commencement of this Act, were vested in the National Parks and Nature Conservation Authority, whether so vested under the principal Act or under the *Land Act 1933*.

⁷ The *Wildlife Conservation Act 1950* s. 10 was repealed by the *Acts Amendment (Conservation and Land Management) Act 1984* s. 6.

⁸ The *Public Service Act 1978* was repealed by the *Public Sector Management Act 1994* s. 110.

⁹ The *Conservation and Land Management Amendment Act 1991* s. 51 had not come into operation when it was deleted by the *Statutes (Repeals and Miscellaneous Amendments) Act 2009* s. 35(2).

¹⁰ The *Conservation and Land Management Amendment Act 1992* s. 18 reads as follows:

18. Validation

Every contract entered into by the Executive Director before the commencement of this Act that would have been lawful if the amendments to the principal Act effected by this Act had been in force at the time when it was entered into is declared to have been lawfully entered into and any act or thing done under such a contract is declared to have been lawfully done.

¹¹ The *Conservation and Land Management Amendment Act 1993* s. 10 reads as follows:

10. Validity of past acts

Anything done under the principal Act before the commencement of this Act is declared to be and to have always been as valid and effective as it would have been if, at the time when it was done, this Act had come into operation.

¹² The amendments in section 15(1)(a) and (9) do not have effect because the relevant provisions were amended by the *Acts Amendment (Marine Reserves) Act 1997*.

¹³ The *Conservation and Land Management Amendment Act 2000* s. 5 was repealed by the *Statutes (Repeals and Minor Amendments) Act 2003* s. 39(11).

¹⁴ The *Conservation and Land Management Amendment Act 2000* Sch. 1 reads as follows:

Schedule 1 — Transitional provisions

[s. 51]

1. Definitions

In this Schedule —

Authority has the meaning given in section 3 of the CALM Act, as enacted immediately before the commencement of this Act;

CALM Act means the *Conservation and Land Management Act 1984*;

Commission has the meaning given in section 3 of the CALM Act, as enacted immediately before the commencement of this Act;

Conservation Commission means the Conservation Commission of Western Australia established by section 18 of the CALM Act, as amended by this Act;

Council has the meaning given in section 3 of the CALM Act, as enacted immediately before the commencement of this Act;

Executive Director has the meaning given in section 3 of the CALM Act;

forest produce has the meaning given in section 3 of the CALM Act;

forest products has the same meaning as it has in the Forest Products Act;

Forest Products Act means the *Forest Products Act 2000*;

Forest Products Commission means the Forest Products Commission established by the Forest Products Act;

harvesting has the same meaning as it has in the Forest Products Act;

Minister means the Minister responsible for the administration of the CALM Act.

2. Certain contracts under CALM Act for sale of forest products have effect as if entered into by Forest Products Commission

- (1) A contract for the sale of forest produce entered into under section 88(1)(b)(i) of the CALM Act that is in effect immediately before the commencement of this Act has effect as if it had been entered into by the Forest Products Commission instead of the Executive Director.
- (2) Subclause (1) applies only to the extent that the contract relates to the sale of forest products and to matters associated with that sale.
- (3) The terms and conditions of a contract referred to in subclause (1), including the provisions of Part VIII Division 1 of the CALM Act, continue to have effect, but the Commission may negotiate variations to the contract to ensure that the provisions of the contract are consistent with the relevant management plan and amendments to the CALM Act that come into operation on the commencement of this Act.
- (4) A contract referred to in subclause (1) has no effect after the relevant management plan has expired.
- (5) The CALM Act, as enacted immediately before the commencement of this Act, continues to have effect on and after

that commencement for the purposes of a contract referred to in subclause (1), except that the references in sections 91(2), 92(5)(b), 93, 94(1) and 95(2)(b) of that Act to the Executive Director are taken to be references to the Forest Products Commission.

- (6) Subclause (5) ceases to apply to a contract referred to in subclause (1) if the contract is varied under subclause (3).

3. Certain contracts under CALM Act for harvesting of forest products have effect as if entered into by the Forest Products Commission

- (1) A contract entered into under section 88(1)(b)(ii) or section 88(1a) of the CALM Act that is in effect immediately before the commencement of this Act has effect as if it had been entered into by the Forest Products Commission instead of the Executive Director.
- (2) Subclause (1) applies only to the extent that the contract relates to the harvesting of forest products and to matters associated with that harvesting.
- (3) The terms and conditions of a contract referred to in subclause (1), including the provisions of Part VIII Division 1 of the CALM Act, continue to have effect but the Commission may negotiate variations to the contract to ensure that the provisions of the contract are consistent with the relevant management plan and amendments to the CALM Act that come into operation on the commencement of this Act.

4. Transfer of rights and obligations under certain timber sharefarming agreements under CALM Act

- (1) A timber sharefarming agreement referred to in section 34B of the CALM Act that is in effect immediately before the commencement of this Act has effect as if any rights, obligations or powers held by, or imposed or conferred on, the Executive Director under that agreement were rights, obligations or powers held by, or imposed or conferred on, the Forest Products Commission.
- (2) A timber sharefarming agreement referred to in subclause (1) entered into by the Executive Director as agent of another person has effect as if the agreement were entered into by the Forest Products Commission as agent of that person.

5. Transfer of rights and obligations under other agreements

- (1) Subject to clauses 2, 3 and 4, an agreement that is in effect immediately before the commencement of this Act that provides

for any rights, obligations or powers to be held by, or to be imposed or conferred on, the Executive Director under the agreement as to the harvesting, sale or supply of timber or other forest produce has effect as if the rights, obligations or powers were held by, or imposed or conferred on, the Forest Products Commission.

- (2) An agreement referred to in subclause (1) entered into by the Executive Director as agent of another person has effect as if the agreement were entered into by the Forest Products Commission as agent of that person.
- (3) Subclauses (1) and (2) apply only to the extent that the agreement concerned relates to the harvesting, sale or supply of forest products and to matters associated with that harvesting, sale or supply.

6. Transfer of positions

- (1) The Minister, by order published in the *Gazette* within 4 weeks of the commencement of this Act, is to determine the positions, the functions or duties of which related, immediately before the commencement of this Act, to performing duties relating exclusively or primarily to —
 - (a) the negotiation, preparation, administration and enforcement of contracts for the sale of things that are forest products;
 - (b) the negotiation, preparation, administration and enforcement of contracts under section 88(1a) of the CALM Act in relation to things that are forest products;
 - (c) the making of arrangements in relation to timber sharefarming agreements referred to in section 34B of the CALM Act;
 - (d) the establishment or maintenance of plantations of forest products, plant nurseries for the production of forest products, or seed or propagation orchards of forest products;
 - (e) the undertaking of research into the management and production of forest products in plantations; or
 - (f) the undertaking of research into the use of forest products.
- (2) The Minister, by order published in the *Gazette* within 4 weeks of the commencement of this Act, may determine the positions (other than the positions determined under subclause (1)) —
 - (a) the functions or duties of which related, immediately before the commencement of this Act, to the provision of

- administrative, policy or corporate services for the purposes of the performance of the duties referred to in subclause (1); and
- (b) that the Minister considers appropriate for transfer to the Forest Products Commission.
- (3) On the publication of an order under subclause (1) or (2) a position referred to in the order is transferred to the Forest Products Commission.
- (4) A person holding a position when it is transferred to the Forest Products Commission is to be regarded as having been engaged under section 39 of the Forest Products Act.
- (5) Except as otherwise agreed by a person referred to in subclause(4), the remuneration, existing or accrued rights (including the right to be employed for an indefinite period in the Public Service), rights under a superannuation scheme or terms, conditions or continuity of service of the person are not affected, prejudiced or interrupted by the operation of subclauses (3) and (4).
- (6) If a person referred to in subclause (4) was a contributor as defined in the *Superannuation and Family Benefits Act 1938* immediately before becoming a Commission employee, the person may continue to be a contributor under that Act after becoming a Commission employee.
- (7) For the purposes of subclause (6), the Forest Products Commission —
- (a) is a department as defined by the *Superannuation and Family Benefits Act 1938*; and
- (b) is to pay to the Board under that Act payments of the kind described in paragraph (i) of the proviso to the definition of **department** in section 6 of that Act.
- (8) If a transferred employee ceases to be a Commission employee, he or she is entitled to employment as a public service officer in the Department at the same level of classification as he or she held immediately before becoming a Commission employee.
- (9) A person does not have an entitlement under subclause (8) if his or her employment as a Commission employee was terminated, or he or she was dismissed, for substandard performance, breach of discipline or misconduct.
- (10) Subclause (8) does not prevent the subsequent operation of Part 6 of the *Public Sector Management Act 1994* in relation to a person who is employed in the Department under an entitlement under subclause (8).

- (11) When a person ceases to be a Commission employee and becomes a public service officer under an entitlement under subclause (8), his or her service as a Commission employee is to be regarded as service in the Public Service for the purposes of determining his or her rights as a public service officer and for the purposes of the *Superannuation and Family Benefits Act 1938*.
- (12) If no suitable vacancy is available to meet a person's entitlement under subclause (8), circumstances attracting the operation of Part 6 of the *Public Sector Management Act 1994* are to be regarded as having arisen in relation to the person.
- (13) In this clause —
Commission employee means a member of the staff of the Forest Products Commission;
transferred employee means a person referred to in subclause (4) who, immediately before becoming a Commission employee, was employed for an indefinite period in the Public Service.

7. Reserves and other land vested in the Commission or Authority

- (1) The care, control and management of a reserve that, immediately before the commencement of this Act, are placed under the *Land Administration Act 1997* with the Commission or the Authority (*the original placement*) are, on that commencement and by this subclause, placed under that Act with the Conservation Commission subject to any interests or conditions that applied to the original placement.
- (2) The care, control and management of a reserve vested under a written law (other than the CALM Act) in the Commission or the Authority immediately before the commencement of this Act (*the original vesting*) are, on that commencement and by this subclause, placed under the *Land Administration Act 1997* with the Conservation Commission subject to any interests or conditions that applied to the original vesting.
- (3) Land that is vested in the Commission under section 7 of the CALM Act immediately before the commencement of this Act (*the original vesting*) is, on that commencement, vested under that section in the Conservation Commission subject to any interests or conditions that applied to the original vesting.
- (4) Land that is vested in the Authority, either solely or jointly with another body or other bodies, under section 7 of the CALM Act immediately before the commencement of this Act (*the original vesting*) is, on that commencement, vested under that section in the Conservation Commission, either solely or jointly with another

body or other bodies, subject to any interests or conditions that applied to the original vesting.

8. Management plans

A management plan prepared by the Commission or the Authority under Part V of the CALM Act that is in effect immediately before the commencement of this Act has effect as if it had been prepared by the Conservation Commission under that Part as amended by this Act.

9. Members of Commission, Authority and Council

A person who holds office as a member of the Commission, the Authority or the Council immediately before the commencement of this Act ceases to hold that office on that commencement but, subject to the CALM Act as amended by this Act, is eligible to be appointed as a member of the Conservation Commission.

10. Certain regulations under CALM Act taken to have been made under Forest Products Act

- (1) Regulations made under the CALM Act to which this subclause applies that are in effect immediately before the commencement of this Act have effect as if they had been made under section 70 of the Forest Products Act.
- (2) Subject to subclause (3), subclause (1) applies to regulations that relate to —
 - (a) the registration of timber workers;
 - (b) identification codes for persons who fell trees in State forests or timber reserves;
 - (c) log delivery notes;
 - (d) the receiving by sawmills of log timber felled in State forests or timber reserves;
 - (e) the determination of the quantity of log timber felled in State forests or timber reserves;
 - (f) records made of log timber felled in State forests or timber reserves and received at sawmills;
 - (g) the sale by public auction or tender of forest produce;
 - (h) the powers of forest officers in relation to forest produce;
 - (i) the provision of statistical information relating to forest produce taken from State forests or timber reserves;
 - (j) the minimizing of damage to, and destruction of, forest produce in State forests or timber reserves caused by the holders of licences, permits or contracts;

- (k) the unauthorised destruction, cutting, injuring or removing of or interfering with seized forest produce;
 - (l) the exporting of karri timber;
 - (m) the making of false or misleading statements or representations, or the production of forged or counterfeit documents, for the purpose of procuring the registration of a person or an identification code;
 - (n) the form and amendment of registers and the obtaining of copies of extracts from registers;
 - (o) the provision of information relating to, and copies of, permits, licences or contracts;
 - (p) fees; and
 - (q) appeals relating to the registration of a person or an identification code.
- (3) If subclause (1) applies to a regulation that relates to forest produce, that subclause only has effect to the extent that the regulation relates to forest products.
 - (4) Regulations may be made under Part X of the CALM Act to amend, repeal or repeal and replace regulations to which subclause (1) applies.

11. Registration of documents

The Registrar of Titles is to take notice of the provisions of this Schedule and is empowered to record and register in the appropriate manner any necessary documents, and otherwise to give effect to this Schedule.

12. Transitional regulations

- (1) If there is no sufficient provision in this Act for dealing with a transitional matter, the Governor may make regulations prescribing all matters that are required, or are necessary or convenient, for dealing with that transitional matter.
- (2) Regulations made under subclause (1) may have effect before the day on which they are published in the *Gazette*.
- (3) To the extent that a regulation made under subclause (1) may have effect before the day of its publication in the *Gazette*, it does not —
 - (a) affect in a manner prejudicial to any person (other than the State, the Executive Director, the Forest Products Commission or the Conservation Commission), the rights of that person existing before the day of its publication; or

- (b) impose liabilities on any person (other than the State, the Executive Director, the Forest Products Commission or the Conservation Commission) in respect of anything done or omitted to be done before the day of its publication.
- (4) In subclause (1) —
transitional matter means a matter that needs to be dealt with for the purpose of effecting the transition from the CALM Act, as enacted immediately before the commencement of this Act, to —
 - (a) the CALM Act as amended by this Act; or
 - (b) the Forest Products Act.

13. Saving

The operation of any provision of this Schedule is not to be regarded —

- (a) as a breach of contract or confidence or otherwise as a civil wrong;
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of property, rights or liabilities or the disclosure of information;
- (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 property, right or liability;
- (d) as causing any contract or other instrument to be void or otherwise unenforceable; or
- (e) as releasing or allowing the release of any surety.

¹⁵ The *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 7 Div. 7 reads as follows:

Division 7 — Transitional provisions

224. Conservation and Land Management Act 1984

- (1) A thing done or omitted to be done before commencement by, to or in relation to the Executive Director (other than as the body corporate referred to in section 38 of the *Conservation and Land Management Act 1984* as in force before commencement) under, or for the purposes of, an enactment has the same effect after commencement, to the extent that it has any force or significance

after commencement, as if it had been done or omitted by, to or in relation to the CEO under, or for the purposes of, that enactment.

- (2) The Conservation and Land Management Executive Body established by section 36 of the *Conservation and Land Management Act 1984* (as in force after commencement) is a continuation of, and the same legal person as, the body corporate referred to in section 38 of that Act (as in force before commencement).
- (3) Land placed under the management of the Department under section 33(2) of the *Conservation and Land Management Act 1984* before commencement is to be taken to have been placed, on commencement, under the management of the CEO under that Act.
- (4) The Registrar of Titles or the Registrar of Deeds and Transfers may make any entry in, or any endorsement or notation on, the title, land register or other record in respect of land that is necessary because of subsection (3).
- (5) A reference in a written law or any other instrument to land under the management of the Department under the *Conservation and Land Management Act 1984* is to be read as a reference to land under the management of the CEO.
- (6) A reference in a written law or any other instrument to the Director of Nature Conservation, the Director of Forests or the Director of National Parks is to be read as a reference to the CEO.
- (7) In this section —
CEO has the meaning given by section 3 of the *Conservation and Land Management Act 1984* as in force after commencement;
commencement means the time at which section 183 comes into operation;
Executive Director means the Executive Director referred to in section 36 of the *Conservation and Land Management Act 1984* as in force before commencement,
and, unless the contrary intention appears, other words and expressions in this section have the same respective meanings as they have in the *Conservation and Land Management Act 1984*.

¹⁶ The requirement to appoint an Executive Director was removed from the Act and references to the Executive Director were replaced by references to the CEO, see the *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 7 Div. 1. Section 454 of that Act is a general transitional provision that applies to references to the Executive Director in written laws.

- ¹⁷ The requirement to establish the Department of Conservation and Land Management was removed from the Act, see the *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 7 Div. 1. Section 453 of that Act is a general transitional provision that applies to references to the Department of Conservation and Land Management in written laws.
- ¹⁸ On the date as at which this compilation was prepared, the *Conservation Legislation Amendment Act 2011* s. 40 had not come into operation. It reads as follows:

Part 2 — *Conservation and Land Management Act 1984* amended

40. Sections 103A and 103B inserted

At the end of Part IX Division 1 insert:

103A. Aboriginal persons may do things for customary purposes

(1) In this section —

Aboriginal customary purpose means —

- (a) preparing or consuming food customarily eaten by Aboriginal persons; or
- (b) preparing or using medicine customarily used by Aboriginal persons; or
- (c) engaging in artistic, ceremonial or other cultural activities customarily engaged in by Aboriginal persons; or
- (d) engaging in activities incidental to a purpose stated in paragraph (a), (b) or (c);

exclusive native title holder, for an area in relation to which exclusive native title exists, means —

- (a) the registered native title body corporate (as defined in section 253 of the NT Act) in respect of the native title rights and interests concerned; or
- (b) if there is no such body corporate, each person who holds the native title rights and interests concerned or a person acting with the authority of each such person;

managed land means any land, waters or any land and waters, that are the subject of a management plan;

protected thing means any flora, fauna, forest produce or other naturally occurring thing, the taking or removal of which from

land to which this Part applies is prohibited or restricted by this Act;

relevant act, on land to which this Part applies, means —

- (a) entering the land;
- (b) driving or riding a vehicle or navigating a vessel on the land;
- (c) bringing an animal on to the land;
- (d) camping temporarily on the land;
- (e) lighting or kindling a fire on the land;
- (f) taking or removing a protected thing on the land;

take, in relation to fauna, includes the following —

- (a) to capture, injure, interfere with and kill fauna;
- (b) to attempt to do any such act;
- (c) to hunt fauna even though no fauna is captured, injured or killed;
- (d) to cause or permit any such act to be done;

take, in relation to any protected thing other than fauna, includes the following —

- (a) to cut, damage, destroy, dig up, gather, pick and uproot the thing;
- (b) to attempt to do any such act;
- (c) to cause or permit any such act to be done;

vehicle has the meaning given in section 81.

- (2) This section does not affect the operation of the *Wildlife Conservation Act 1950*.
- (3) It is a defence to a charge of an offence against this Act that is alleged to have been committed on land to which this Part applies and that is constituted by a relevant act on the land to prove —
 - (a) the accused is an Aboriginal person; and
 - (b) the accused did the relevant act for an Aboriginal customary purpose; and
 - (c) in doing the relevant act the accused complied with any regulations that restrict or exclude the operation of this subsection; and
 - (d) if the offence is alleged to have been committed in an area in relation to which exclusive native title exists, the accused either —
 - (i) held the exclusive native title alone or with other persons; or

- (ii) did the relevant act with the consent of the exclusive native title holder;
 - and
 - (e) if the offence is alleged to have been committed on section 8A land, the accused, under the relevant section 8A agreement, was permitted to do the act on the land for an Aboriginal customary purpose.
- (4) If, but for this subsection, the defence provided by subsection (3) would entitle an Aboriginal person to do an act that is inconsistent with the continued existence, enjoyment or exercise of any native title rights and interests (as defined in section 223 of the NT Act) held by another Aboriginal person, the defence does not apply to that act.
- (5) An Aboriginal person who takes or removes a protected thing for an Aboriginal customary purpose must not sell the thing, or any part of it, unless, under the regulations, the sale is excepted or the person is authorised or licensed to do so.
Penalty: a fine of \$4 000.
- (6) Regulations made under Part X —
- (a) may, by reference to time, place, protected thing, circumstances or class of person, or to a combination of them, restrict or exclude the operation of subsection (3); and
 - (b) may restrict or exclude the operation of subsection (3) in relation to the taking or removal of protected things by reference to any of, or a combination of, the following —
 - (i) the kind of protected thing taken or removed;
 - (ii) the class of person taking or removing the protected thing;
 - (iii) the time of taking or removal;
 - (iv) the place of taking or removal;
 - (v) the manner of taking or removal;
 - (vi) the quantity of a protected thing taken or removed;
 - (vii) the circumstances of the taking or removal,but must not restrict or exclude the operation of subsection (3) in respect of managed land except for a purpose that is consistent with the management plan for the land.

103B. People acting under s. 8A agreements, defence for

It is a defence to a charge of an offence against this Act alleged to have been committed on section 8A land to prove —

- (a) the accused was a party to the relevant section 8A agreement or was acting with the authority of such a party; and
- (b) the agreement authorised the party to do the act or make the omission constituting the offence.

¹⁹ On the date as at which this compilation was prepared, the *Water Services Legislation Amendment and Repeal Act 2012* s. 207 had not come into operation. It reads as follows:

207. Conservation and Land Management Act 1984 amended

- (1) This section amends the *Conservation and Land Management Act 1984*.
- (2) In section 3 in the definition of **public water catchment area**:
 - (a) in paragraph (b)(ii) delete “1909; or” and insert:

1909;
 - (b) delete paragraph (b)(iii).
- (3) In section 53 in the definition of **relevant water utility** delete paragraph (b) and insert:
 - (b) a licence under the *Water Services Act 2012*.

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
Aboriginal person.....	3
agency	26D(7)
agreed area	8A(1)
alienated land	8A(1)
amendment Act	143(1)
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