

Western Australia

**Conservation and Land Management Act  
1984**

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# Conservation and Land Management Act 1984

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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*<sup>1</sup>.

**2. Commencement**

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

**3. Interpretation**

In this Act, unless the contrary intention appears —

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

**“associated body”**, in relation to a nature reserve, means a body in which the nature reserve is, by section 7(4), vested jointly with the Conservation Commission or jointly with the Conservation Commission and some other person;

**“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;
- (b) diversity of ecosystems; and
- (c) diversity of other biodiversity components;

**“biodiversity components”** includes habitats, ecological communities, genes and ecological processes;

**“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”** has the meaning assigned to it by sections 6(4) and 16B(3);

**“Department”** means the Department of Conservation and Land Management referred to in section 32;

**“Director of Forests”** means the person holding, or acting in, the office referred to in section 42(b);

**“Director of National Parks”** means the person holding, or acting in, the office referred to in section 42(c);

**“Director of Nature Conservation”** means the person holding, or acting in, the office referred to in section 42(a);

**“Executive Director”** means Executive Director of the Department referred to in section 36(1);

**“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;

**“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*;

**“Fund”** means the Conservation and Land Management Fund referred to in section 65;

**“land”** includes —

- (a) tidal land;
- (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;

**“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”** has the meaning assigned to it by sections 6(6) and 16B(3);

**“marine nature reserve”** has the meaning assigned to it by sections 6(6) and 16B(3);

**“marine park”** has the meaning assigned to it by sections 6(6) and 16B(3);

**“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 Mines”** means the Minister to whom the administration of the *Mining Act 1978*, the *Petroleum 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;

**“national park”** has the meaning assigned to it by sections 6(3) and 16B(3);

**“nature reserve”** has the meaning assigned to it by sections 6(5) and 16B(3);

**“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 Water and Rivers Commission under that Act;
- (b) a catchment area or water reserve constituted by order in council or proclamation under —
  - (i) the *Country Areas Water Supply Act 1947*;
  - (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);

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

**“State forest”** has the meaning assigned to it by sections 6(1) and 16B(3);

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

**“timber reserve”** has the meaning assigned to it by sections 6(2) and 16B(3);

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

**“Water and Rivers Commission”** means the Water and Rivers Commission established by section 4 of the *Water and Rivers Commission Act 1995*;

**“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. 74 of 2003 s. 39(2).]*

**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 *Petroleum 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 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.

*[Section 4 amended by No. 66 of 1992 s. 4; No. 5 of 1997 s. 5; No. 31 of 1997 s. 141.]*

## **Part II — Land to which this Act applies**

### **Division 1 — Categories of land**

#### **5. Specification of land to which this Act applies**

(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;
- (b) timber reserves;
- (c) national parks;
- (ca) conservation parks;
- (d) nature reserves;
- (e) marine nature reserves;
- (f) marine parks;
- (fa) marine management areas;
- (g) any other land reserved under the *Land Act 1933*<sup>2</sup> 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.

(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).]*

**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*<sup>3</sup>;
  - (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*<sup>3</sup>;
  - (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.

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**Part II** Land to which this Act applies

**Division 1** Categories of land

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- (3) National parks, for the purposes of this Act, comprise all lands that —
- (a) by section 7(3) are vested in the Conservation Commission;
  - (b) after the commencement of this Act are reserved under Part III of the *Land Act 1933*<sup>2</sup>, 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*<sup>2</sup>, 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;
  - (b) after the commencement of this Act are reserved under Part III of the *Land Act 1933*<sup>2</sup>, 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;

- (b) all land reserved under Part III of the *Land Act 1933*<sup>2</sup>, 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;
- (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 metres; and
- (f) in the case of land other than waters, the subsoil below such land to a depth of 200 metres.

[Section 6 inserted by No. 20 of 1991 s. 6; amended by No. 5 of 1997<sup>4</sup> s. 7; No. 31 of 1997 s. 15(2) and (3); No. 35 of 2000 s. 50.]

## **7. Vesting**

- (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*<sup>2</sup>, 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*<sup>2</sup>, in; or

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**Part II** Land to which this Act applies

**Division 1** Categories of land

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- (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*<sup>5</sup> 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*<sup>2</sup>, 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*<sup>2</sup>, 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 1997<sup>6</sup> 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).]*

### **Division 2 — State forest and timber reserves**

#### **8. Reservation of State forests**

- (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. Restriction on abolition of State forest**

- (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).

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**Part II** Land to which this Act applies

**Division 2** State forest and timber reserves

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- (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 Executive Director 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.]*

**10. Reservation of timber reserves**

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. Meaning of “Crown land” in sections 8 and 10**

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*<sup>2</sup> 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. Repealed by No. 20 of 1991 s. 10.]*

### **Division 3 — Marine reserves**

#### **13. Reservation of marine nature reserves and marine parks**

- (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) and (3) repealed]*

- (3a) The Minister shall consult the Swan River Trust established by the *Swan River Trust Act 1988* before any waters that are in the management area 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).

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- (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.]*

**13A. Purpose of marine nature reserves**

- (1) The reservation of a marine nature reserve shall be for —
  - (a) the conservation and restoration of the natural environment;
  - (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 under the *Petroleum Act 1967* or 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.]*

**13B. Purpose of marine parks**

- (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;
  - (b) a sanctuary area;

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- (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;
  - (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;
- (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;
  - (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;
  - (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 under the *Petroleum Act 1967* or 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;
- (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.]*

### **13C. Purpose of marine management areas**

- (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;
  - (b) mining, within the meaning of the *Mining Act 1978*;
  - (c) seismic surveys and exploratory drilling for petroleum; and
  - (d) production of petroleum, 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 Act 1967* or the *Petroleum (Submerged Lands) Act 1982*; and
  - (b) other activities authorised by those Acts,
- may be carried out, in accordance with those Acts, in a marine management area.

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

**13D. Preservation of certain licences and other instruments relating to fishing and pearling**

- (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. Preservation of licences and other instruments relating to petroleum and provision for further rights**

(1) In this section —

**“drilling reservation”** means a drilling reservation within the meaning of the *Petroleum 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 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;
  - (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).]*

**13F. Operation of Environmental Protection Act**

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. Opportunity for public submissions**

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

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- (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 Executive Director causing the publication —
- (a) in the *Gazette*;
  - (b) in 2 issues of a daily newspaper circulating throughout the State;
  - (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;
  - (f) specifying the purpose for which the reserve, park or management area is proposed to be constituted;
  - (g) specifying whether or not the proposed order under section 13(1) will classify the reserve, park or management area as Class A;
  - (h) specifying the places at which —
    - (i) a copy of a map of the proposed reserve, park or management area may be inspected;
    - (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;
  - (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.
- (2d) Sections 55(1) and (3) and 56(1)(da) and (db) apply to the preparation of an indicative management plan.

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- (3) (a) 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.
- (b) Notwithstanding subsection (4) each local government notified pursuant to paragraph (a) 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.]*

#### **Division 4 — Other procedures**

### **15. Power to purchase or compulsorily take land**

- (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 Minister administering the *Land Administration Act 1997* to —

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- (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).]*

**16. Agreements for management of private land**

- (1) The Executive Director may enter into agreements with the owner, lessee or licensee of any land for the management of the land by the Department as a State forest, timber reserve, national park, conservation park or nature reserve or as part of a marine reserve, or for some other public purpose, under this Act.
- (2) The Executive Director shall not enter into any agreement under this section with the lessee or licensee of any land unless the owner, and any person occupying the land with the consent of the owner, has given approval in writing to the agreement.
- (3) The Executive Director shall not enter into any agreement under this section until notice of the proposed agreement is given to the local government of each district within which the land is situated, and each local government so notified is given a reasonable time to prepare written submissions on the proposal.
- (4) Written submissions prepared by a local government on the proposal shall be delivered or posted to an address designated by the Executive Director.



*[Section 16 amended by No. 20 of 1991 s. 13; No. 14 of 1996 s. 4; No. 5 of 1997 s. 13.]*

**16A. Agreements for management of pastoral leases**

- (1) Section 16(1) extends, notwithstanding the *Land Administration Act 1997*, to an agreement with the lessee of a pastoral lease under that Act but any such agreement is of no effect unless the Minister to whom the administration of that Act is committed has given approval in writing to the agreement.
- (2) Land that is the subject of an agreement referred to in subsection (1) remains available for use by the lessee for grazing purposes in terms of his lease, except to the extent that the agreement otherwise provides.

*[Section 16A inserted by No. 20 of 1991 s. 14; amended by No. 31 of 1997 s. 141.]*

**16B. Further provisions as to agreements referred to in sections 16 and 16A**

- (1) An agreement referred to in section 16 or 16A shall not be made so as to bind the Executive Director to do anything in relation to any land that is inconsistent with or contrary to a management plan for that land or with the provision of section 56 relevant to land of the category to which that land belongs.
- (2) Section 7(1), (2), (2a) and (5) do not apply to land to which an agreement referred to in section 16 or 16A relates.
- (3) Land that is agreed to be managed as, or as part of, one of the categories of land referred to in section 16(1) is deemed to be within the definition of that category of land in section 6, except for the purposes of sections 9, 17 and paragraph (b) of the definition of “Crown land” in section 87(1).

*[Section 16B inserted by No. 20 of 1991 s. 14; amended by No. 35 of 2000 s. 8.]*

**Division 5 — Cancellation etc. of purpose**

**17. Cancellation and amendment of purpose**

- (1) Nothing in this section applies to —
- (a) State forest;
  - (b) conservation parks;
  - (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 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;
  - (b) declines to approve it;
  - (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 management area of the Swan River Trust within the meaning of the *Swan River Trust Act 1988* 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 Minister administering the *Land Administration Act 1997* 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).]*

### **Division 6 — Maps**

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

#### **17A. Maps to be deposited in Department**

- (1) A map of every —
- (a) timber reserve;
  - (b) national park;
  - (c) conservation park;
  - (d) nature reserve;
  - (e) marine nature reserve;
  - (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.
- (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
  - (b) plans of survey may be prepared, under the direction of an authorised land officer with the approval of the Executive Director, 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.]*

## **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. Conservation Commission established**

- (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 of Conservation Commission**

- (1) The functions of the Conservation Commission are —
  - (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;
  - (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;

- (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);
- (d) to advise the Minister on the development of policies for the conservation and management of biodiversity and biodiversity components throughout the State;
- (e) to consider, in accordance with section 17, any cancellation, change of purpose or boundary alteration in respect of land vested, whether solely or jointly with an associated body, in the Conservation Commission;
- (f) to submit proposed management plans to the Minister as provided in Part V in respect of land vested, whether solely or jointly with an associated body, in the Conservation Commission;
- (g) in relation to management plans for land vested, whether solely or jointly with an associated body, in the Conservation Commission —
  - (i) to develop guidelines for monitoring and assessing the implementation of the management plans by the Department;
  - (ii) to set performance criteria for assessing and auditing the performance of the Department and the Forest Products Commission in carrying out and complying with the management plans; and
  - (iii) to assess and audit the performance of the Department and the Forest Products Commission in carrying out and complying with the management plans;
- (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;

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- (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) to provide advice, upon request, on matters relating to land and waters vested in the Conservation Commission, whether solely or jointly with an associated body, to any body or person, if the provision of the advice is in the public interest and it is practicable for the Conservation Commission to provide it; and
  - (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;
  - (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;
  - (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;
  - (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 Department under section 33.
- (4) Despite the *Land Act 1933*<sup>2</sup>, 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 or to enter into an agreement under section 16 for the management of land as 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 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;
  - (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).]*

**20. Powers of Conservation Commission**

- (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 Minister for Public Sector Management.
- (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 land the care, control and management of which are placed with, 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;
- (b) a member of the staff of the Conservation Commission;
- or

- (c) the Executive Director 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; 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 of Conservation Commission**

- (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;
    - (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. Certain person not eligible for appointment**

- (1) A person is not eligible to be appointed as, or be, a member of the Conservation Commission if the person —
- (a) holds office as the Executive Director, Director of Forests, Director of National Parks, Director of Nature Conservation or a member of the staff of the Conservation Commission or the Department;
  - (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.]*

**23. Entitlement of Executive Director and Directors to attend meetings of Conservation Commission**

- (1) Reasonable notice of a meeting of the Conservation Commission is to be given to the Executive Director 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 Executive Director is to notify the chairman as to the functions of the Directors and any changes to those functions.
- (3) Subject to subsection (5), the Executive Director, or the Executive Director'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 Department.
- (6) In this section —  
**“Director”** means the Director of Forests, Director of National Parks or Director of Nature Conservation.

*[Section 23 inserted by No. 35 of 2000 s. 10.]*

**Subdivision 3 — Relationship with the Minister**

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

**24. Minister may give 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 Department under section 33(1)(ba).

*[Section 25 inserted by No. 35 of 2000 s. 10.]*

#### **Subdivision 4 — General**

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

### **26. Consultants**

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**

(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;

(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. Execution of documents**

- (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 Conservation 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 repealed by No. 35 of 2000 s. 10.]*

**Division 3A — Marine Parks and Reserves Authority**

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

**26A. Marine Parks and Reserves Authority**

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 of Marine Authority**

- (1) The functions of the Marine Authority are —
- (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;
  - (b) to develop policies —
    - (i) to preserve the natural marine and estuarine environments of the State;
    - (ii) to provide facilities for the enjoyment of those environments by the community;
    - (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);
  - (c) to consider, in accordance with section 17, any cancellation, change of purpose or boundary alteration in respect of land and waters vested in it;
  - (d) to advise the Minister in relation to proposals for reservations for the purposes of section 14;
  - (e) to submit proposed management plans to the Minister as provided in Part V for land and waters vested in it;

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- (f) in relation to management plans for land and waters vested in the Marine Authority —
    - (i) to develop guidelines for monitoring the implementation of the management plans by the Department;
    - (ii) to set performance criteria for evaluating the carrying out of the management plans; and
    - (iii) to conduct periodic assessments of the implementation of the management plans;
  - (g) to provide advice, upon request, on matters relating to land and waters vested in it to any body or person, if the provision of advice 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; and
  - (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 Department under section 33.
- (3) Despite the *Land Act 1933*<sup>2</sup>, 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) The Marine Authority shall not advise the Minister on any matter to which this subsection applies 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) Subsection (4) applies to the following matters —
- (a) any proposal to enter into an agreement under section 16 for the management of land as a marine reserve;
  - (b) any matter to which the Minister, by written direction to the Marine Authority, applies that subsection.
- (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 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;
  - (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.]*

**26C. Minister may give 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 of Marine Authority**

- (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 Department 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 Executive Director, or the Executive Director’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 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.]

**26E. Review of Marine 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. Marine Parks and Reserves Scientific Advisory Committee**

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 of Marine Committee**

- (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;
    - (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 of Marine Committee**

- (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;
  - (b) one shall be a senior scientific officer of the Fisheries Department;
  - (c) one shall be a senior scientific officer employed and nominated by the Trustees of the Western Australian Museum under the *Museum Act 1969*;
  - (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;
  - (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

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- (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. Definition**

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**

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 Minister for Public Sector Management.

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

**31. Annual report**

- (1) Notwithstanding the provisions of the *Financial Administration and Audit Act 1985*, 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.]*

## **Part IV — Department of Conservation and Land Management**

### **Division 1 — Establishment of Department**

#### **32. Department of Conservation and Land Management**

For the purposes of this Act, there shall be established under the *Public Sector Management Act 1994* as a department of the Public Service of the State a department to be known as the Department of Conservation and Land Management.

#### **33. Functions of Department**

- (1) The functions of the Department are, subject to the direction and control of the Minister —
- (a) to manage land —
    - (i) to which this Act applies; or
    - (ii) which becomes subject to the management of the Department under subsection (2),  
and the associated forest produce, fauna and flora;
  - (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 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 Department'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;
  - (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 applicable to the land, on land vested in, or on land the care, control and management of which are placed with, the Conservation Commission 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, and in particular to be the instrument by which the administration of the *Wildlife Conservation Act 1950* is carried out by the Executive Director pursuant to section 7 of that Act;
- (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;

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- (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;
    - (ii) the conservation and protection of flora and fauna;
    - (iii) the taxonomy of flora and introduced plants; and
    - (iv) any other matter related to a function of the Department,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 Minister to whom the administration of the *Land Administration Act 1997* is committed, 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) Upon the recommendation of the Minister and the Minister referred to in subsection (1)(g), the Governor may place under the management of the Department any Crown land within the meaning of the *Land Administration Act 1997* or land —
- (a) reserved under Part 4 of that Act, but the care, control and management of which are not placed with any person under that Act; or

- (b) reserved, but not vested in any person, under any other Act.
- (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;
    - (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 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 Executive Director may enter into an agreement with another person under which the Minister and the Executive Director agree to exercise the powers under the *Wildlife Conservation Act 1950* and this Act to

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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).]*

**33A. Definitions**

- (1) In section 33(1)(cb)(i) and (3)(b) **“necessary operations”** means those that are necessary for the preservation or protection of persons, property, land, waters, flora or fauna, or for the preparation of a management plan.
- (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 Executive Director 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.]*

#### **34. Powers of Executive Director**

Subject to this Act and the *Public Sector Management Act 1994*, the Executive Director has power to do all things that are necessary or convenient to be done for, or in connection with, the performance of the functions of the Department.

#### **34A. Business undertakings**

- (1) The powers conferred by section 34 include power for the Executive Director, 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;
  - (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;

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- (c) to enter into any partnership or arrangement for sharing of profits;
  - (d) to acquire, hold and dispose of real and personal property;
  - (e) to manage, or participate in the management of, a business undertaking;
  - (f) to exercise any power conferred on or available to the Executive Director in connection with a business undertaking, including power to appoint or hold office as a director or other office-holder of a business undertaking;
  - (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.]*

**34B. Timber sharefarming agreements**

- (1) The powers conferred by sections 34 and 34A include power for the Executive Director 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 Executive Director

acting as an agent and the right to establish and maintain, or the right to maintain, the crop may be acquired —

- (i) by the Executive Director;
- (ii) by another person through the Executive Director acting as an agent; or
- (iii) by the Executive Director and by another person through the Executive Director 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 Executive Director).

- (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 Executive Director 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.

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- (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 Executive Director 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 Executive Director and does not acquire the right through the Executive Director 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 Executive Director may enter into a contract with any person for the doing by that person of anything that the Executive Director 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 Executive Director 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.]*

### **35. Department may be remunerated**

- (1) Any arrangement made by the Executive Director for the provision of advice, performance of work or supply of services or facilities by the Department may, with the approval of the Minister, provide for an agreed amount by way of payment to the Executive Director 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 Department 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.]*

**Division 2 — Executive Director**

**36. Executive Director**

- (1) A person shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* to be Executive Director of the Department.

*[(2) repealed]*

- (3) The Executive Director is the chief executive officer of the Department.

*[Section 36 amended by No. 113 of 1987 s. 32; No. 32 of 1994 s. 19; No. 35 of 2000 s. 20.]*

*[37. Repealed by No. 113 of 1987 s. 32.]*

**38. Executive Director to be body corporate**

- (1) The Executive Director is body corporate with perpetual succession and a common seal and is capable of —
- (a) acquiring holding and disposing of real and personal property;
  - (b) suing and being sued; and
  - (c) doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.
- (2) The corporate name of the Executive Director is the “Executive Director of the Department of Conservation and Land Management”.
- (3) Where a document is produced bearing a seal purporting to be the common seal of the Executive Director or bearing a signature purporting to be the signature of the Executive Director, or bearing both, it shall be presumed that the seal is the common seal, or the signature is the signature, of the Executive Director until the contrary is shown.

- (4) In subsection (1) —
- “acquiring”** has a meaning that accords with the meaning of “disposing of”;
- “disposing of”** includes selling, leasing or disposing of in any other manner that an interest in property may be disposed of.

*[Section 38 amended by No. 35 of 2000 s. 21.]*

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

### **Division 3 — Other officers and staff**

#### **42. Other senior offices**

Persons shall be appointed in the Department, under and subject to Part 3 of the *Public Sector Management Act 1994*, to the following offices —

- (a) a Director of Nature Conservation;
- (b) a Director of Forests; and
- (c) a Director of National Parks.

*[Section 42 amended by No. 32 of 1994 s. 19.]*

#### **43. Appointment of staff generally**

- (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 Executive Director 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.]*

**44. Contracts and arrangements for services**

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;
  - (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**

- (1) The Executive Director 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 Executive Director 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).]*

**46. Honorary enforcement officers**

- (1) The Executive Director 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.]*

**47. Application of *Public Sector Management Act 1994***

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. Certificate as to authority of wildlife officer, etc. to act**

- (1) The Executive Director 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;
  - (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 Executive Director.

- (3) Where a person ceases to be designated or appointed under section 45 or 46, he shall forthwith surrender the certificate to the Executive Director 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).]*

**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;
- (b) a police officer;
- (c) the Executive Director referred to in 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.]*

**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 34, 34A or 34B, the Minister may in writing approve of the Executive Director or other officer of the Department entering into any transaction or holding any right, title or interest or accepting appointment to any office on behalf of or as representative of the Department; and subsection (1)

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does not apply to the Executive Director 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.]*

**51. Auctioneers' licences not required**

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. Repealed by No. 98 of 1985 s. 3.]*

## Part V — Management of land

### Division 1 — Management plans

#### 53. Definitions

In this Division —

“**controlling body**” means the Conservation Commission or the Marine Authority;

“**land**” includes the waters comprised in a marine reserve;

“**Minister for Water Resources**” means the Minister to whom the administration of the *Water and Rivers Commission Act 1995* is committed;

“**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*.

[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.]

#### 54. Management plans to be prepared

(1) A controlling body shall be responsible —

- (a) for the preparation of proposed management plans; and
- (b) the review of expiring plans and preparation of further management plans,

for all land which is vested in it whether solely or jointly with an associated body.

(2) This Part applies to the preparation of a plan under subsection (1)(b) in the same way as it applies to the preparation of an initial management plan.

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- (3) Proposed management plans for any land shall be prepared —
- (a) by —
    - (i) the controlling body for that land through the agency of the Department;
    - (ii) if the land is State forest or a timber reserve, the Conservation Commission through the agency of the Department in consultation with the Forest Products Commission; or
    - (iii) if the land is or includes a public water catchment area, the Conservation Commission through the agency of the Department in consultation with the Water and Rivers Commission 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 Department available for the purpose.

*[Section 54 amended by No. 35 of 2000 s. 24; No. 43 of 2002 s. 5.]*

**55. Contents of management 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;

- (b) recreation;
  - (c) timber production on a sustained yield basis;
  - (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.]*

**56. Objectives of management plans**

- (1) A controlling body shall, in the preparation of proposed management plans for any land, have the objective of achieving or promoting the purpose for which the land is vested in it, or for which the care, control and management of the land are placed with it, and in particular management plans 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);
  - (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;
  - (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;

- (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;
- (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;
- (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.

*[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).]*

**57. 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*;
  - (b) in 2 issues of a daily newspaper circulating throughout the State;
  - (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 controlling 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;
- (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.]*

**58. Public submissions**

- (1) Written submissions on the proposed management plan may be made by any person —
  - (a) within a period determined by the Executive Director, 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 Executive Director.
- (2) If the proposed management plan is for State forest or a timber reserve, the Executive Director 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 Executive Director shall give a copy of any written submission on the plan to the Water and Rivers Commission and to any relevant water utility.

*[Section 58 amended by No. 35 of 2000 s. 25.]*

**59. Plans to be referred to other bodies**

- (1) The controlling 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 controlling 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 a jointly vested nature reserve referred to in section 7(4), the Conservation Commission shall submit the proposed management plan, in accordance with subsection (1), to any associated body.
- (4) If an organization or body to which the proposed plan is referred under subsection (1) or (3) considers that the controlling body should vary the plan or make any addition to or delete any provision from, the plan, it may within one month after receipt of the proposed plan under subsection (1), in writing, request the controlling body to make the variation, addition or deletion.
- (5) The Marine Authority 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 Conservation Commission shall submit a proposed management plan for State forest or a timber reserve to the Minister for Forest Products.
- (7) The Conservation Commission shall submit a proposed management plan for land that is or includes a public water catchment area to the Minister for 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 controlling 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.]*

**60. Approval by Minister**

- (1) Subject to this Part, the controlling body shall submit the proposed plan, modified as it thinks fit to give effect to submissions made under section 58 and any request under section 59(4), to the Minister for approval together with a copy of all requests so made.
- (2) Subject to subsections (2a) and (2b), the Minister may approve the proposed plan or approve it with such modifications as he thinks fit.
- (2a) If the Minister for Fisheries has made submissions to the controlling body on a proposed management plan for a marine park or a marine management area, 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; 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 controlling body on a proposed management plan for a marine

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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 related exploration or production activities or the administration of the *Mining Act 1978*, the *Petroleum 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.]*

**60A. Transitional provision**

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. Revocation and amendment**

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 Conservation Commission and, where applicable, any associated body, by notice published in the *Gazette*, classify any land that is vested in the Conservation Commission as —
- (a) a wilderness area;
  - (b) a prohibited area;
  - (c) a limited access area;
  - (d) a temporary control area;
  - (da) a forest conservation area;
  - (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 Conservation Commission, 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.

- (1aa) Subject to this section, the Minister may, on the recommendation of the Minister for Forest Products, by notice

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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;
  - (b) a general use area;
  - (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) shall only be made for the purposes of public safety or the protection of flora or fauna, or both flora and fauna, 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.

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- (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 which is relevant to, or any management plan for, that land or those waters;
  - (b) in the case of land to which section 16 applies, unless the owner, and any person occupying the land with the consent of the owner, has given approval in writing 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.]*

**62A. Amendment and cancellation of forest conservation area classification**

- (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 — Conservation and Land Management Fund**

#### **63. Revenue to be paid to Consolidated Fund**

Subject to this Part, all moneys received by the Department under this Act or the *Wildlife Conservation Act 1950* shall be credited to the Consolidated Fund.

*[Section 63 amended by No. 6 of 1993 s. 11; No. 49 of 1996 s. 64.]*

#### **64. Financial resources**

- (1) The moneys available for carrying this Act into effect shall be —
  - (a) those from time to time appropriated by Parliament for the purposes of this Act and the *Wildlife Conservation Act 1950*;
  - (b) such moneys as the Executive Director lawfully borrows or receives by way of grants or otherwise for those purposes;
  - (c) moneys derived under the *Wildlife Conservation Act 1950* and referred to in subsection (2);
  - (d) moneys from time to time derived under this Act by the Department from dealing with or the management of any land which is vested in the Conservation Commission whether solely or jointly with an associated body;
  - (da) moneys from time to time derived under this Act by the Department from dealing with or from the management of any land or waters vested in the Marine Authority;
  - (e) the proceeds of investment of any moneys referred to in section 67;
  - (f) moneys derived from the sale of the publications of the Department;

- (g) subject to any direction of the Treasurer, moneys received by the Department under section 35 for the provision of advice, performance of work or the supply of services or facilities;
  - (ga) subject to any direction of the Treasurer, moneys received by the Department or the Executive Director, as the case requires, 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;and
  - (h) gifts, devises, bequests or other donations.
- (2) The moneys mentioned in subsection (1)(c) are —
- (a) fees paid for licences referred to in sections 23C and 23D(2) of the *Wildlife Conservation Act 1950*;
  - (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 Executive Director from a nature reserve.

*[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.]*

**65. Conservation and Land Management Fund**

The moneys referred to in section 64 shall be —

- (a) credited to an account at the Treasury, forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
- (b) paid into and placed to the credit of an account at a bank approved by the Treasurer,

and the account is to be called the Conservation and Land Management Fund.

*[Section 65 inserted by No. 49 of 1996 s. 51.]*

**66. Expenditure**

- (1) Without limiting section 68(3) or 70, all expenditure incurred by the Department in carrying this Act and the *Wildlife Conservation Act 1950* into effect, including the repayment of moneys borrowed by the Executive Director in accordance with this Act and the payment of interest and charges on such moneys, shall be charged to the Fund.
- (2) The Executive Director shall in each year pay to the Treasurer such amounts, if any, as are fixed by the Treasurer as the interest and sinking fund contribution for that year in respect of such portion of the Consolidated Fund as has been applied for the purposes of this Act or the *Wildlife Conservation Act 1950*.
- (3) The Executive Director shall ensure that the moneys standing to the credit of the Fund are applied only in accordance with this Act or the *Wildlife Conservation Act 1950*.

*[Section 66 amended by No. 98 of 1985 s. 3; No. 6 of 1993 s. 15; No. 49 of 1996 s. 64.]*

**67. Investment of funds**

The Executive Director may invest any moneys standing to the credit of the Fund which are not immediately required for the purposes of this Act in such categories of investments as the Treasurer may approve.

**68. Nature Conservation and National Parks Trust Account**

- (1) There shall be established in the Fund a trust account to be called the Nature Conservation and National Parks Trust Account.

- (2) There shall be credited to that Trust Account —
  - (a) the moneys referred to in section 64(2);
  - (b) gifts, devises, bequests and donations made to that Account; and
  - (c) income derived from the investment under section 67 of money credited to that Account.
- (3) The Executive Director may apply money standing to the credit of the Trust 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.]*

**69. Other trust accounts**

- (1) There may, with the approval of the Treasurer, be established in the Fund other trust accounts for such purposes, in such terms, and comprising such moneys as may be prescribed.
- (2) Without limiting subsection (1), there shall under that subsection be established in the Fund a trust account to which shall be credited the net proceeds received by the Executive Director 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.]*

**70. Application of donations**

Where any gift, devise, bequest or donation has been made to the Fund, the Account provided for by section 68 or any other trust account upon lawful conditions which are accepted by the Executive Director, he shall apply the money representing the same in accordance with those conditions.

**Division 2 — Financial powers and borrowing**

**71. Particular financial powers**

- (1) Without limiting section 34 but subject to subsection (2), the Executive Director may for the purposes of this Act —
  - (a) obtain credit;
  - (b) provide credit (including credit to consumers in the normal course of business), whether or not security is to be furnished to the Executive Director;
  - (c) take personal property on lease;
  - (d) give, take or arrange security; and
  - (e) pay commission or brokerage.
- (2) The Treasurer may give directions to the Executive Director in relation to the exercise of the powers, or any specified power, conferred on him by subsection (1), including a direction that he shall not exercise a power without, or otherwise than in accordance with the terms and conditions of, the prior written approval of the Treasurer.
- (3) The Executive Director shall comply with any direction given to him under subsection (2).

**72. General borrowing by Executive Director**

- (1) Subject to subsection (2), the Executive Director may, with the prior approval of the Governor, borrow money for the performance by the Department of its functions under this Act.
- (2) The Executive Director shall not exercise the powers conferred by this section unless a proposal in writing showing —
  - (a) the terms and particulars of the proposed loan;
  - (b) the rate of interest to be paid on that loan;
  - (c) the purpose to which the money borrowed is to be applied; and
  - (d) the manner in which the loan is to be repaid,

shall first be submitted by him on the recommendation of the Minister to, and approved by, the Treasurer.

- (3) Any moneys borrowed by the Executive Director under this section may be raised as one loan or as several loans and in such manner as the Treasurer may approve but the amount of money so borrowed shall not in any one year exceed in the aggregate such amounts as the Treasurer approves.
- (4) For the purpose of making provision to repay either the whole or any part of any loan raised under this section, the Executive Director may, subject to this section, borrow the moneys necessary for that purpose before the loan or part of it becomes payable.

**73. Borrowing from Treasurer**

- (1) In addition to the powers conferred on him by section 72 the Executive Director may borrow from the Treasurer such amounts, for such reasons and on such conditions as to repayment and payment of interest, as the Treasurer approves.
- (2) The moneys so borrowed and the interest payable in respect thereof are a charge upon the Fund and upon the other assets vested in the Executive Director.

*[Section 73 amended by No. 98 of 1985 s. 3; No. 49 of 1996 s. 64.]*

**74. Guarantee of borrowings etc.**

- (1) The Treasurer is hereby authorised to guarantee —
  - (a) the repayment of any amount borrowed from time to time under section 72;
  - (b) the payment of rental or other charges payable on a lease under section 71(1)(c); and
  - (c) the payment of interest and such other charges in respect of such borrowings as he has approved.

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**Part VI** Financial provisions

**Division 3** Accounts and audit

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- (2) Before a guarantee is given by the Treasurer under this section, the Executive Director shall give to the Treasurer such security as the Treasurer may require and shall execute all such instruments as may be necessary for the purpose.
- (3) The Treasurer shall cause any money required for fulfilling any guarantee given by him under this section to be charged to the Consolidated Fund which, to the extent necessary, is hereby appropriated accordingly and the Treasurer shall cause any amounts received or recovered from the Executive Director or otherwise in respect of moneys so charged by him to be credited to the Consolidated Fund.

*[Section 74 amended by No. 6 of 1993 s. 11; No. 49 of 1996 s. 64.]*

**Division 3 — Accounts and audit**

**75. Application of *Financial Administration and Audit Act 1985***

The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of departments apply to and in respect of the Department of Conservation and Land Management and its operations.

*[Section 75 inserted by No. 98 of 1985 s. 3.]*

**[76-78. Repealed 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

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. Interpretation

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;
- (b) tools;
- (c) vehicles;
- (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;
- (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. Risk areas**

- (1) Where the Executive Director 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.

**83. Disease areas**

- (1) Where the Executive Director 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.

**84. Steps to be taken before Minister makes recommendation**

- (1) Where pursuant to section 82(1) or 83(1) the Executive Director 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 Department, the Executive Director 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).]*

**85. Extension, reduction or abolition of risk and disease areas**

- (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 tenements in risk 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 1 — State forests, timber reserves, and certain  
Crown land**

**87. Definitions**

(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;
- (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) Notwithstanding anything in subsection (1) or section 11, the Governor may by order declare to be Crown land, for the purposes of this Division, any land which is —
- (a) reserved under Part 4 of the *Land Administration Act 1997* but the care, control and management of which are not placed with any person under that Act; and
  - (b) placed under the management of the Department under section 33(2).

*[Section 87 amended by No. 66 of 1992 s. 7; No. 31 of 1997 s. 15(18); No. 35 of 2000 s. 31.]*

**87A. Restriction on exercise of powers**

- (1) Subject to subsection (2), the powers conferred on the Executive Director by this Division are exercisable only —
- (a) with the approval of the Minister;
  - (b) in the case of land vested in the Conservation Commission, after consultation with the Conservation Commission;
  - (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;
  - (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

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

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

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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;
- (b) the entering into under this Division of certain kinds of contracts or certain numbers of contracts;
- (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.]*

**88. Permits and licences**

- (1) Subject to this Part, the Executive Director may —
  - (a) grant permits and licences to take; and
  - (b) contract on such terms and conditions as the Executive Director 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 Executive Director 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.

*[Section 88 amended by No. 66 of 1992 s. 8.]*

**89. Form and effect of permit under this Division**

- (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 Executive Director;
  - (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 Executive Director, to extend such roads and tramways upon Crown lands beyond the boundaries of the permit area.

**90. Form and effect of licence under this Division**

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. Terms of permits, licences, etc.**

- (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 Executive Director 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.]*

**92. Royalty on 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 without consent**

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

*[Section 93 amended by No. 66 of 1992 s. 11.]*

**94. Forest produce to be removed during currency of permit etc.**

- (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 Executive Director 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 Executive Director.

*[Section 94 amended by No. 66 of 1992 s. 12.]*

**95. Cancellation etc.**

- (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 Executive Director 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.]*

**96. Timber, etc., on mining and other leases**

*[(1)-(3) repealed]*

- (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**

- (1) The Executive Director 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 Executive Director thinks fit.
- (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.]*

**97A. Licences for use of land**

- (1) The Executive Director may grant a licence in writing to any person to enter and use any land to which this Division applies.
  - (2) The Minister, after consultation with the Conservation Commission and on the recommendation of the Executive Director, 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.
  - (3) The Executive Director 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 to which this Division applies, 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 to which this Division applies —
    - (a) the granting of the permit does not limit the operation of the *Rights in Water and Irrigation Act 1914*;
    - (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

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- (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 Executive Director 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 Executive Director 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 Executive Director 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 Executive Director may, by notice in writing to the holder, cancel the licence or permit or suspend it for such period as the Executive Director thinks fit.

*[Section 97A inserted by No. 35 of 2000 s. 36.]*

**Division 2 — Other land**

**98. Application**

- (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) land referred to in section 33(2),

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.]*

**99. Restriction on exercise of powers**

- (1) Subject to subsection (2), the powers conferred on the Executive Director by this Division are exercisable only —
  - (a) with the approval of the Minister;
  - (aa) in the case of land vested in the Conservation Commission, after consultation with the Conservation Commission and, where applicable, an associated body;
  - (ab) in the case of land vested in the Marine Authority, after consultation with the Marine Authority;
  - (ac) in the case of land that is in the management area of the Swan River Trust within the meaning of the *Swan River Trust Act 1988*, after consultation with the Swan River Trust;
  - (b) in the case of land for the management of which an agreement is entered into under section 16, consistently with the agreement;
  - (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*

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*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;

(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.]*

**99A. Restrictions on operations in national parks etc.**

(1) The Executive Director may —

(a) grant a licence to any person to take or remove exotic trees, honey, bees-wax or pollen;

(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 Executive Director 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 the Conservation Commission.



- (2) In subsection (1)(c) “**essential works**” are works that in the opinion of the Executive Director 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 Executive Director 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 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 Executive Director 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 Executive Director 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 the Conservation Commission.

*[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).]*

**100. Leases of land**

- (1) The Executive Director 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.
- (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.]*

**101. Licences for use of land**

- (1) The Executive Director 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 Executive Director, 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 Executive Director 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*;
  - (b) the permit can apply only to land vested in the Conservation Commission 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 Executive Director 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 Executive Director 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 Executive Director from time to time during the operation of the licence or permit.

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- (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 Executive Director may, by notice in writing to him, cancel the licence or permit or suspend it for such period as he thinks fit.

*[Section 101 amended by No. 5 of 1997 s. 32; No. 35 of 2000 s. 38.]*

**Division 3 — Marine reserves**

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

**101A. Definition**

In this Division —

“**take**” includes —

- (a) to injure, destroy or otherwise interfere with, or cause or permit the doing of any of those things;
- (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. Protection of flora and fauna**

- (1) Subject to subsection (2a) —
- (a) the Executive Director 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) repealed]*

- (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 Executive Director 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.]*

### **101C. Unlawful taking of flora and fauna**

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

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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. Definitions

- (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;
  - (b) land placed under the management of the Department under section 33(2); 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.]*

### Division 2 — Offences

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

#### 103. Unlawful taking of 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.

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- (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 Executive Director; or
  - (b) a Part VIII Division 1 authorisation.
- (2b) The power of the Executive Director to give an authorisation under subsection (2a)(a) is exercisable only —
- (a) consistently with any management plan for the land concerned;
  - (b) with the approval of the Minister;
  - (c) in the case of land for the management of which an agreement is entered into under section 16, consistently with the agreement; and
  - (d) in conformity with section 33(3).
- (2c) In subsection (2a)(b) —
- “Part VIII Division 1 authorisation”** means —
- (a) a contract entered into under section 88(1)(b);
  - (b) a permit described in section 89;
  - (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 Executive Director 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.]*

**104. Unlawfully 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 metres 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 Executive Director 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.]*

**105. Setting fire to bush or grass without notice to 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 occupation of 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 Executive Director 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.]*

**108. Unlawful use of marks, brands etc.**

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. Presence, removal or disposal of buildings, etc.**

- (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 Executive Director 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.]*

**108B. Cattle may be impounded**

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 Executive Director 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.]*

**108C. Unbranded cattle**

- (1) The Executive Director 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 Executive Director 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).]*

### **Division 3 — General provisions as to offences**

#### **109. Aiding and abetting offences**

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. Liability for damage**

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 Executive Director in fixing the penalty, and may be recovered in the same manner as a pecuniary penalty.

#### **111. Presumption as to ownership of forest produce**

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. Presumption as to place of offence**

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. Authority to prosecute**

- (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 Executive Director.
- (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.]*

**114. Penalties not substituted for others**

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.

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- (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 Executive Director 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 Executive Director is deemed to have declined to be so dealt with.
- (6) The Executive Director 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.]*

#### **Division 4 — Enforcement powers**

##### **115. Obstruction of officers**

- (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.]*

*Forest officers, etc.*

##### **116. Unbranded timber liable to seizure**

- (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 the property of Crown until royalty 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. Seizure of forest produce**

- (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 Executive Director may direct, and the proceeds of any such sale shall be paid into the Public Bank Account and credited to the Consolidated Fund 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.]*

**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. Entry to sawmills**

A forest officer authorised by the Executive Director 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).]*

**120. Power to enter and inspect land**

A forest officer authorised by the Executive Director 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.

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

*Rangers and conservation and land management officers*

*[Heading inserted by No. 20 of 1991 s. 49.]*

**124. Powers of rangers and conservation and land management officers**

- (1) A ranger or conservation and land management officer who finds a person committing a relevant offence on or in any land

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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) repealed]*

- (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 s. 96.]*

*Wildlife officers*

**125. Powers of wildlife officer**

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 power**

- (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.
- (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.]*

### **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;
- [(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.]*

### **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;
  - (ii) a system for recording, making available, and otherwise dealing with information concerning forest produce taken and the destination thereof;
  - (iii) a system for recording, making available, and otherwise dealing with information for the purposes of ascertaining forest produce charges payable;
  - (iv) the inspection, grading, branding and marking of forest produce;
  - [(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;
  - (vii) the weighing of forest produce or the use of any other method to determine the quantity of forest produce;
  - (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;

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- (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.
- (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 under subsection (1) shall not be made applicable to land which is subject to an agreement under section 16 unless —
  - (a) the agreement so authorises, either generally or specifically; or
  - (b) the owner of the land has been consulted.

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- (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*<sup>2</sup>, 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, 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).]*

**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.]*

**Part XI — Miscellaneous**

**131. Devolution of certain acquired forest land**

- (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 Executive Director 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.]*

**131A. Tabling of Ministerial directions**

- (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 to be regarded —
  - (a) as having been laid before that House; and
  - (b) as being a document published by order or under the authority of that House.
- (4) The laying of a copy of a direction that is regarded as having occurred under subsection (3)(a) 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.]*

**132. Exemption from liability**

The Minister, the Executive Director, 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.]*

**133. Delegation**

- (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to the Executive Director 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 Executive Director 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).

**134. Erection of notices**

- (1) The Executive Director 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 —

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- (a) that the area is one to which this Act applies;
- (b) the general extent of the area;
- (c) the nature of any conduct which is forbidden in the area;
- (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.

**135. A forest officer may call for assistance to extinguish fires**

- (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 kilometres 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 Executive Director to the exportation thereof has been obtained.
- (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 cubic metre of timber exported.

**137. Timber on catchment areas may be placed under control of Executive Director**

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 Executive Director, 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.

**138. Forest produce on parks and reserves**

- (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 Executive Director.
- (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.

**139. Timber on roads**

- (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

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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. Repealed 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. Trees to be planted by conditional purchase holders**

- (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 Executive Director, 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 Executive Director, of indigenous timber already growing on any portion of land acquired under those provisions may, with the approval of the Minister to whom the administration of the *Land Administration Act 1997* is for the time being committed, be deemed an improvement within the meaning of that Act.

*[Section 142 amended by No. 31 of 1997 s. 141.]*

*[143. Repealed by No. 70 of 2003 s. 21.]*

*[144. Repealed by No. 20 of 1991 s. 56.]*



## Part XII — Repeal, savings, transitional and validation

### Division 1 — Preliminary

#### 145. Interpretation

In this Part —

“**Conservator**” means “The Conservator of Forests” under section 8 of the *Forests Act 1918*<sup>3</sup>;

“**Forests Department**” means the Forests Department established by section 7 of the *Forests Act 1918*<sup>3</sup>;

“**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*<sup>5</sup>;

“**repealed Act**” means an Act repealed by section 147(1);

“**Western Australian Wildlife Authority**” means the Authority established by section 10<sup>7</sup> of the *Wildlife Conservation Act 1950*.

#### 146. Interpretation Act 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.

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- (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;
  - (b) any classification of land made;
  - (c) any notice erected on any land;
  - (d) any management scheme or working plan approved, (such management scheme or working plan being deemed to be a management plan under this Act);
  - (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);
  - (f) any map or plan certified;
  - (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*<sup>3</sup>.

- (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 Executive Director;
- (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 Executive Director;
- (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 Executive Director;
- (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 Executive Director.

**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 Executive Director;
  - (ii) the Forests Department shall be read as a reference to the Department;
  - (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 Executive Director; or
  - (ii) to the Department of Fisheries and Wildlife shall be read as a reference to the Department.

**152. Staff not under the *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*<sup>8</sup>, 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. Funds etc.**

On the commencement of this Act —

- (a) the Forestry Fund under section 41 of the *Forests Act 1918*<sup>3</sup> and the National Parks Authority Account under section 38 of the *National Parks Authority Act 1976*<sup>5</sup> shall be closed and the moneys standing to the credit thereof shall be placed to the credit of the Conservation and Land Management Fund referred to in section 65; and
- (b) the Wildlife Conservation Trust Fund under section 17C of the *Wildlife Conservation Act 1950* shall be closed and the moneys standing to the credit thereof shall be placed to the credit of the Nature Conservation and National Parks Trust Account referred to in section 68.

**154. Annual reports for part of a 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*<sup>3</sup>; and
  - (b) the National Parks Authority shall report as required by section 39 of the *National Parks Authority Act 1976*<sup>5</sup>,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*<sup>5</sup> 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*<sup>2</sup> 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*<sup>5</sup> land was reserved as a national park under section 29 of the *Land Act 1933*<sup>2</sup> 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*<sup>5</sup> 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*<sup>5</sup>; and
- (b) to have been, as from such commencement, a national park under that section.

## Schedule

[Section 29]

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

1. (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.
2. The office of a member becomes vacant if —
  - (a) he resigns his office by written notice addressed to the Minister;
  - (b) he is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy; 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.
3. (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) repealed]*

**Conservation and Land Management Act 1984**

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

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- (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.
- 4. (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.
- 5. (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.
- 5A.(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.
- 6. 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.
- 7. A controlling body may grant leave of absence to a member on such terms and conditions as it thinks fit.
- 8. Subject to this Act, a controlling body shall determine its own procedures.

*[Schedule amended by No. 73 of 1995 s. 188; No. 5 of 1997 s. 38; No. 35 of 2000 s. 49.]*

### Notes

<sup>1</sup> 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 <sup>1a</sup>. 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	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	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	25 Jun 1991	Act other than s. 51: 23 Aug 1991 (see s. 2 and <i>Gazette</i> 23 Aug 1991 p. 4353)
<b>Reprint of the <i>Conservation and Land Management Act 1984</i> as at 16 Jan 1992</b> (includes amendments listed above)			
<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> <sup>9</sup>	66 of 1992	11 Dec 1992	11 Dec 1992 (see s. 2)

## Conservation and Land Management Act 1984

Short title	Number and year	Assent	Commencement
<i>Financial Administration Legislation Amendment Act 1993</i> s. 11 and 15	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Conservation and Land Management Amendment Act 1993</i> <sup>10</sup>	49 of 1993	20 Dec 1993	20 Dec 1993 (see s. 2)
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 19	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Fish Resources Management Act 1994</i> s. 264	53 of 1994	2 Nov 1994	1 Oct 1995 (see s. 2 and <i>Gazette</i> 29 Sep 1995 p. 4649)
<i>Statutes (Repeals and Minor Amendments) Act 1994</i> s. 4	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995</i> s. 188	73 of 1995	27 Dec 1995	1 Jan 1996 (see s. 2(2) and <i>Gazette</i> 29 Dec 1995 p. 6291)
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Financial Legislation Amendment Act 1996</i> s. 51 and 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<b>Reprint of the Conservation and Land Management Act 1984 as at 20 Jan 1997</b> (includes amendments listed above)			
<i>Acts Amendment (Marine Reserves) Act 1997</i> Pt. 2 <sup>4,6</sup>	5 of 1997	10 Jun 1997	29 Aug 1997 (see s. 2 and <i>Gazette</i> 29 Aug 1997 p. 4867)
<i>Acts Amendment (Land Administration) Act 1997</i> Pt. 13 and s. 141 <sup>11</sup>	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))

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Short title	Number and year	Assent	Commencement
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998 s. 22</i>	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<b>Reprint of the Conservation and Land Management Act 1984 as at 26 Mar 1999</b> (includes amendments listed above)			
<i>Statutes (Repeals and Minor Amendments) Act 2000 s. 8</i>	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
<i>Conservation and Land Management Amendment Act 2000</i> <sup>12, 13</sup>	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 s. 96</i>	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 s. 17</i>	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 s. 41</i>	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)
<b>Reprint 4: The Conservation and Land Management Act 1984 as at 24 Apr 2003</b> (includes amendments listed above)			
<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</i> (see <i>Gazette</i> 15 Aug 2003 p. 3685-92)			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)

Short title	Number and year	Assent	Commencement
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 21(2) and 39(1)-(10)	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<b>Reprint 5: The Conservation and Land Management Act 1984 as at 24 Sep 2004</b> (includes amendments listed above)			
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	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</i> s. 80	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</i> s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)

<sup>1a</sup> On the date as at which this reprint was prepared, provisions referred to in the following table had not come into operation and were therefore not included in compiling the reprint. 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 and Land Management Amendment Act 1991</i> s. 51 <sup>14</sup>	20 of 1991	25 Jun 1991	To be proclaimed (see s. 2)
<i>Offshore Minerals (Consequential Amendments) Act 2003</i> Pt. 3 <sup>15</sup>	12 of 2003	17 Apr 2003	Operative on commencement of the <i>Offshore Minerals Act 2003</i> (see s. 2)

<sup>2</sup> The *Land Act 1933* was repealed by section 281 of the *Land Administration Act 1997*.

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

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

“

- (2) The application of section 6(6) of the principal Act 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.

”

<sup>5</sup> The *National Parks Authority Act 1976* was repealed by s. 147(2) of this Act.

<sup>6</sup> 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, 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*.

”

<sup>7</sup> Section 10 of the *Wildlife Conservation Act 1950* was repealed by the *Acts Amendment (Conservation and Land Management) Act 1984* s. 6.

<sup>8</sup> The *Public Service Act 1978* was superseded by the *Public Sector Management Act 1994*.

<sup>9</sup> 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.

”

<sup>10</sup> The *Conservation and Land Management Amendment Act 1993* Pt. 4 reads as follows:

“

**Part 4 — Validation**

**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.

”

<sup>11</sup> 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*.

<sup>12</sup> The amendments in the *Conservation and Land Management Amendment Act 2000* s. 5 are not included because it was repealed by the *Statutes (Repeals and Minor Amendments) Act 2003* s. 39(11).

<sup>13</sup> The *Conservation and Land Management Amendment Act 2000* s. 51, which gives effect to Sch. 1, reads as follows:

“

**51. Transitional provisions.**

Schedule 1 has effect.

”

Schedule 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.

”.

<sup>14</sup> On the date as at which this compilation was prepared, the *Conservation and Land Management Amendment Act 1991* s. 51 had not come into operation. It reads as follows:

“

**51. Part IXA inserted**

After section 125 of the principal Act the following Part is inserted —

“

**Part IXA — Nature Conservation Trust of  
Western Australia**

**125A. Nature Conservation Trust established**

- (1) There is established a body corporate to be called the Nature Conservation Trust of Western Australia (in this Part called “the Trust”).
- (2) The Trust —
  - (a) has perpetual succession and a common seal; and
  - (b) is capable of suing and being sued and doing and suffering such acts and things as bodies corporate may lawfully do and suffer.
- (3) The Trust is an agent of the Crown in right of the State.

**125B. Membership etc. of the Trust**

- (1) The Trust shall have 6 members of whom —
  - (a) 5 are to be appointed by the Minister; and
  - (b) one is to be a member of the Authority from time to time nominated by the Authority.
- (2) The Minister shall appoint a member of the Trust to be chairperson and another to be deputy chairperson of the Trust.
- (3) A member of the Trust shall be paid from moneys appropriated by Parliament such remuneration and travelling and other allowances as are determined in his case by the Minister on the recommendation of the Public Service Commissioner.
- (4) A member of the Trust is not personally liable for any act done or omitted to be done in good faith by the Trust or by him in the performance of any function under this Part.
- (5) A member of the Trust holds office for such term not exceeding 3 years as is specified in the instrument of the member’s appointment, but may from time to time be re-appointed.
- (6) Except as provided in this section —
  - (a) the constitution and proceedings of the Trust;
  - (b) the terms and conditions of appointment of members of the Trust; and



- (c) the grounds on which a member may be removed from office,  
are as prescribed by regulations and subject to this Part and any such regulations the Trust may regulate its own procedure.

**125C. Functions of the Trust**

- (1) The functions of the Trust are —
  - (a) to seek and encourage the making of donations and testamentary gifts to the Trust for the purposes described in paragraphs (b), (c) and (d);
  - (b) to acquire land that it considers suitable for reservation under the *Land Act 1933*<sup>2</sup> as or as part of —
    - (i) a national park;
    - (ii) a conservation park;
    - (iii) a reserve of Class A for the conservation of flora or fauna or both flora and fauna; or
    - (iv) a marine nature reserve or marine park;
  - (c) to transfer land acquired to Her Majesty to enable it to be reserved under the *Land Act 1933*<sup>2</sup> for a purpose referred to in paragraph (b) and vested in the Authority;
  - (d) to preserve and protect by whatever lawful means appear expedient, and raise public awareness of, indigenous flora and fauna, particularly endangered species of indigenous flora and fauna; and
  - (e) to control and manage the Trust Fund to achieve the objects of this section.
- (2) The Trust may do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

**125D. Effect of transfer**

- (1) Land that is transferred to Her Majesty as mentioned in section 125C(1) is by virtue of that transfer —
  - (a) re-vested in Her Majesty as of her former estate;
  - (b) removed from the operation of the *Transfer of Land Act 1893*; and

- (c) constituted Crown land within the meaning of that expression in the *Land Act 1933*<sup>2</sup>, but the land must be reserved under the *Land Act 1933*<sup>2</sup> for the purpose for which it is so transferred.
- (2) If the transfer of any land to Her Majesty results in the discharge of an estate or interest that is registered or recorded in the register book as an encumbrance on the land the person who was entitled to the benefit of that encumbrance immediately before the transfer may claim compensation for the value of that encumbrance.
- (3) Any claim for compensation under subsection (2) shall be made and be dealt with under the *Public Works Act 1902* as if the estate or interest in the land in respect of which compensation is claimed had been resumed under that Act by notice published in the *Government Gazette* under section 17(1) of that Act.
- (4) A claim referred to in subsection (3) shall be made on the Minister to whom the administration of the *Public Works Act 1902* is for the time being committed, but any compensation shall be paid out of the Trust Fund.

**125E. Part of the land may be disposed of**

If in order to acquire land that is suitable for reservation as mentioned in section 125C(1) it is necessary for the Trust to acquire that land together with other land that is not suitable, the Trust, notwithstanding that subsection —

- (a) may subdivide the land;
- (b) may sell the land that is not suitable; and
- (c) shall pay the proceeds of sale to the Trust Fund.

**125F. Trust Fund**

- (1) Moneys received by the Trust for the purposes of this Part shall be paid to the credit of an account at the Treasury to be called the Nature Conservation Trust Fund (in this Part referred to as the Trust Fund) and may only be applied for the purposes of, and in accordance with, this Part.
- (2) All expenditure incurred by the Trust for the purpose of performing its functions shall be paid from the Trust Fund.
- (3) Moneys standing to the credit of the Trust Fund are subject to the directions of the Trust and may be transferred to the Trust for the purposes of carrying this Part into effect or otherwise applied for the purposes of the Trust.

- (4) Moneys standing to the credit of the Trust Fund may, until required by the Trust for the purposes of this Part, be temporarily invested as the Treasurer directs in any securities in which money standing to the credit of the Public Bank Account, as constituted under the *Financial Administration and Audit Act 1985*, may lawfully be invested and the Treasurer shall cause all interest derived from the investment to be paid to the credit of the Trust Fund.

**125G. Ministerial directions**

- (1) The Minister may give directions in writing to the Trust with respect to the performance of its functions, either generally or in relation to a particular matter, and the Trust shall give effect to any such direction.
- (2) The text of any direction given under subsection (1) shall be included in the annual report submitted by the accountable authority of the Trust under section 66 of the *Financial Administration and Audit Act 1985*.

**125H. Minister to have access to information**

- (1) For parliamentary purposes or for the proper conduct of the Minister's public business, the Minister is entitled to have information in the possession of the Trust and to have and retain copies of documents.
- (2) For the purpose of subsection (1) the Minister may —
- (a) request the Trust to furnish information to the Minister;
  - (b) request the Trust to give the Minister access to information;
  - (c) for the purposes of paragraph (b) make use of staff assisting the Trust to obtain the information and furnish it to the Minister.
- (3) The Trust shall comply with a request under subsection (2) and make available to the Minister, for the purposes of paragraph (c) of that subsection, the facilities of, and the staff assisting, the Trust.
- (4) In this section —
- “document”** includes any data that is recorded or stored mechanically, photographically, or electronically and any tape, disc or other device or medium on which it is recorded or stored;

**“information”** means documents or other information relating to the functions of the Trust being information, as so defined, specified, or of a description specified, by the Minister;

**“parliamentary purposes”** means the purpose of —

- (a) answering a question asked in a House of Parliament; or
- (b) complying with a written law, or an order or resolution of a House of Parliament, that requires information to be furnished to a House of Parliament.

**125I. Staff and support**

The Executive Director shall provide the Trust with the services of such officers and with such facilities and support as the Trust may reasonably require to perform its functions.

**125J. Execution of documents by Trust**

- (1) A document is duly executed by the Trust if —
  - (a) the common seal of the Trust is affixed to it in accordance with subsections (2) and (3); or
  - (b) it is signed on behalf of the Trust by the member or members or officer or officers of the Trust authorised by the Trust to do so.
- (2) The common seal of the Trust shall not be affixed to any document except by resolution of the Trust.
- (3) The common seal of the Trust shall be affixed to a document in the presence of not less than 2 members.
- (4) A document purporting to be executed in accordance with this section shall be presumed to be duly executed until the contrary is shown.
- (5) When a document is produced bearing a seal purporting to be the common seal of the Trust, it shall be presumed that seal is the common seal of the Trust until the contrary is shown.
- (6) All courts and persons acting judicially shall take notice of the common seal of the Trust.

**125K. Applications of *Financial Administration and Audit Act 1985***

Subject to this Part, the provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Trust and its operations.

**125L. Review**

- (1) The Minister shall carry out a review of the operations and the effectiveness of the Trust as soon as is practicable after the expiry of 5 years from its establishment and in the course of that review the Minister shall consider and have regard to —
  - (a) the desirability of the continuation of the functions of the Trust; and
  - (b) such other matters as appear to the Minister to be relevant to the operations and effectiveness of the Trust.
- (2) The Minister shall prepare a report based on the review carried out under subsection (1) and shall, as soon as practicable, cause that report to be laid before each House of Parliament.

”  
”  
15 On the date as at which this compilation was prepared, the *Offshore Minerals (Consequential Amendments) Act 2003* Pt. 3 had not come into operation. It reads as follows:

“

**Part 3 — Amendments to *Conservation and Land Management Act 1984***

**11. The Act amended by this Part**

The amendments in this Part are to the *Conservation and Land Management Act 1984*.

**12. Section 3 amended**

Section 3 is amended, in the definition of “Minister for Mines”, by inserting after “*Mining Act 1978*,” —

“ the *Offshore Minerals Act 2003*, ”.

**13. Section 4 amended**

Section 4(1) is amended by inserting after “*Mining Act 1978*,” —  
“ the *Offshore Minerals Act 2003*, ”.

**14. Section 13C amended**

(1) Section 13C(2) is amended, in the definition of “commercial purposes”, by inserting after paragraph (b) the following paragraph —

“  
(ba) exploration for and recovery of minerals under the  
*Offshore Minerals Act 2003*;  
”.

(2) Section 13C(7) is amended as follows:

(a) after paragraph (a) by deleting “and” and inserting —

“  
(aa) exploration for and recovery of minerals under the  
*Offshore Minerals Act 2003*; and  
”;

(b) in paragraph (b) by deleting “those Acts” and inserting  
instead —

“ the Acts mentioned in paragraphs (a) and (aa) ”.

**15. Section 60 amended**

Section 60(2b) is amended by inserting after “*Mining Act 1978*,” —

“ the *Offshore Minerals Act 2003*, ”.

”.