



WILDERNESS PROTECTION ACT 1992

No. 28 of 1992

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ANNO QUADRAGESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1992

No. 28 of 1992

An Act to provide for the protection of wilderness and the restoration of land to its condition before European colonization; to make consequential amendments to the National Parks and Wildlife Act 1972; and for other purposes.

[Assented to 21 May 1992]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Wilderness Protection Act 1992*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

“**Aboriginal**” means of, or pertaining to, the people who inhabited Australia before European colonization:

“**Aboriginal object**” has the same meaning as in the *Aboriginal Heritage Act 1988*:

“**Aboriginal organization**” means an association, body or group comprised, or substantially comprised, of Aboriginal persons having as its principal objects the furtherance of interests of Aboriginal people:

“**Aboriginal site**” has the same meaning as in the *Aboriginal Heritage Act 1988*:

“**Aboriginal tradition**” means Aboriginal traditions, observances, customs or beliefs and includes traditions, observances, customs and beliefs that have evolved or developed from that tradition since European colonization:

“**the Chief Executive Officer**” means the person for the time being holding, or acting in, the office of Chief Executive Officer of the Department:

“**Crown land**” means—

- (a) unalienated land of the Crown;

or

(b) land held by a Minister, agent or instrumentality of the Crown on behalf of the Crown:

“the Department” means the Department of Environment and Planning:

“the Director” means the person for the time being holding, or acting in, the office of Director of National Parks and Wildlife:

“the Environment, Resources and Development Committee” means the committee of that name established by the *Parliamentary Committees Act 1991*:

“land” includes submerged land and includes an estate or interest in land:

“land acquired by the Minister” means land that the Minister has acquired for the purposes of this Act and includes land that the Minister proposes to acquire for those purposes and in relation to which he or she has served a notice of intention to acquire the land under the *Land Acquisition Act 1969*:

“management” in relation to land includes the restoration of the land and its ecosystems to their condition before European colonization:

“mining Act” means the *Mining Act 1971*, the *Petroleum Act 1940* or the *Petroleum (Submerged Lands) Act 1982*:

“mining tenement” means a mineral claim, lease, licence, permit or other authority granted under a mining Act and includes rights of entry, prospecting, exploration or mining in relation to an area of land declared to be a private mine under the *Mining Act 1971*:

“the Minister” means the Minister in whom the administration of the *National Parks Act* is vested for the time being:

“modern technology” includes all forms of human technology except Aboriginal technology:

“the National Parks Act” means the *National Parks and Wildlife Act 1972*:

“native plant” has the same meaning as in the *National Parks Act*:

“the Natural Resources Management Standing Committee” means the body of that name having as its principal object the co-ordination of the management of the natural resources of the State and the members of which include the Chief Executive Officers of the government departments responsible for resource management and includes the successors of that body:

“owner” of land means—

(a) in relation to land alienated from the Crown by grant in fee simple—the holder of the fee simple;

(b) in relation to land held under Crown lease or licence—the lessee or licensee;

(c) in relation to land held under an agreement to purchase from the Crown—the person entitled to the benefit of the agreement:

“public notice” means notice published in the *Gazette*:

“reserve” means a reserve constituted under the *National Parks Act*:

“vehicle” includes—

(a) a caravan or trailer;

(b) an aircraft;

(c) a ship, boat or vessel:

“**warden**” means a person for the time being holding the office of warden under this Act:

“**wilderness**” means land that meets the wilderness criteria:

“**the Wilderness Advisory Committee**” or “**the Committee**” means the Wilderness Advisory Committee established by this Act:

“**the wilderness code of management**” or “**the code of management**” means the wilderness code of management adopted by the Minister under Part 2 Division 3:

“**the wilderness criteria**”—see subsection (2):

“**wilderness protection area**” or “**area**” means land constituted as a wilderness protection area under this Act:

“**wilderness protection zone**” or “**zone**” means land constituted as a wilderness protection zone under this Act:

“**wildlife**” means all native plants and animals indigenous to Australia existing apart from cultivation or domestication:

“**Wildlife Conservation Fund**” means the Wildlife Conservation Fund established by section 11 of the *National Parks Act*.

(2) The following are the criteria for determining whether or not land should be regarded as wilderness:

(a) the land and its ecosystems must not have been affected, or must have been affected to only a minor extent, by modern technology;

(b) the land and its ecosystems must not have been seriously affected by exotic animals or plants or other exotic organisms.

Note: For definition of divisional penalties see Appendix.

Act binds the Crown

4. This Act binds the Crown not only in right of the State but also, so far as the legislative power of the State permits, in all its other capacities.

PART 2

ADMINISTRATION

DIVISION 1—MINISTERIAL POWERS AND DUTIES

Power of acquisition

5. The Minister may, subject to and in accordance with the *Land Acquisition Act 1969*, acquire land for the purposes of this Act.

Delegation

6. (1) Subject to subsection (4), the Minister may delegate to the Chief Executive Officer, the Director or any other person any of the Minister’s powers under this Act.

(2) The Chief Executive Officer may, with the Minister’s consent, delegate to the Director or any other person any of the powers delegated to the Chief Executive Officer.

(3) The Director may, with the consent of the person who has delegated powers to the Director under this section, delegate any of those powers to another person.

(4) The Minister cannot delegate the power to acquire land for the purposes of this Act.

(5) A delegation under this section—

- (a) must be in writing;
- (b) may be expressed as a delegation to the person from time to time holding, or performing the duties of, a specified position in the Public Service of the State.

(6) A delegation under this section may be revoked at will by the delegator and does not prevent the exercise of any power by the delegator.

Annual report

7. (1) The Minister must cause a report to be prepared annually setting out the following information:

- (a) the names and locations of the wilderness protection areas and wilderness protection zones constituted under this Act and the extent to which the wilderness criteria are met by each area and zone;
 - (b) the name or some other identification of the former reserves or parts of reserves that have been constituted as wilderness protection areas or zones;
 - (c) the extent of mining operations in wilderness protection zones;
 - (d) information as to the management of wilderness protection areas and zones and particulars of any activities to restore land and its ecosystems to their condition before European colonization;
 - (e) a list of management plans adopted under this Act;
 - (f) the portions (if any) of wilderness protection areas or zones that the Minister has declared to be prohibited areas and the reasons for making those declarations;
 - (g) an account of money received and expended in relation to the management of wilderness protection areas and wilderness protection zones;
- and
- (h) in the case of wilderness protection zones, an account of the royalties (if any) received in respect of the mining tenements in force in those zones and the money expended by the Department of Mines and Energy in administering those mining tenements.

(2) The report must include a copy of the Wilderness Code of Management in force under Division 3.

(3) The Minister must—

- (a) cause copies of the report to be laid before both Houses of Parliament;
 - (b) provide the Minister of Mines and Energy with a copy of the report;
- and
- (c) by public notice specify an address at which copies of the report can be inspected or purchased by members of the public.

DIVISION 2—THE WILDERNESS ADVISORY COMMITTEE

The Wilderness Advisory Committee

8. (1) The Wilderness Advisory Committee is established.

(2) The Committee consists of the Director and four other members appointed by the Governor on the nomination of the Minister—

- (a) one of whom is engaged at an institution of tertiary education in teaching the knowledge and skills required for conserving and managing wildlife;

(b) one of whom has been nominated by the Minister from a panel of three persons selected by the Wilderness Society SA Branch Incorporated;

(c) two of whom have wide experience in the management or recreational use of wilderness.

(3) A member appointed by the Governor will be appointed for such term (not exceeding two years) and on such conditions as the Governor thinks fit.

(4) The Governor may appoint suitable persons to be deputies of the members of the Committee appointed by the Governor and a deputy of a member must be appointed in the same manner as the member and have the qualifications (if any) required by this Act for the appointment of the member.

(5) The deputy of a member may act as a member of the Committee in the absence, or during a temporary vacancy in the office, of the member.

(6) The office of a member appointed by the Governor becomes vacant if the member—

(a) dies;

(b) completes a term of office and is not reappointed;

(c) resigns by written notice to the Minister;

or

(d) is removed from office by the Governor on the ground of—

(i) mental or physical incapacity to carry out official duties satisfactorily;

(ii) neglect of duty;

or

(iii) misconduct.

Procedures at meetings of the Committee

9. (1) A meeting will be chaired by the presiding member (appointed by the Governor) or, in his or her absence, by the deputy of the presiding member or, in the absence of both of them by a member chosen by those present.

(2) Subject to subsection (3), the Committee may act notwithstanding vacancies in its membership.

(3) Four members constitute a quorum at a meeting of the Committee.

(4) A decision in which a majority of the members present at a meeting concur is a decision of the Committee but if the Committee is equally divided the decision of the person presiding at the meeting is the decision of the Committee.

(5) Subject to this Act, the Committee may determine its own procedures.

(6) The Committee must keep minutes of its proceedings.

Allowances and expenses

10. The members of the Committee are entitled to allowances and expenses determined by the Minister.

Functions of the Committee

11. (1) The functions of the Committee are as follows:

(a) to assess all land in the State to identify those parts of the State that meet the wilderness criteria to a sufficient extent to justify protection under this Act or that warrant restoration to a condition that justifies such protection;

- (b) at the request of a member of the public to assess the extent to which land specified in the request meets the wilderness criteria;
- (c) to report to the Minister on the results of its assessments under paragraphs (a) and (b) and to make recommendations to the Minister as to what land in the State should be constituted as wilderness protection areas or wilderness protection zones;
- (d) to make recommendations to the Minister in relation to the management of wilderness protection areas and zones generally or in relation to a particular wilderness protection area or zone;
- (e) to commission research into the effect of mining, grazing and other forms of primary production and tourism on wilderness and its wildlife and to advise the Minister of the findings of the research;
- (f) to increase understanding in the community of the significance of wilderness;
- (g) to assist the Minister in relation to the preparation of the annual report under Division 1;

and

(h) functions assigned to the Committee by other provisions of this Act.

(2) The Committee must make the assessment under subsection (1) (a) and report to the Minister under subsection (1) (c) as soon as practicable after the commencement of this Act.

DIVISION 3—WILDERNESS CODE OF MANAGEMENT

Wilderness code of management

12. (1) The Wilderness Advisory Committee must, as soon as practicable after the commencement of this Act, in consultation with the Director, prepare a draft code of management of wilderness protection areas and wilderness protection zones for submission to the Minister.

(2) The code must set out policies that should be implemented in the management of wilderness protection areas and zones in relation to the following:

- (a) the preservation of wildlife and ecosystems;
- (b) the restoration of land and its ecosystems to their condition before European colonization and the protection of land and its ecosystems from the effects of modern technology and exotic animals and plants and other exotic organisms;
- (c) the preservation of Aboriginal sites and Aboriginal objects;
- (d) the preservation of historic sites and objects and structures of historic or scientific interest;
- (e) the preservation of features of geographical, natural or scenic interest;
- (f) the destruction of dangerous weeds and the eradication or control of noxious weeds and exotic plants;
- (g) the control of vermin and exotic animals and other exotic organisms;
- (h) the control and eradication of disease of animals and vegetation;
- (i) the prevention and suppression of bush fires and other hazards;
- (j) the conduct of firefighting and other emergency operations;
- (k) the conduct of scientific research;

- (l) education of the public as to the significance of wilderness protection areas and zones;
 - (m) use of wilderness protection areas and zones by members of the public;
 - (n) hunting in wilderness protection areas and wilderness protection zones by Aboriginal people;
 - (o) the entry into and use of wilderness protection areas and zones by Aboriginal people to observe Aboriginal tradition.
- (3) Upon receipt of the draft code of management the Minister must—
- (a) provide the Natural Resources Management Standing Committee with a copy of the draft code;
 - (b) give public notice—
 - (i) specifying an address at which copies of the draft code may be inspected or purchased;and
 - (ii) specifying an address to which submissions in connection with the draft code may be forwarded.
- (4) Any person may within three months after publication of the notice, or such longer period as may be specified in the notice, make submissions to the Minister in connection with the draft code of management.
- (5) The Minister must provide the Environment, Resources and Development Committee and the Natural Resources Management Standing Committee with copies of all submissions made under subsection (4) and must make copies of those submissions available for public inspection or purchase (except for submissions made in confidence) and for that purpose the Minister must, by public notice, specify the place or places at which the copies are available.
- (6) After expiration of the period allowed for making submissions the Minister must refer the submissions made in relation to the code to the Wilderness Advisory Committee for its comments.
- (7) The Committee must, within three months of the referral, provide the Minister with its comments.
- (8) The Minister may—
- (a) adopt a draft code of management—
 - (i) without alteration;or
 - (ii) with such alterations as the Minister thinks reasonable in view of the submissions made pursuant to subsection (4) or comments made by the Wilderness Advisory Committee;
- or
- (b) refer the draft code of management back to the Wilderness Advisory Committee for further advice.
- (9) The Minister must give public notice of the adoption of a code of management.
- (10) The Director must, upon the application of any member of the public and payment of the prescribed fee, provide that person with a copy of the code of management adopted under this section.
- (11) The code of management may be varied or revoked and replaced at any time in accordance with the procedures set out in this section.

DIVISION 4—APPOINTMENT AND POWERS OF WARDENS

Appointment of wardens

13. (1) The Minister may, by instrument in writing, appoint any person who has prescribed qualifications to be a warden under this Act.

(2) A warden will be appointed for a term specified in the instrument of appointment.

(3) The Minister may, in the instrument of appointment, authorize the warden to exercise his or her powers in respect of the whole, or any specified portion, of the State.

(4) Where the authority of a warden is limited by the instrument of appointment or by this section to any specified portion of the State, the powers conferred on the warden under this Act are exercisable only within that portion of the State.

(5) Every person appointed and holding office as a warden under the *National Parks Act* is a warden for the purposes of this Act and may exercise his or her powers as a warden throughout the State or in that part of the State to which his or her powers are limited under the *National Parks Act*.

(6) Every member of the police force is, while holding office as such, a warden competent to exercise powers as such in any part of the State.

(7) Where a mining tenement is in force in relation to a wilderness protection zone, a person who has authority to exercise powers in relation to the mining tenement by virtue of being an authorized person or inspector under the *Mining Act 1971*, an authorized officer or inspector under the *Petroleum Act 1940* or an inspector under the *Petroleum (Submerged Lands) Act 1982*, is a warden competent to exercise powers as such in relation to the wilderness protection zone in relation to which the mining tenement is in force.

(8) A warden must, while acting as such, carry an identity card issued by the Minister under this Act or the *National Parks Act* or, if the warden is a member of the police force, the member's warrant card, and the warden must produce the card for inspection by the person against whom the warden proposes to exercise any of the powers conferred by this Act.

Assistance to wardens

14. (1) A warden may request any suitable person to assist the warden in the exercise of powers under this Act.

(2) A person, while assisting a warden in response to a request for assistance by the warden, has the powers of a warden.

Powers of entry and search

15. (1) If a warden suspects on reasonable grounds that an offence against this Act or the *National Parks Act* is being, has been, or is about to be committed, the warden may—

- (a) enter and search any premises or vehicle connected with the suspected offence;
- (b) require the person suspected of committing, having committed, or being about to commit the offence to state his or her full name and usual place of residence;
- (c) ask any person any question relating to the suspected offence;
- (d) in order to facilitate a search of a vehicle or to ask questions of any person in, or on, a vehicle, give—
 - (i) directions to a person in, on, or in charge of, the vehicle to stop the vehicle or to move it to a particular place;
 - (ii) such other directions as the warden thinks fit;

(e) if the suspect is in a wilderness protection area or wilderness protection zone or is on land acquired by the Minister—order him or her off the wilderness protection area or zone or other land for a stated period (not exceeding 24 hours).

(2) Subject to subsection (3), a person who fails to answer a question asked by a warden under subsection (1) to the best of his or her knowledge, information or belief is guilty of an offence.

Penalty: Division 7 fine.

(3) A person is not obliged to answer a question if the answer would tend to incriminate him or her of an offence.

(4) If a warden suspects on reasonable grounds that a name or place of residence stated pursuant to this section is false, the warden may require the person to produce evidence of his or her full name or usual place of residence.

(5) For the purpose of entering and searching premises or a vehicle, a warden may break into the premises or vehicle, or anything on the premises or in the vehicle, using so much force as is necessary for that purpose—

(a) if authorized by warrant under subsection (6);

or

(b) if the warden has reason to believe that urgent action is necessary in the circumstances of the particular case.

(6) A justice may, if satisfied on the application of a warden that there is proper ground for the issue of a warrant, issue a warrant authorizing the warden to break into and search premises or a vehicle or anything on the premises or in the vehicle.

(7) A person who contravenes, or fails to comply with, a direction, requirement or order of a warden under this section is guilty of an offence.

Penalty: Division 7 fine.

(8) A warden, or a person assisting a warden, who—

(a) addresses offensive language to any other person;

or

(b) without lawful authority, or a reasonable belief as to lawful authority, hinders or obstructs, or uses or threatens to use force in relation to, any other person,

is guilty of an offence.

Penalty: Division 7 fine.

Prevention of certain activities

16. (1) Where a person is undertaking or, in the opinion of a warden, is about to undertake an activity in, or adjacent to, a wilderness protection area or wilderness protection zone or on, or adjacent to, land acquired by the Minister and, in the opinion of the warden, the activity constitutes, or will constitute, an offence against this Act or the *National Parks Act* or will result in the commission of such an offence if it continues, the warden may direct the person to stop the activity or not to undertake it.

(2) A direction under subsection (1) may be made orally, in writing or in any other convenient manner and remains in force for five days.

(3) As soon as practicable after giving a direction the warden must make a written report to the Minister—

(a) describing the activity and its location;

- (b) stating the name and address (if known) of the person to whom the direction was given;
 - (c) stating the date and time at which it was given;
- and
- (d) providing any other information required by the Minister.

(4) When a direction under subsection (1) expires the direction cannot be renewed by a further direction given under that subsection.

(5) Where a person is undertaking or has undertaken an activity in, or adjacent to, a wilderness protection area or wilderness protection zone or on, or adjacent to, land acquired by the Minister or the Minister has reason to believe that a person is likely to undertake such an activity and, in the opinion of the Minister, the activity constitutes, or will constitute an offence against this Act or the *National Parks Act* or will result in the commission of such an offence if it continues, the Minister may, by notice in writing, direct the person to stop the activity or not to undertake it.

(6) The notice must—

- (a) state the Minister's reasons for giving the direction;
 - (b) state that any interested person may make submissions to the Minister with respect to the direction;
- and
- (c) set out the penalty for failure to comply with the direction.

(7) The notice must be served on the person to whom it is addressed—

- (a) personally or by post;
- or
- (b) if the whereabouts of the person are unknown—by publication of the notice in a newspaper circulating generally throughout the State.

(8) The Minister must—

- (a) give proper consideration to any submissions made with respect to the direction;
- (b) if satisfied (whether on the basis of such submissions or otherwise) that the direction should be revoked or modified, revoke or modify the direction accordingly.

(9) A person who contravenes or fails to comply with a direction of the Minister or a warden under this section is guilty of an offence.

Penalty: Division 6 fine.

Forfeiture

17. (1) An object is liable to confiscation under this section if it has been used in the commission of an offence or it furnishes evidence of the commission of an offence.

(2) A vehicle is liable to confiscation under subsection (1) only in relation to an offence that is punishable by imprisonment.

(3) If a warden suspects on reasonable grounds that an object is liable to confiscation under this section, the warden may seize the object.

(4) Where an object is seized under subsection (3), the following provisions apply:

- (a) if proceedings for an offence in relation to the object seized are not commenced within three months of the date of seizure, the object must be returned to the owner;
- (b) if such proceedings are commenced against the owner of the object within three months of the date of seizure and the owner is, in the course of those proceedings, convicted of such an offence—
- (i) the court may order that the object be forfeited to the Crown;
 - and
 - (ii) where the object is an animal, carcass, egg or plant and the prosecutor applies for its forfeiture—the court must order that the object be forfeited to the Crown;
- (c) the object must be returned to the owner of the object if—
- (i) in the circumstances referred to in paragraph (b), the owner is not convicted or the court does not make an order for forfeiture;
 - or
 - (ii) in any other circumstances, the object is no longer required to furnish evidence of the commission of an offence;
- (d) an object forfeited to the Crown may be sold or disposed of as the Minister thinks fit and, if sold, the proceeds of sale must be paid into the Wildlife Conservation Fund.

(5) Notwithstanding subsection (4) if the Minister is unable, after reasonable inquiry, to ascertain the whereabouts of a person to whom an object is to be returned under subsection (4), the object may be sold or disposed of as the Minister thinks fit and, if sold, the proceeds of sale must be paid into the Wildlife Conservation Fund.

(6) In this section—

“convicted” includes found guilty without a conviction being recorded:

“object” includes—

- (a) an animal, carcass or egg;
- (b) a plant;
- (c) a vehicle;
- (d) a cage or container;
- (e) a firearm or a trap, net, snare or other device for taking, or facilitating the taking of, animals;
- (f) poison or other substance;
- (g) a document or record:

“offence” means an offence against this Act and includes an offence against the *National Parks Act* that is committed in, or adjacent to, a wilderness protection area, wilderness protection zone or on land acquired by the Minister:

“owner” in relation to an object seized under this section means either or both of the following persons:

- (a) a person who has legal title to the object;
- (b) a person who was, immediately before seizure of the object, legally in possession or control of the object.

Hindering of wardens, etc.

18. (1) A person must not hinder a warden, or a person assisting a warden, in the exercise of powers or functions under this Act.

Penalty: Division 6 fine.

(2) A person must not use abusive, threatening or insulting language to a warden, or a person assisting a warden, in the exercise of powers or functions under this Act.

Penalty: Division 6 fine.

(3) A person must not assault a warden, or a person assisting a warden, in the exercise of powers or functions under this Act.

Penalty: Division 5 fine or division 5 imprisonment.

Power of arrest

19. (1) A warden may, without warrant, arrest a person—

(a) who fails to comply with a direction, requirement or order of a warden or the Minister under this Act;

or

(b) who hinders a warden or a person assisting a warden in the exercise of powers or functions under this Act.

(2) Where a warden arrests a person under this section, the warden must, as soon as possible, take the person, or have the person taken, to the nearest police station at which facilities are continuously available for the care and custody of the person arrested.

False representation

20. A person must not, by words or conduct, falsely represent that he or she is a warden.

Penalty: Division 7 fine or division 8 imprisonment.

Immunity from personal liability

21. (1) No personal liability attaches to a warden, or a person assisting a warden, for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of the powers or functions of a warden under this Act.

(2) A liability that would, but for subsection (1), lie against a warden or other person lies instead against the Crown.

PART 3**WILDERNESS PROTECTION AREAS AND WILDERNESS PROTECTION ZONES****DIVISION 1—CONSTITUTION OF WILDERNESS PROTECTION AREAS AND ZONES****Constitution of wilderness protection areas and wilderness protection zones**

22. (1) The Governor may, by proclamation made on the recommendation of the Minister—

(a) constitute as a wilderness protection area or a wilderness protection zone—

(i) a reserve, or part of a reserve or any other Crown land;

(ii) any other land if the proclamation is made with the consent of the owner of the land and of all other persons who have an interest in the land registered under the *Real Property Act 1886*;

and

(b) assign a name to the wilderness protection area or zone so constituted.

(2) The Governor may, on the recommendation of the Minister, by subsequent proclamation—

(a) abolish a wilderness protection area or wilderness protection zone constituted under this section;

(b) alter the boundaries of a wilderness protection area or wilderness protection zone constituted under this section;

or

(c) alter the name of a wilderness protection area or wilderness protection zone constituted under this section.

(3) A proclamation must not be made under subsection (2) (a) or (b) by virtue of which any land ceases to be, or to be included in, a wilderness protection area or wilderness protection zone unless—

(a) the proclamation is made in pursuance of a resolution passed by both Houses of Parliament;

or

(b) in the case of land comprising the whole or part of a wilderness protection zone—the proclamation constitutes the land as a wilderness protection area or part of a wilderness protection area.

(4) Notice of a motion for a resolution under subsection (3) (a)—

(a) must not be given until the Minister has notified the Environment, Resources and Development Committee in writing of the proposed abolition, or alteration in the boundaries, of the wilderness protection area or zone;

and

(b) must be given at least 14 sitting days before the resolution is passed.

(5) Where, in the opinion of the Minister, land should be constituted as a wilderness protection area or a wilderness protection zone under this section—

(a) —

(i) because it meets the wilderness criteria to a sufficient extent to justify its protection as wilderness under this Act;

or

(ii) to enable it to be restored to a condition that justifies its protection as wilderness under this Act;

(b) in order to provide a buffer zone to protect land of a kind referred to in paragraph (a);

or

(c) to enable the adoption of convenient boundaries for a wilderness protection area or wilderness protection zone,

the Minister may recommend to the Governor that he or she constitute the land as a wilderness protection area or wilderness protection zone under subsection (1) or alter the boundaries of an existing wilderness protection area or zone by adding the land to the area or zone under subsection (2).

(6) Before making a recommendation under subsection (5), the Minister must comply with the following requirements:

- (a) if, in the Minister's opinion, an Aboriginal organization has a particular interest in the land to which the proposal relates, the Minister must consult that organization in relation to the proposal;
- (b) if the Wilderness Advisory Committee has not provided the Minister with a report setting out its views in relation to the proposal and to the future management of the land the Minister must obtain such a report from the Committee;
- (c) the Minister must by public notice—
 - (i) identify the land to which the proposal relates and set out the Minister's reasons for the proposal;
 - (ii) set out the text of the Committee's report;and
 - (iii) invite interested persons to make submissions to the Minister in relation to the proposal within a period of three months following publication of the notice;
- (d) the Minister must give a copy of the notice to the Environment, Resources and Development Committee, the Natural Resources Management Standing Committee, the Reserves Advisory Committee and to the holder of a mining tenement (if any) in force in respect of the land;
- (e) the Minister must make copies of all submissions made in response to the notice available for public inspection or purchase (except for submissions made in confidence) and for that purpose the Minister must, by public notice, give notice of the place or places at which the copies are available;
- (f) the Minister must refer all submissions made in response to the notice to the Wilderness Advisory Committee for comment and must before making a recommendation to the Governor consider all submissions and the comments of the Committee;
- (g) if the Minister decides to defer, or not to proceed with, the proposal he or she must give public notice setting out the reasons for the decision.

(7) Upon constitution of a reserve, or part of a reserve, as a wilderness protection area or wilderness protection zone the land ceases to be a reserve, or part of a reserve, under the *National Parks Act*.

Constitution of area or zone with consent of indenture holder

23. (1) Subject to subsection (2), the Governor may, by proclamation under this Part, constitute land as a wilderness protection area or zone in contravention of an indenture Act or an indenture.

(2) The Governor must not make a proclamation of a kind referred to in subsection (1) that would affect the rights of a party under an indenture Act or an indenture without the consent of the party.

(3) In order to obtain the consent of a party under subsection (2) the Governor may, by regulation, authorize the party to undertake an act or activity that would otherwise be unlawful under this Act.

(4) In this section—

“**Indenture**” means an indenture, or other instrument, ratified by an indenture Act:

“**Indenture Act**” means the—

Broken Hill Proprietary Company's Indenture Act 1937

Broken Hill Proprietary Company's Steel Works Indenture Act 1958

Cooper Basin (Ratification) Act 1975

Roxby Downs (Indenture Ratification) Act 1982

or

Stony Point (Liquids Project) Ratification Act 1981.

Alteration of boundaries of wilderness protection areas and zones

24. (1) The Governor may, by regulation made on the recommendation of the Minister, alter the boundaries of a wilderness protection area or wilderness protection zone for the purpose of making, or allowing for the making of, minor alterations or additions to a public road that intersects, or is adjacent to, the wilderness protection area or zone.

(2) At least three months before making a recommendation to the Governor, the Minister must give public notice—

(a) specifying the place or places at which a plan showing the proposed alterations is available for inspection;

and

(b) inviting interested persons to make written submissions to the Minister in relation to the proposal.

(3) The Minister must give a copy of the notice to the Natural Resources Management Standing Committee.

(4) The Minister must give consideration to any submissions made in response to an invitation under subsection (2).

(5) The Minister must not make a recommendation if the Minister is satisfied that the proposed alteration would—

(a) significantly prejudice the implementation of the policies set out in the wilderness code of management so far as they are relevant to that wilderness protection area or wilderness protection zone;

or

(b) be contrary to the plan of management prepared in relation to that wilderness protection area or wilderness protection zone.

DIVISION 2—PROHIBITION OF ACTIVITIES IN WILDERNESS PROTECTION AREAS AND ZONES

Prohibition of mining operations in wilderness protection areas and zones

25. (1) Subject to subsection (3), rights of entry, prospecting, exploration, or mining cannot be acquired or exercised pursuant to a mining Act in respect of land constituting a wilderness protection area or wilderness protection zone.

(2) Rights of entry, prospecting, exploration or mining cannot be acquired pursuant to a mining Act in respect of land in respect of which the Minister has published a notice under section 22 (6) (c) until the land is constituted as a wilderness protection zone or the Minister gives public notice under section 22 (6) (g) that he or she has decided not to proceed with the proposal to constitute the land as a wilderness protection area or zone.

(3) The Governor may, by proclamation, declare that subject to any conditions specified in the proclamation rights of entry, prospecting, exploration, or mining may be acquired and exercised in respect of land constituting a wilderness protection zone.

- (4) The Governor may, by proclamation, vary or revoke a proclamation under subsection (3).
- (5) A proclamation must not be made under subsection (3) unless—
- (a) the proclamation—
- (i) is made—
- (A) for the purpose of enabling the holder of a mining tenement that was in force immediately before constitution of the land as a wilderness protection zone to continue to exercise rights of entry, prospecting, exploration or mining under the tenement;
- (B) to enable the holder to acquire and exercise such rights under another tenement granted under the same mining Act;
- (C) to enable a subsequent holder of a mining tenement referred to in subsubparagraph (A) or (B) to exercise rights of entry, prospecting, exploration or mining under the tenement;
- or
- (D) to enable a subsequent holder of such a mining tenement to acquire and exercise such rights under another tenement granted under the same mining Act;
- and
- (ii) is made simultaneously with the proclamation constituting the land as, or adding the land to, a wilderness protection zone;
- or
- (b) the proclamation is made in pursuance of a resolution passed by both Houses of Parliament.
- (6) A proclamation under subsection (4) that removes or reduces restrictions on the acquisition or exercise of rights of entry, prospecting, exploration or mining must not be made unless the proclamation is made in pursuance of a resolution passed by both Houses of Parliament.
- (7) A proclamation under subsection (4) that increases existing restrictions or imposes new restrictions on the acquisition or exercise of rights of entry, prospecting, exploration or mining must not be made unless—
- (a) the Minister of Mines and Energy and the holder of the mining tenement concerned have been given at least three months to make submissions to the Minister on the proposal;
- and
- (b) the Minister has considered the submissions (if any) made under paragraph (a).
- (8) Notice of a motion for a resolution under subsection (5) (b) or (6)—
- (a) must not be given until the Minister has notified the Environment, Resources and Development Committee in writing of the proposal;
- and
- (b) must be given at least 14 sitting days before the resolution is passed.

(9) A person who contravenes or fails to comply with a condition of a proclamation under this section is guilty of an offence.

Penalty: Division 4 fine or division 4 imprisonment or both.

(10) The Minister must, at intervals of not more than five years—

(a) assess the effects of mining operations on each wilderness protection zone constituted under this Act;

(b) prepare a report setting out the Minister's conclusions following the assessment and any action that should be taken as a result of the assessment;

and

(c) cause copies of the report to be laid before both Houses of Parliament.

Prohibition of other activities

26. (1) The following activities are prohibited in wilderness protection areas and wilderness protection zones:

(a) the grazing of stock and all other forms of primary production;

(b) the construction or erection of roads, tracks, buildings or structures (except those that are specifically authorized by the plan of management of the wilderness protection area or zone).

(2) Subsection (1) is subject to the right of a person to exercise rights of entry, prospecting, exploration or mining pursuant to a mining tenement and a proclamation under this Division.

(3) A person who undertakes an activity in contravention of subsection (1) is guilty of an offence.

Penalty: Division 4 fine or division 4 imprisonment or both.

(4) A person must not, without the approval in writing of the Director, bring an animal into a wilderness protection area or wilderness protection zone or permit an animal to enter a wilderness protection area or zone.

Penalty: Division 4 fine or division 4 imprisonment or both.

Wilful damage to wilderness protection area or zone or to property of Minister

27. (1) A person who intentionally and without lawful authority—

(a) destroys or damages any part of a wilderness protection area, wilderness protection zone or land acquired by the Minister;

(b) destroys or damages native plants in a wilderness protection area or zone or on land acquired by the Minister;

or

(c) damages or destroys any property of the Minister in a wilderness protection area or zone or on land acquired by the Minister,

is guilty of an offence.

Penalty: Division 4 fine or division 4 imprisonment or both.

(2) Upon convicting a person of an offence against this section, the court may order the convicted person to pay to the Minister such sum as the court thinks just by way of compensation.

DIVISION 3—CONTROL AND MANAGEMENT OF WILDERNESS PROTECTION
AREAS AND ZONES

Control and administration of wilderness protection areas and zones

28. (1) The Minister has the control and administration of all wilderness protection areas and wilderness protection zones.

(2) Subject to subsection (3), all leases and licences granted in respect of land become void upon constitution of the land as a wilderness protection area or zone.

(3) A mining tenement in force in respect of land immediately before the constitution of the land as a wilderness protection zone remains in force if the rights of entry, prospecting, exploration or mining under the tenement are preserved by a proclamation made simultaneously with the proclamation constituting the land as a wilderness protection zone.

(4) The Minister may, on appropriate terms and conditions, grant a licence entitling a person to take groups of people into a wilderness protection area or wilderness protection zone on sight seeing or scientific expeditions.

Management of wilderness protection areas and zones

29. (1) Subject to subsection (2), all wilderness protection areas and wilderness protection zones are under the management of the Director.

(2) The Director must observe any direction of the Minister or the Chief Executive Officer relating to the management of wilderness protection areas and wilderness protection zones generally or any particular wilderness protection area or zone.

Implementation of code of management

30. Before the Minister has adopted a plan of management in relation to a wilderness protection area or zone, the Minister, the Chief Executive Officer and the Director must, as far as practicable in the management of that area or zone, implement the policies set out in the wilderness code of management so far as they are relevant to that area or zone.

Plans of management

31. (1) As soon as practicable after the constitution of a wilderness protection area or zone, the Minister must prepare a plan of management in relation to the area or zone.

(2) Before preparing a plan of management the Minister must, by public notice, invite interested persons to make written submissions to the Minister (within a period of not less than three months following publication of the notice) as to matters that should be addressed by the plan of management and the Minister must consider all submissions made in response to the advertisement when preparing the plan of management.

(3) Where the plan of management will relate to a wilderness protection zone the Minister must give a copy of the notice to the Natural Resources Management Standing Committee and to the Minister of Mines and Energy.

(4) The Minister must make copies of all submissions made under subsection (2) available for public inspection or purchase (except for submissions made in confidence) and for that purpose the Minister must, by public notice, give notice of the place or places at which the copies are available.

(5) The plan of management must—

- (a) as far as practicable implement the policies set out in the wilderness code of management so far as they are relevant to the wilderness protection area or wilderness protection zone;

- (b) set forth proposals of the Minister in relation to the management of the wilderness protection area or wilderness protection zone;
- and
- (c) set forth any other proposals by which the Minister proposes to accomplish the objectives of this Act in relation to the wilderness protection area or zone.
- (6) When a plan of management has been prepared, the Minister must give public notice of that fact.
- (7) The notice must—
- (a) specify an address at which copies of the plan of management may be inspected or purchased;
- and
- (b) specify an address to which submissions in connection with the plan may be forwarded.
- (8) Where the plan of management relates to a wilderness protection zone the Minister must give a copy of it to the Natural Resources Management Standing Committee.
- (9) Any person may within three months after publication of the notice, or such longer period as is specified in the notice, make submissions to the Minister in connection with the plan of management.
- (10) The Minister must make copies of all submissions made under subsection (9) available for public inspection or purchase (except for submissions made in confidence) and for that purpose the Minister must, by public notice, give notice of the place or places at which the copies are available.
- (11) After expiration of the period allowed for making submissions the Minister must refer the proposed plan together with copies of all submissions made in relation to it to the Wilderness Advisory Committee for its comments.
- (12) The Committee must, within three months after the referral, provide the Minister with its comments.
- (13) The Minister may—
- (a) adopt the plan of management—
- (i) without alteration;
- or
- (ii) with such alterations as the Minister thinks reasonable in view of the submissions made pursuant to subsection (9) or comments made by the Wilderness Advisory Committee;
- (b) may refer the plan of management back to the Wilderness Advisory Committee for further advice.
- (14) The Minister must give public notice of the adoption of a plan of management.
- (15) The Director must, upon the application of any person and payment of the prescribed fee, furnish that person with a copy of a plan of management adopted under this section.
- (16) A plan of management may be varied or revoked and replaced at any time in accordance with the procedures set out in this section.

Implementation of plan of management

32. Where the Minister has adopted a plan of management in relation to a wilderness protection area or wilderness protection zone—

- (a) the provisions of the plan must be carried out in relation to that area or zone;
and
- (b) operations must not be undertaken in relation to that area or zone unless those operations are in accordance with the plan of management.

Prohibited areas

33. (1) Where the Minister is satisfied that it is necessary for the purpose of protecting human life or conserving wildlife the Minister may, by public notice, declare any portion of a wilderness protection area or wilderness protection zone to be a prohibited area.

(2) A notice published under subsection (1) must state the grounds upon which the declaration is made.

(3) A person must not be within a prohibited area unless authorized to enter the area by a permit issued by the Minister under this section.

Penalty: Division 7 fine.

(4) The Minister may, on appropriate terms and conditions, issue to any person a permit to be within a prohibited area.

(5) The Minister may, by public notice, vary or revoke a notice under subsection (1).

(6) The Minister must not publish a notice under subsection (1) or vary a notice under subsection (5) in relation to a wilderness protection zone without first consulting the Minister of Mines and Energy and the holder of the mining tenement (if any) in force in relation to the zone and considering his or her views.

PART 4

CIVIL ENFORCEMENT PROCEEDINGS

Jurisdiction of the Court

34. (1) Where a person contravenes or fails to comply with a provision of this Act, the Director or any other person may apply to a District Court for an order under this section.

(2) The application may be made in the absence of the respondent and, if the Court is satisfied on the application that the respondent has a case to answer, it will issue a summons requiring the respondent to appear before the Court to show cause why an order should not be made under this section.

(3) If—

(a) after hearing—

(i) the applicant and the respondent;

and

(ii) any other person who has, in the opinion of the Court, a proper interest in the subject matter of the proceedings and desires to be heard in the proceedings,

the Court is satisfied, on the balance of probabilities, that the respondent to the application has contravened or failed to comply with a provision of this Act;

or

(b) the respondent fails to appear in response to the summons or, having appeared, does not avail himself or herself of an opportunity to be heard,

the Court may, by order—

- (c) require the respondent to refrain, either temporarily or permanently, from the act, or course of action, that constitutes the contravention of, or failure to comply with, this Act;
- (d) require the respondent to pay the Director's costs in making good the contravention or default.

(4) If, upon an application under this section or before the determination of the proceedings commenced by the application, the Court is satisfied that, in order to preserve the rights or interests of parties to the proceedings or for any other reason, it is desirable to make an interim order under this section, the Court may make such an order.

(5) An interim order—

- (a) may be made in the absence of the respondent;
 - (b) will be made subject to such conditions as the Court thinks fit;
- and
- (c) will not operate after the proceedings in which it is made are finally determined.

(6) A person who contravenes, or fails to comply with, an order or an interim order, under this section is (without prejudice to any liability for contempt of the order) guilty of an offence.

Penalty: Division 4 fine.

(7) The Court may make such orders in relation to the costs of proceedings under this section as it thinks just.

Commencement of proceedings

35. (1) Proceedings under this Part may be commenced within two years after the date of the alleged contravention of, or failure to comply with, a provision of this Act or, with the authorization of the Director of Public Prosecutions, at any later time.

(2) The Director of Public Prosecutions may authorize proceedings under this Part within six months following the authorization if, in the Director's opinion, the application could not have been made within the time specified in subsection (1) because of lack of evidence.

(3) A document that purports to be an authorization signed by the Director of Public Prosecutions under subsection (2) must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of authorization under that subsection.

Appeals

36. (1) An appeal lies against—

- (a) an order of a District Court made in the exercise of the jurisdiction conferred by this Part;

or

- (b) a decision by a District Court not to make an order under this Part,

to the Supreme Court.

(2) An appeal under this section must be instituted within 30 days of the date of the decision or order subject to appeal, or such longer period as may be allowed by the Supreme Court.

PART 5

MISCELLANEOUS

Evidentiary provisions

37. (1) In civil enforcement proceedings under this Act or in proceedings for an offence against this Act, an allegation that a place referred to in the application, complaint or information is, or was at a specified time, a wilderness protection area or wilderness protection zone or is, or was at a specified time, situated within a wilderness protection area or zone will be accepted as proved in the absence of proof to the contrary.

(2) Where in civil enforcement proceedings under this Act or in proceedings for an offence against this Act, any question arises as to whether the respondent or defendant was duly authorized pursuant to this Act, the *National Parks Act* or any other Act to undertake the action the subject of the proceedings, the onus of proving the authorization lies upon the respondent or defendant.

(3) In civil enforcement proceedings under this Act or in proceedings for an offence against this Act, an allegation that a particular person is, or was at a time specified in the application, complaint or information, a warden will be accepted as proved in the absence of proof to the contrary.

Time for prosecution of summary offences

38. (1) Subject to subsection (2), a complaint for a summary offence against this Act cannot be laid after the expiration of two years after the commission of the offence.

(2) The Director of Public Prosecutions may authorize the laying of a complaint within six months following the authorization if, in the Director's opinion, the complaint could not have been laid within the time specified in subsection (1) because of lack of evidence.

(3) A document that purports to be an authorization signed by the Director of Public Prosecutions under subsection (2) must be accepted in legal proceedings, in the absence of proof to the contrary, as proof of authorization under that subsection.

Financial provision

39. (1) Subject to this Act, the money required for the purposes of this Act will be paid out of money provided by Parliament for those purposes.

(2) A penalty payable in respect of an offence against this Act must be paid into the Wildlife Conservation Fund.

General defence

40. It is a defence to a charge of an offence against this Act if the defendant proves that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

Regulations

41. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

- (a) confer powers, authorities, duties and obligations upon the Minister, the Chief Executive Officer, the Director, wardens or any officers appointed under this Act, that may be necessary or expedient for the enforcement of this Act;
- (b) regulate the use and enjoyment of wilderness protection areas or zones;
- (c) provide for the safety of persons in wilderness protection areas or zones;

- (d)* establish standards of conduct to which those who may resort to wilderness protection areas or zones must conform while in the areas or zones;
- (e)* provide for the removal of trespassers from wilderness protection areas or zones;
- (f)* restrict or prohibit access to wilderness protection areas or zones or any portions of wilderness protection areas or zones;
- (g)* provide for the preservation and protection of natural features of wilderness protection areas or zones;
- (h)* provide for the protection, conservation and management of animals and plants in wilderness protection areas or zones;
- (i)* regulate, restrict or prohibit the taking of animals and plants into wilderness protection areas or zones or the removal of animals and plants from wilderness protection areas or zones;
- (j)* regulate, restrict or prohibit the removal of wood, mulch or other dead vegetation from wilderness protection areas or zones;
- (k)* provide for the impounding, removal, destruction, or disposal of animals found straying upon wilderness protection areas or zones;
- (l)* regulate, restrict or prohibit the taking of firearms or other devices into, or the use of firearms or other devices in, a wilderness protection area or zone;
- (m)* provide for the collection of scientific specimens and the pursuit of research in wilderness protection areas or zones;
- (n)* reserve the whole or any portion of wilderness protection areas or wilderness protection zones for a separate or exclusive use prescribed by the regulations;
- (o)* restrict or prohibit access to wilderness protection areas or zones or to any portion of a wilderness protection area or zone by any person or class of persons;
- (p)* regulate, restrict or prohibit the use of roads or tracks in wilderness protection areas or wilderness protection zones;
- (q)* regulate, restrict or prohibit the use of motor vehicles or other vehicles in wilderness protection areas or zones;
- (r)* empower the Director to fix one or more speed limits for vehicles driven within a wilderness protection area or zone or any part of a wilderness protection area or zone;
- (s)* provide for the impounding, removal or disposal of any vehicle or property found in a wilderness protection area or zone in contravention of a regulation;
- (t)* prescribe fees in relation to the administration of this Act and in particular prescribe, and provide for the collection or recovery of, charges or entrance fees to be made of persons entering or desiring to enter a wilderness protection area or zone or desiring to use facilities provided in a wilderness protection area or zone;
- (u)* regulate, restrict or prohibit the parking of vehicles in a wilderness protection area or zone;
- (v)* regulate, restrict or prohibit camping within a wilderness protection area or zone;
- (w)* provide for the protection and preservation of buildings, structures, signs and other improvements in wilderness protection areas or zones;
- (x)* exempt, conditionally or unconditionally, Aboriginal people generally, or Aboriginal people of a specified class, from all or any of the provisions of this Act in order

to enable the observance of Aboriginal tradition in the wilderness protection area or wilderness protection zone specified in the regulations;

(y) prescribe penalties, recoverable summarily, for breach of, or non-compliance with, any regulation;

and

(z) provide for the expiation of offences against the regulations.

(3) Any fees prescribed under this Act may be differential, varying according to any factor stated in the regulation.

SCHEDULE 1

Consequential Amendment to National Parks and Wildlife Act 1972

| Provision Amended | How Amended |
|--------------------|--|
| Section 5 | <p>by inserting after the definition of "warden" the following definitions:</p> <p>"wilderness protection area" means land constituted as a wilderness protection area under the <i>Wilderness Protection Act 1992</i>;</p> <p>"wilderness protection zone" means land constituted as a wilderness protection zone under the <i>Wilderness Protection Act 1992</i>;</p> |
| Section 47 (1) (a) | by inserting after "reserve" "or a wilderness protection area or wilderness protection zone" |
| Section 52 (2) (b) | <p>strike out paragraph (b) and substitute the following paragraph:</p> <p>(b) does not apply in relation to animals within—</p> <p>(i) a reserve, other than a game reserve;</p> <p>or</p> <p>(ii) a wilderness protection area or wilderness protection zone;</p> |
| Section 68d (1) | by inserting after "reserve" "or a wilderness protection area or wilderness protection zone" |
| Section 68d (2) | by inserting after "reserve" "or a wilderness protection area or wilderness protection zone" |
| Section 68d (3) | <p>by inserting after "reserve" first occurring "or from a wilderness protection area or a wilderness protection zone"</p> <p>by inserting after "reserve" second occurring "or wilderness protection area or wilderness protection zone"</p> |
| Section 68d (4) | <p>by inserting after "reserve" first occurring "or from a wilderness protection area or a wilderness protection zone"</p> <p>by inserting after "reserve" second occurring "or wilderness protection area or wilderness protection zone"</p> |
| New section 74a | <p>by inserting the following section after section 74:</p> <p>Maximum penalties in relation to wilderness protection areas and zones</p> <p>74a. The maximum penalties prescribed by sections 47 (3) and 51 are increased by one half of those penalties in respect of the taking of a native plant or a protected animal or the eggs of a protected animal in a wilderness protection area or wilderness protection zone.</p> |
| Section 75 (2) | by inserting after "a reserve or sanctuary under this Act" "or a wilderness protection area or wilderness protection zone or is situated within a reserve, sanctuary, wilderness protection area or zone". |

APPENDIX

Divisional Penalties

At the date of publication of this reprint divisional penalties are, as provided by section 28a of the *Acts Interpretation Act 1915*, as follows:

| Division | Maximum imprisonment | Maximum fine |
|----------|----------------------|--------------|
| 1 | 15 years | \$60 000 |
| 2 | 10 years | \$40 000 |
| 3 | 7 years | \$30 000 |
| 4 | 4 years | \$15 000 |
| 5 | 2 years | \$8 000 |
| 6 | 1 year | \$4 000 |
| 7 | 6 months | \$2 000 |
| 8 | 3 months | \$1 000 |
| 9 | — | \$500 |
| 10 | — | \$200 |
| 11 | — | \$100 |
| 12 | — | \$50 |

Note: This appendix is provided for convenience of reference only.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor