

**MISCELLANEOUS ACTS (WILDERNESS) AMENDMENT
ACT 1987 No. 197**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Amendment of Act No. 80, 1974
3. Amendment of certain other Acts

SCHEDULE 1—AMENDMENTS TO THE NATIONAL PARKS AND WILDLIFE
ACT 1974

SCHEDULE 2—AMENDMENTS TO OTHER ACTS

MISCELLANEOUS ACTS (WILDERNESS) AMENDMENT ACT 1987
No. 197

NEW SOUTH WALES



Act No. 197, 1987

An Act to amend the National Parks and Wildlife Act 1974 to provide for the protection of wild and scenic rivers and for interim protection orders; and to further amend that Act and certain other Acts as a result of the enactment of the Wilderness Act 1987. [Assented to 4 December 1987]

*Miscellaneous Acts (Wilderness) Amendment 1987***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Miscellaneous Acts (Wilderness) Amendment Act 1987.

Amendment of Act No. 80, 1974

2. The National Parks and Wildlife Act 1974 is amended as set out in Schedule 1.

Amendment of certain other Acts

3. Each Act specified in Schedule 2 is amended as set out in that Schedule.

SCHEDULE 1—AMENDMENTS TO THE NATIONAL PARKS AND WILDLIFE ACT 1974

(Sec. 2)

(1) Section 5 (Interpretation)—

(a) Section 5 (1), definition of “interim protection order”—

After the definition of “honorary ranger”, insert:

“interim protection order” means an order made under Part VIA;

(b) Section 5 (1), definition of “wild and scenic river”—

After the definition of “vehicle”, insert:

“wild and scenic river” means a river declared to be a wild and scenic river under this Act;

(c) Section 5 (1), definition of “wilderness protection agreement”—

After the definition of “wilderness area”, insert:

“wilderness protection agreement” has the same meaning as it has in the Wilderness Act 1987;

(2) Section 8 (Miscellaneous powers and functions of Director)—

(a) Section 8 (6)—

After “wilderness areas,”, insert “wild and scenic rivers,”.

(b) Section 8 (6)—

Omit “and wildlife management areas”, insert instead “,wildlife management areas and interim protection orders”.

(3) Section 10 (Officers and employees)—

After “this Act”, insert “and the Wilderness Act 1987”.

SCHEDULE 1—AMENDMENTS TO THE NATIONAL PARKS AND WILDLIFE ACT 1974—*continued*

- (4) Section 11 (**Use of services of officers etc. of Departments etc.**)—
 Section 11 (5)—
 After “this Act”, insert “and the Wilderness Act 1987”.
- (5) Section 23 (**Functions and duties of Council**)—
 (a) Section 23 (1) (a)—
 Omit “and to conservation agreements and conservation areas,”,
 insert instead “to conservation agreements and conservation areas,
 and to wilderness protection agreements and wilderness areas,”.
 (b) Section 23 (1) (b)—
 After “this Act”, insert “and the Wilderness Act 1987”.
- (6) Part IV, Division 3, heading—
 Omit the heading to the Division, insert instead:
 DIVISION 3—*Wilderness areas and wild and scenic rivers*
- (7) Section 59—
 Omit the section, insert instead:
Declaration of wilderness areas
 59. (1) The Minister may, by notification published in the Gazette, declare any lands reserved or dedicated under this Act to be a wilderness area.
 (2) The Minister shall not declare lands to be a wilderness area unless the Director has identified those lands as wilderness in accordance with the Wilderness Act 1987.
 (3) A declaration may be varied by a further notification by the Minister published in the Gazette but shall not be revoked except by an Act of Parliament.
 (4) A declaration of a wilderness area made under this Act and in force immediately before the commencement of this section shall be deemed to have been made under this section and may be varied or revoked in accordance with this section.
- (8) Section 60 (**Effect of declaration of wilderness area**)—
 (a) Section 60—
 Omit “within a national park or nature reserve”, insert instead “reserved or dedicated under this Act”.
 (b) Section 60 (2)—
 At the end of section 60, insert:

Miscellaneous Acts (Wilderness) Amendment 1987

 SCHEDULE 1—AMENDMENTS TO THE NATIONAL PARKS AND WILDLIFE ACT 1974—*continued*

(2) Lands declared to be a wilderness area under section 59 shall be managed in accordance with the objects of the Wilderness Act 1987 and the principles set out in section 9 of that Act.

(9) Sections 61, 61A—

Omit section 61, insert instead:

Declaration of wild and scenic rivers

61. (1) Subject to section 61A, the Director may, by notification published in the Gazette, declare any river or part of a river (when within lands reserved or dedicated under this Act) to be a wild and scenic river.

(2) The Director may, by further notification published in the Gazette, vary or revoke any such declaration.

Effect of declaration of wild and scenic river

61A. (1) Where a plan of management is in force with respect to any river or part of a river within lands reserved or dedicated under this Act, a declaration shall not be made under section 61 with respect to that river or part of that river except in accordance with the plan.

(2) A statutory authority shall not carry out development in relation to a wild and scenic river unless it has consulted with, and considered any advice given by, the Minister in relation to the development.

(3) In this section, “statutory authority” and “development” have the same meanings as they have in Division 7.

(10) Section 69i (**Proposals by statutory authorities affecting conservation areas**)—

Section 69i (8)—

After section 69i (7), insert:

(8) This section does not apply to any part of a conservation area that is a wilderness area within the meaning of the Wilderness Act 1987.

(11) Section 70 (**Fauna in wildlife districts, wildlife refuges, wildlife management areas, conservation areas and certain wilderness areas**)—

(a) Section 70 (1), (2), (4), (6)—

Omit “or conservation area” wherever occurring, insert instead “, conservation area, wilderness area or area subject to a wilderness protection agreement”.

*Miscellaneous Acts (Wilderness) Amendment 1987*SCHEDULE 1—AMENDMENTS TO THE NATIONAL PARKS AND WILDLIFE ACT 1974—*continued*

- (b) Section 70 (6A) (a)—
After “conservation area”, insert “or area subject to a wilderness protection agreement”.
- (c) Section 70 (6A) (b)—
After “conservation agreement”, insert “or wilderness protection agreement”.
- (12) Section 71 (**Native plants in wildlife refuges, wildlife management areas, conservation areas and certain wilderness areas**)—
- (a) Section 71 (1), (3)—
Omit “or conservation area” wherever occurring, insert instead “, conservation area, wilderness area or area subject to a wilderness protection agreement”.
- (b) Section 71 (3A) (a)—
After “conservation area”, insert “or area subject to a wilderness protection agreement”.
- (c) Section 71 (3A) (b)—
After “conservation agreement”, insert “or wilderness protection agreement”.
- (13) Section 74 (**Catchment areas**)—
- (a) After “Aboriginal area” where firstly occurring, insert “or that comprise a wilderness area within the meaning of the Wilderness Act 1987”.
- (b) Omit “The Metropolitan Water Sewerage and Drainage Board, The Hunter District Water Board or The Broken Hill Water Board”, insert instead “the Water Board, the Hunter District Water Board or the Broken Hill Water Board”.
- (c) Omit “or Aboriginal area” where secondly occurring, insert instead “, Aboriginal area or wilderness area”.
- (14) Part VIA—
After Part VI, insert:

PART VIA

INTERIM PROTECTION ORDERS

Interim protection of areas having significant natural values etc.

91A. The Director may recommend to the Minister the making of an interim protection order in respect of an area of land—

- (a) which has, in the Director’s opinion, natural, scientific or cultural significance; or

Miscellaneous Acts (Wilderness) Amendment 1987

SCHEDULE 1—AMENDMENTS TO THE NATIONAL PARKS AND WILDLIFE ACT 1974—*continued*

- (b) on which the Director intends to exercise any of the Director's powers, authorities, duties or functions under this Act relating to fauna or native plants.

Interim protection orders

91B. (1) The Minister may, after considering a recommendation made under section 91A, make an interim protection order in respect of the area of land the subject of the recommendation.

(2) An interim protection order shall take effect on the date of its publication in the Gazette or on a later date specified in the order.

(3) An interim protection order may contain terms of a kind set out in the regulations, being terms relating to the preservation, protection and maintenance of the area of land, its fauna and plants and any relic or place subject to the order.

Notice of intention to make order not required

91C. The Minister is not required, before making an interim protection order, to notify any person who will be affected by the order of the intention to make the order.

Duration of interim protection order

91D. (1) An interim protection order has effect for such period, being not longer than 12 months, as is specified in the order.

(2) An order ceases to have effect if the area of land subject to the order is reserved or dedicated under this Act or the order is revoked.

(3) Only one interim protection order may be imposed in respect of an area of land while it is owned by the same person.

Revocation of interim protection order

91E. (1) The Minister may revoke an interim protection order by notice of revocation.

(2) A notice of revocation shall take effect on the date of its publication in the Gazette or on a later date specified in the notice.

Notice of making of interim protection order

91F. The Minister shall cause notice of an interim protection order and its terms or of the revocation of such an order to be given, as soon as practicable after its publication in the Gazette, to—

SCHEDULE 1—AMENDMENTS TO THE NATIONAL PARKS AND
WILDLIFE ACT 1974—*continued*

- (a) any person who appears to the Minister to be an owner or occupier of the area of land subject to the order;
 - (b) the Council;
 - (c) the council of the shire, municipality or city in which the area is situated; and
 - (d) any other person the Minister thinks fit,
- and shall consider any advice given by the Council relating to the order.

Offence

91G. An owner or occupier of an area of land subject to an interim protection order shall not fail to comply with the requirements of that order.

Penalty: \$10,000 or 6 months imprisonment, or both.

Appeal against order

91H. (1) An owner or occupier of the whole or any part of an area of land subject to an interim protection order may appeal to the Land and Environment Court against the imposition of the order or any of its terms.

(2) Such an appeal shall be made within the time and in the manner provided by the rules of the Court.

(3) In deciding an appeal, the Court may have regard to—

- (a) any hardship caused to the owner or occupier by the imposition of the order or any of its terms; and
- (b) the purposes of the order.

(4) In deciding such an appeal, the Court has all the functions and discretions of the Minister under this Part and may make such order as it thinks fit.

(5) A decision of the Court on an appeal is final and shall be given effect to as if it were the decision of the Minister.

Register of orders

91I. (1) The Director shall keep a register containing copies of interim protection orders as in force from time to time.

(2) The register shall be open for public inspection during ordinary business hours, and copies of or extracts from the register shall be available, on payment of the fee fixed by the Director.

- (15) Section 120 (**General licence**)—
Section 120 (2)—

Miscellaneous Acts (Wilderness) Amendment 1987

 SCHEDULE 1—AMENDMENTS TO THE NATIONAL PARKS AND WILDLIFE ACT 1974—*continued*

Omit “or conservation area”, insert instead “, conservation area, wilderness area or area subject to a wilderness protection agreement”.

(16) Section 123 (**Trapper’s licence**)—

Section 123 (2)—

Omit “or conservation area”, insert instead “, conservation area, wilderness area or area subject to a wilderness protection agreement”.

(17) Section 129 (**Certain licences authorising shooting etc. in national parks etc.**)—

Section 129 (b)—

Omit “or conservation area”, insert instead “, conservation area or area subject to a wilderness protection agreement”.

(18) Section 148 (**Power of Minister to accept gifts etc.**)—

Section 148 (1)—

After “this Act”, insert “or the Wilderness Act 1987”.

(19) Section 153A—

After section 153, insert:

Leases etc. relating to wilderness areas

153A. The Minister or Director shall not—

- (a) grant a lease or licence under section 151 (1); or
- (b) grant a licence or franchise under section 152,

in respect of land that is within a wilderness area.

(20) Section 169 (**Impersonating, assaulting, resisting or obstructing an officer etc.**)—

Section 169 (2), (3)—

After “the regulations” wherever occurring, insert “, the Wilderness Act 1987 or regulations under that Act”.

(21) Section 176A—

After section 176, insert:

Restraint etc. of breaches of this Act

176A. (1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.

*Miscellaneous Acts (Wilderness) Amendment 1987***SCHEDULE 1—AMENDMENTS TO THE NATIONAL PARKS AND WILDLIFE ACT 1974—*continued***

(2) Proceedings under this section may be brought by a person on the person's own behalf or on behalf of the person and other persons (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.

(3) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

SCHEDULE 2—AMENDMENTS TO OTHER ACTS

(Sec. 3)

Environmental Planning and Assessment Act 1979 No. 203—

(1) Section 77 (3A)—

After section 77 (3), insert:

(3A) A development application shall not be made in respect of land that is, or is part of, a wilderness area (within the meaning of the Wilderness Act 1987) unless any consent to the development required under that Act has been obtained.

(2) Section 90 (1) (c1)—

After section 90 (1) (c), insert:

(c1) the effect of that development on any wilderness area (within the meaning of the Wilderness Act 1987) in the locality;

(3) Section 111 (3)—

After section 111 (2), insert:

(3) Without limiting subsection (1), a determining authority shall consider the effect of an activity on any wilderness area (within the meaning of the Wilderness Act 1987) in the locality in which the activity is intended to be carried on.

(4) Section 112 (1A)—

After section 112 (1), insert:

(1A) A determining authority shall not grant an approval in relation to an activity referred to in subsection (1) that is to be carried out in respect of land that is, or is part of, a wilderness area (within the meaning of the Wilderness Act 1987) unless any consent to the activity required under that Act has been obtained.

Land and Environment Court Act 1979 No. 204—

Section 20 (1) (cf)–(ch)—

After section 20 (1) (ce), insert:

(cf) proceedings under section 91H of the National Parks and Wildlife Act 1974;

Miscellaneous Acts (Wilderness) Amendment 1987

SCHEDULE 2—AMENDMENTS TO OTHER ACTS—*continued*

(cg) proceedings under section 176A of the National Parks and Wildlife Act 1974;

(ch) proceedings under section 27 of the Wilderness Act 1987;