

Conservation, Forests and Lands Acts (Amendment) Bill

No.

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By Authority Jean Gordon Government Printer Melbourne

LEGISLATIVE ASSEMBLY

Read 1° 19 April 1989

(Brought in by Mrs Setches and Mr Roper)

A BILL

to amend the *Conservation, Forests and Lands Act 1987*, the *Land Act 1958*, the *Forests Act 1958*, the *Firearms Act 1958* and the *Wildlife Act 1975* and for other purposes

Conservation, Forests and Lands Acts (Amendment) Act 1989

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

Purposes

1. The purposes of this Act are—

- 5
- (a) to amend the *Conservation, Forests and Lands Act 1987*; and
 - (b) to amend the *Firearms Act 1958*; and
 - (c) to amend various Acts relating to Crown lands, forests and wildlife

10 Commencement

2. (1) Parts 1, 2, 3 and 4 and section 16 come into operation on the day on which this Act receives the Royal Assent.

(2) Section 17 (2) is deemed to have come into operation on 19 April 1988.

(3) The remainder of this Act comes into operation on a day to be proclaimed.

PART 2—AMENDMENT OF THE CONSERVATION, FORESTS AND LANDS ACT 1987

Principal Act

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3. In this Part the *Conservation, Forests and Lands Act 1987* is called the Principal Act.

No. 41/1987.
Amended by
Nos. 26/1988,
47/1988 and
50/1988.

Appointment of authorised officer

4. The Principal Act is amended as follows:

(a) In section 83 (1) omit “by instrument”; 10

(b) In section 83 for sub-section (2) substitute:

“(2) An authorised officer may be appointed under sub-section (1)—

(a) for the purpose of any one or more relevant laws; or

(b) for the whole or part of Victoria.”; 15

(c) In section 83 (5) after “appointment” insert “stating the relevant law for the purposes of which the person is appointed an authorised officer, whether the person is appointed for the whole or a part of Victoria and, if for a part of Victoria, specifying the part of Victoria for which the person is appointed”; 20

(d) In section 84 (1)—

(i) omit “by instrument”; and

(ii) for “in the instrument” substitute “by the Director-General”; 25

(e) In section 84 (2) for “An instrument under sub-section (1) may provide that the person or class of persons specified in the instrument” substitute “When making an appointment under sub-section (1) the Director-General may determine that the person or class of persons”. 30

Conduct of proceedings on behalf of person who brought them

5. Section 96 of the Principal Act is amended as follows:

(a) After sub-section (1) insert—

“(1A) If proceedings mentioned in sub-section (1) are brought by a person authorised by that sub-section to take those proceedings, the proceedings may be conducted before the court by any other person authorised by that sub-section to take proceedings of that kind.”; 35

(b) In sub-section (2) after “(1)” insert “or conduct proceedings under sub-section (1A) as the case requires”. 40

PART 3—AMENDMENT OF THE LAND ACT 1958

Principal Act

6. In this Part the *Land Act* 1958 is called the Principal Act.

No. 6284.
Reprinted to No.
59/1986.
Subsequently
amended by Nos.
110/1986,
121/1986,
122/1986,
41/1987,
45/1987,
55/1987,
75/1987 and
44/1988.

Section 138A inserted

5 7. After section 138 of the Principal Act insert:

Licence for strata of Crown land

10 “138A. (1) In this section “Stratum of Crown land” means a part of land consisting of a space of any shape below, on or above the surface of the land or partly below and partly above the surface of the land, all the dimensions of which are limited.

(2) A licence under section 138 may be granted—

- (a) without being limited to a particular stratum; or
- (b) for a stratum of Crown land.

15 (3) A licence for a stratum of Crown land must not be granted unless the person granting the licence—

- (a) has first consulted the council of the municipal district in which the stratum is located; and
- (b) is satisfied that—

20 (i) the licensee can obtain reasonable access to and use of the land to be licensed; and

(ii) a licence under this Act is not in force for the stratum; and

25 (iii) the granting of the licence would not interfere with the exercise of rights under any other licence for a stratum or for land.

(4) Examples of the matters which must be taken into account by a person authorised to grant a licence under sub-section (3) (b) (i) include but are not limited to the following:

30 (a) the fact that the stratum is to be used as a crossing over or tunnel under the surface of the land, for the purpose of passing between 2 pieces of land owned or occupied by the applicant for the licence;

35 (b) the fact that the stratum is to be used as a crossing over or tunnel under the surface of land and that the licensee has obtained rights of access to neighbouring land

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- sufficient to enable the licensee to use the crossing or tunnel, whether those rights are interests in land or are created by agreement or otherwise;
- (c) if the licensee proposes to erect a building or structure, the fact that provision has been made for the support of the building or structure, whether by the creation of proprietary interests or rights under an agreement, or in any other way. 5
- (5) Despite section 138 (2), a licence over a stratum of Crown land may be granted even though the land is— 10
- (a) shown as a road on a map or plan kept in the Department of Property and Services; or
- (b) proclaimed as a road or public highway under an Act; or
- (c) reserved as a road under the *Crown Land (Reserves) Act 1978*— 15
- if the person granting the licence is satisfied that the exercise of the licensee's rights under the licence would not interfere with the use of the road by the public and the stratum covered by the licence does not include the surface of the land. 20
- (6) Section 140 does not apply to a licence for a stratum of Crown land.
- (7) A licence for a stratum of Crown land—
- (a) is subject to any conditions determined by the person granting the licence, specified in the licence and relating to— 25
- (i) access to and use of the stratum; or
- (ii) support of any building or structure to be erected on the stratum; or
- (iii) the making and removal of improvements by the licensee; or 30
- (iv) the prevention of interference by the licensee with the exercise of rights under licence for other strata or other land; or
- (v) the prevention of interference by the licensee with the use of any road by the public; and 35
- (b) is subject to any other conditions that the person granting the licence determines and specifies in the licence; and
- (c) may be granted for a term of not more than 21 years and may be renewed, each renewal being for a term of not more than 21 years, by a person authorised to grant licences under this subdivision. 40
- (8) Subject to sub-section (6), the provisions of this Act applying to licences under section 138 apply to licences for a 45

stratum of Crown land as if those provisions referred to a stratum of Crown land instead of to land.

- 5 (9) Without limiting section 140F (2), a licence for a stratum of Crown land may be declared forfeit under that sub-section if the Minister is satisfied that, because an interest right or power has ceased to have effect or no longer exists or for any other reason, the licensee cannot have reasonable access to or use of the stratum covered by the licence.”.

Consequential amendments relating to licences

- 10 8. The Principal Act is amended as follows:
- (a) In section 139 after “139.” insert “(1)”;
 - (b) At the end of section 139 insert:

15 “(2) If a provision in a licence for a stratum of Crown land is inconsistent with a provision of sub-section (1), the provision in the licence prevails.”;
 - (c) After section 140F (6) insert—

“ (7) If a provision in a licence for a stratum of Crown land is inconsistent with a provision of sub-section (6), the provision in the licence prevails.”;
 - 20 (d) After section 339 (3) insert—

“ (4) Sub-section (1) does not apply to a licence for a stratum of Crown land to which section 138A applies.”

Grant of leaseholds to lessees

- 25 9. The Principal Act is amended as follows:
- (a) In the heading to subdivision 3 of division 9 of Part I for “Metropolitan” substitute “Grant of”;
 - (b) In section 151AA (1) omit “in the metropolitan area”;
 - (c) In section 151AA sub-section (6) is repealed.

PART 4—AMENDMENT OF THE FORESTS ACT 1958

30 **Licences over protected and reserved forests**

10. In section 52 of the *Forests Act* 1958 for sub-section (1) substitute—

No. 6254.
Reprinted to No.
9427.
Subsequently
amended by Nos.
9464, 9549,
9576, 9615,
9699, 9765,
9861, 9921,
9936, 9974,
9993, 10073,
10081, 10087,
10166, 10235,
16/1986,
121/1986, 6/1987
and 41/1987.

- “(1) Subject to any covenants, terms and conditions that may be prescribed, any additional covenants, terms and conditions that the Director-General thinks proper to impose in a particular case, and the payment of any rent, fees, royalties or charges that the Director-General may determine, the Director-General may grant to any person for a term of not more than 3 years or, with the approval of the Governor in Council, for a term of not more than 20 years—
- (a) a licence or permit in respect of Crown land in a reserved forest, for any one or more of the following purposes that is specified in the licence: 5
- (i) To graze cattle;
 - (ii) To graze cattle under agistment;
 - (iii) To occupy an area of not more than 2000 hectares for the exclusive cutting of timber; 15
 - (iv) To thin, cut and remove timber;
 - (v) To cut forest produce specified in the licence;
 - (vi) To dig forest produce specified in the licence;
 - (vii) To take away forest produce specified in the licence;
 - (viii) To occupy for residence an area of not more than 0.4 hectares; 20
 - (ix) Any purpose for which a licence may be granted under sub-division 2 of division 9 of Part I of the *Land Act 1958*;
 - (x) Any other purpose whatever relating to or connected with a state forest or forest produce; or 25
- (b) a licence or permit to enter protected forest for any one or more of the following purposes that is specified in the licence: 30
- (i) To cut forest produce specified in the licence;
 - (ii) To dig forest produce specified in the licence;
 - (iii) To take away forest produce specified in the licence; or
- (c) a licence or permit to enter land having an area of not more than 1.25 hectares or, with the approval of the Minister, a greater area, set aside in section 50 (1), for any one or more of the following purposes that is specified in the licence: 35
- (i) To provide accommodation;
 - (ii) To store goods and liquid fuels; 40
 - (iii) To sell goods and liquid fuels;
 - (iv) To erect ski lifts;
 - (v) To operate ski lifts;

- (vi) To provide any other facility or service which the Director-General considers appropriate.”.

PART 5—AMENDMENT OF THE WILDLIFE ACT 1975

Principal Act

- 5 11. In this Part the *Wildlife Act* 1975 is called the Principal Act.

Act No. 8699.
Reprinted to No.
47/1988.

Game licence

12. In section 3 (1) of the Principal Act, after the definition of “Game” insert “Game licence” means a game licence issued under section 22A.”’

10 **New section 22A inserted and transitional provision**

13. (1) After section 22 of the Principal Act insert—

Game licences

“22A. (1) A person must not hunt, take or destroy any game unless he or she holds a game licence under this section.

15 Penalty: \$1000

(2) A person seeking a game licence may apply to the Director-General in the prescribed manner for the game licence and must lodge the prescribed fee with the application.

20 (3) The Director-General may, subject to any conditions, limitations and restrictions that are prescribed or as the Director-General thinks fit to impose, license any person to hunt, take or destroy any game.

25 (4) A game licence may be general in application or may be restricted as to the kinds or species of game which may be hunted, taken or destroyed or the area in which game may be hunted, taken or destroyed or the type of weapon which may be used to hunt, take or destroy game.

(5) The Director-General may refuse to grant any application for a game licence if the Director-General is satisfied that—

30 (a) the applicant is not a fit and proper person to hold the licence; or

(b) the applicant is not qualified under the regulations to hold the licence; or

35 (c) the issue of the licence would be deleterious to the conservation of any species or any kind of game; or

(d) the number of game licences in force ought to be limited; or

(e) the applicant has been convicted of any offence against this Act or any corresponding previous enactment.

(6) A game licence unless sooner cancelled under this Act continues in force for any period up to three years that is specified in the licence.

(7) The holder of a game licence must not contravene any condition, limitation or restriction to which the licence is subject. 5

Penalty for an offence against this sub-section: \$1000.”

(2) Any authority to hunt issued under section 22AA (4) (c) or 22A (1) (d) of the *Firearms Act* 1958 and in force immediately before the commencement of this section shall be deemed to be a game licence issued under section 22A of the Principal Act and shall subject to that Act and regulations and notices made under that Act, continue in force for the unexpired period of the authority. 10

Consequential amendments

14. The Principal Act is amended as follows:

(a) In section 17 (2) omit “in accordance with the provisions of section 22AA (8A) of the *Firearms Act* 1958”; 15

(b) In section 23 (1) for “any licence” substitute “any such licence”;

(c) In sections 23 (2) and (3), 24, 25 (1), (2) and (4), 26 (1) (where twice occurring) and (2), for “this Part” substitute “section 22”; 20

(d) In section 44 (1) after “Part III” insert “other than section 22A”;

(e) In section 60—

(i) in sub-section (1) (b) after “gun” insert “or other weapon”; 25

(ii) in sub-section (3) after “net” (where three times occurring) insert “gun or other weapon”;

(iii) in sub-section (5) after “gun” insert “or other weapon”.

(f) In section 68 (1) after “gun” insert “or other weapon”. 30

Consequential amendments to *Firearms Act* 1958

15. The *Firearms Act* 1958 is amended as follows:

(a) In section 22AA (4) paragraph (c) and the word “and” preceding it are repealed;

(b) In section 22AA sub-sections (8) and (8A) are repealed; 35

(c) Section 22A (1) (d) and the word “and” preceding it are repealed;

(d) Section 22A(1A) is repealed;

(e) In section 23 sub-sections (2B), (2C) and (2D) are repealed.

New section 86A inserted and consequential amendments

16. (1) After section 86 of the Principal Act insert:

Emergency Closure notices

5 “86A. (1) If the Minister is satisfied that any protected
wildlife declared by proclamation of the Governor in Council
published in the *Government Gazette* to be endangered wildlife
or notable wildlife or that significant numbers of protected
wildlife other than game is under immediate threat of destruction,
10 injury or disturbance from hunting or the presence of hunters,
the Minister may, by notice published in the *Government
Gazette*—

- 15 (a) prohibit absolutely or regulate or control the taking or
destroying or hunting of any particular kind or species
of wildlife in any area and for any period not exceeding
seven days specified in the notice; and
- (b) provide for exemptions for anything referred to in
paragraph (a); and
- (c) fix penalties of not more than \$200 for any
contravention of any part of a notice.

20 (2) A notice under sub-section (1)—

- 25 (a) may be general in application or may be restricted in
operation as to wildlife (whether by reference to kind
or species or to sex) time, place, persons, equipment,
hunting, guns or circumstances whether any such
wildlife, time, place, persons, equipment, hunting, guns
or circumstances is determined or ascertainable before,
at, or after the making of the notice; and
- (b) unless it otherwise expressly provides, if it refers to
wildlife or any specified kind or species of wildlife
30 applies to both sexes of wildlife or to both sexes of that
kind or species of wildlife; and
- (c) takes effect from the date of the publication of the
notice.

35 (3) A notice under sub-section (1) prevails over any
inconsistent—

- (a) regulation made under this Act; or
- (b) licence, permit or other authority to take destroy or
hunt any particular kind or species of wildlife issued
under this Act.”

40 (2) In section 3 (1) of the Principal Act in the definition of “This
Act” for “of this Act” substitute “or 86A”.

(3) In section 61 (1) and (2) of the Principal Act after “proclamation” insert “or any notice under section 86 or 86A”.

Statute law revision

17. (1) In section 86 (2) (a) of the Principal Act for “as ascertained” substitute “or ascertainable”.

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(2) In section 8 (2) of the *National Parks and Wildlife (Amendment) Act 1988* for “the Principal Act” substitute “the *Wildlife Act 1975*”.