

South Australia

# Wilderness Protection (Miscellaneous) Amendment Act 2013

An Act to amend the *Wilderness Protection Act 1992*; and to make related amendments to the *National Parks and Wildlife Act 1972*.

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**The Parliament of South Australia enacts as follows:**

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Wilderness Protection (Miscellaneous) Amendment Act 2013*.

### 2—Commencement

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

### **3—Amendment provisions**

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

## **Part 2—Amendment of *Wilderness Protection Act 1992***

### **4—Amendment of section 26—Prohibition of other activities**

Section 26—after subsection (4) insert:

- (5) A person must not undertake any of the following activities in a wilderness protection area or wilderness protection zone except in accordance with a licence granted by the Director:
- (a) taking groups of people on sight seeing or scientific expeditions;
  - (b) filming for commercial purposes;
  - (c) conducting tours for fee or reward;
  - (d) conducting surfing, fishing or any other kind of competition;
  - (e) selling or hiring goods or offering goods for sale or hire;
  - (f) providing, or offering to provide, any service for fee or reward;
  - (g) conducting scientific experiments;
  - (h) an activity of any kind for the purpose of fundraising or making a profit.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (6) A licence granted by the Director under subsection (5)—
- (a) may be subject to such conditions as the Director thinks fit and specifies in the licence; and
  - (b) may be varied or revoked by the Director as the Director thinks fit; and
  - (c) cannot be transferred or otherwise dealt with except with the consent of the Director.

### **5—Amendment of section 28—Control and administration of wilderness protection areas and zones**

- (1) Section 28(2)—delete "subsection (3)" and substitute:  
subsections (3) and (4)

- (2) Section 28(4) and (5)—delete subsections (4) and (5) and substitute:
- (4) A lease or licence in force in respect of land immediately before the constitution of the land as a wilderness protection area or zone, remains in force if the lease or licence is preserved by the proclamation constituting the land as a wilderness protection area or zone.
  - (5) A proclamation must not preserve a lease or licence under subsection (4) unless the Governor has considered whether the lease or licence by its operation will cause, or contribute to, a reduction in the degree to which the land meets the wilderness criteria.
  - (6) A lease or licence preserved under subsection (4) continues in force—
    - (a) for the remainder of its term or, if a term is specified in the proclamation, for that term; and
    - (b) subject to any modification specified in the proclamation; and
    - (c) as if it had been entered into by the Minister under this section.
  - (7) Despite any other Act or law, the Minister may—
    - (a) renew a lease or licence preserved under subsection (4) on terms and conditions that are substantially the same as the terms and conditions of the preserved lease or licence; or
    - (b) if the term of a lease or licence preserved under subsection (4), or a lease or licence renewed under paragraph (a), has expired—grant a new lease or licence in respect of the same land for purposes, and on terms and conditions, that are substantially the same as the preserved lease or licence.
  - (8) A lease or licence cannot be transferred or otherwise dealt with except with the consent of the Minister.
  - (9) The Minister may direct that money paid under a lease or licence be paid to a Trust established under the National Parks Act.

## **6—Insertion of Part 3 Division 4**

After section 33 insert:

### **Division 4—Co-management of wilderness protection areas and zones**

#### **33A—Co-management of wilderness protection areas or zones**

- (1) A co-management agreement may be entered into for a wilderness protection area or wilderness protection zone in the same way as a co-management agreement may be entered into for a park or reserve under the National Parks Act.

- (2) A co-management board for a wilderness protection area or wilderness protection zone that is subject to a co-management agreement (a *co-managed wilderness protection area or zone*) may be established by the Governor by regulation in the same way as a co-management board may be established for a park or reserve under the National Parks Act.
- (3) Part 3 Division 6A of the National Parks Act (together with any definitions contained in the Act of terms used in that Division) applies as if it forms part of this Division, subject to the following modifications:
  - (a) the objects of the Division are to be read as if they included an additional object of providing, as far as practicable, for the restoration of land and its ecosystems to their condition before European colonisation and the protection of land and its ecosystems from the effects of modern technology and exotic animals and plants and other exotic organisms;
  - (b) a reference to a park or reserve is to be read as a reference to a wilderness protection area or zone;
  - (c) a reference to the Minister is to be read as a reference to the Minister responsible for the administration of this Act;
  - (d) a reference to a plan of management for a park or reserve is to be read as a reference to a plan of management for a wilderness protection area or zone under this Act;
  - (e) a reference to a warden is to be read as a reference to a warden under this Act;
  - (f) any other modifications prescribed by the regulations.
- (4) Whether the Minister or a co-management board has control of a co-managed wilderness protection area or zone is to be determined, despite section 28(1), in the same way as for a co-managed park or reserve under the National Parks Act.
- (5) Whether the Director or a co-management board has the management of a co-managed wilderness protection area or zone is to be determined, despite section 29(1), in the same way as for a co-managed park or reserve under the National Parks Act.
- (6) In its application in relation to land that is, or is to be, constituted as a co-managed wilderness protection area or zone, this Act is to be read subject to the following modifications:
  - (a) a proclamation under Part 3 Division 1 or 2 in respect of Aboriginal-owned land (within the meaning of the National Parks Act) may only be made—
    - (i) in the case of a proclamation constituting Aboriginal-owned land as a wilderness protection area or wilderness protection zone—

- (A) if there is a co-management agreement providing for the establishment of the area or zone; and
  - (B) a co-management board for the area or zone has been, or is to be, established; and
  - (C) any conditions specified in the co-management agreement for the making of the proclamation have, in the opinion of the Minister, been met; and
- (ii) in any case—if the registered proprietor agrees to the making of the proclamation;
- (b) section 22(6) does not apply in relation to a co-managed wilderness protection area or zone comprised of Aboriginal-owned land and, in such a case, the Minister must instead comply with the following requirements before making a recommendation under section 22(5)—
  - (i) 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;
  - (ii) the Minister must provide a copy of the Committee's report to the owner of the land to which the proposal relates;
  - (iii) the Minister must invite the owner of the land to make submissions to the Minister in relation to the Committee's report; and
  - (iv) the Minister must refer all submissions made in response to the invitation 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; and
  - (v) if the Minister decides to defer, or not to proceed with, the proposal—the Minister must give notice to the owner of the land setting out the reasons for the decision;
- (c) a reference in section 26 to the Director is to be read as a reference to the Director or the co-management board according to whether the Director or the board has responsibility for the management of the land to which the relevant approval or licence relates;

- (d) a reference in section 28(6), (7) and (8) to the Minister is to be read as a reference to the Minister or the co-management board according to whether the Minister or the board has control of the relevant land;
- (e) section 28(9) does not apply in relation to a co-managed wilderness protection area or zone comprised of Aboriginal-owned land and, in such a case, money payable under a lease or licence in respect of the area or zone is payable to the co-management board for the area or zone;
- (f) any direction given to the Director under section 29(2) must be consistent with the co-management agreement for the area or zone;
- (g) if a co-management board is responsible for the management of the area or zone, the board must comply with section 30 in the same way as the Director must comply with that section;
- (h) if the Director is responsible for the management of the area or zone, the Director must seek or consider the advice of an advisory committee (the *co-management committee* for the area or zone) as set out in the co-management agreement;
- (i) the area or zone must be managed in accordance with the co-management agreement for the area or zone;
- (j) the co-management board or co-management committee for the area or zone must be involved in the preparation, review, adoption or amendment of a plan of management for the area or zone in the same way as a co-management board or co-management committee is involved in the preparation, review, adoption or amendment of a plan of management for a park or reserve under the National Parks Act;
- (k) except in an emergency, the Minister may only make a notice under section 33—
  - (i) in relation to an area or zone for which there is a co-management board—if the board has agreed to the making of the notice; or
  - (ii) in relation to an area or zone for which there is a co-management committee—if the committee has been consulted about the making of the notice;
- (l) the Minister may, at the request of the co-management board or co-management committee for the area or zone, exempt members of the relevant Aboriginal group from a restriction applying under section 33 to the area or zone;

- (m) a reference in section 38A to the Director is to be read as a reference to the Director or the co-management board according to whether the Director or the board has responsibility for management of the area to which the fees fixed under that section relate;
- (n) section 38A(3) does not apply in relation to an area or zone comprised of Aboriginal-owned land, and in such a case, fees fixed under section 38A(1) are payable to the co-management board for the area or zone.

## **7—Insertion of section 38A**

After section 38 insert:

### **38A—Entrance fees etc for wilderness protection areas or zones**

- (1) Fees for entrance to wilderness protection areas or zones, fees for camping or other accommodation in wilderness protection areas or zones, fees for activities authorised by a licence or permit, or permission granted under the regulations and fees for the use of facilities and services provided in wilderness protection areas or zones may be fixed by the Director with the approval of the Minister.
- (2) The Director may waive or refund the whole or part of a fee.
- (3) A fee payable under subsection (1) must be paid to the Trust established for the area or zone under the National Parks Act.

## **Schedule 1—Further amendments of *Wilderness Protection Act 1992***

<b>Provision amended</b>	<b>How amended</b>
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Section 15(2), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$2 500.
Section 15(7), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$2 500.
Section 15(8), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$2 500.
Section 16(9), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$5 000.
Section 18(1), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$5 000.
Section 18(2), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$5 000.
Section 18(3), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$10 000 or imprisonment for 2 years.
Section 20, penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$2 500 or imprisonment for 3 months.

<b>Provision amended</b>	<b>How amended</b>
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Section 25(9), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$20 000 or imprisonment for 4 years or both.
Section 26(3), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$20 000 or imprisonment for 4 years or both.
Section 26(4), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$20 000 or imprisonment for 4 years or both.
Section 27, penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$20 000 or imprisonment for 4 years or both.
Section 33(3), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$2 500.
Section 34, penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$20 000.

## **Schedule 2—Related amendments of *National Parks and Wildlife Act 1972***

### **1—Amendment of section 45A—Interpretation and application**

Section 45A(1), definition of *reserve*—delete the definition and substitute:

*reserve* means a park, reserve, wilderness protection area or wilderness protection zone and includes a part of a park, reserve, wilderness protection area or wilderness protection zone or any 2 or more parks, reserves, wilderness protection areas or wilderness protection zones;

### **2—Amendment of section 45F—Functions of Trust**

Section 45F(2c)—after paragraph (c) insert:

(ca) under the *Wilderness Protection Act 1992*; or

### **3—Amendment of section 45M—Establishment of Fund**

Section 45M(3)—before paragraph (e) insert:

(da) money required to be paid into the Fund under the *Wilderness Protection Act 1992*; and