



PUBLIC RESERVES ACT 1997

[Consolidated as at 11 January 2010 on the authority of
the Administrator and in accordance with the
Enactments Reprinting Act 1980]

[re-issued 23 April 2010 by Commissioner of Enactments to correct designation of a
subsection in section 36A]

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Public Reserves Act 1997

An Act relating to public reserves

BE IT ENACTED by the Legislative Assembly of Norfolk Island as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Public Reserves Act 1997*.

Commencement

2. (1) Section 1 and this section commence on the day on which notification of Assent is published in the Gazette.
(2) The remaining provisions commence on a day, or respective days, fixed by the Administrator by notice in the Gazette.

Objects

3. (1) The objects of this Act are to protect and conserve public reserves so as to —
 - (a) promote the conservation of the natural environment and landscape beauty of Norfolk Island;
 - (b) promote the conservation of the heritage of Norfolk Island; and
 - (c) preserve the way of life and the quality of life of the people of Norfolk Island.
- (2) In interpreting this Act, a construction that would promote the objects shall be preferred to a construction that would not promote the objects.

Interpretation

4. (1) In this Act, unless the contrary intention appears —
- “approved”, in relation to a place or thing in a reserve, has the meaning given by section 37;
- “Conservator” means the Conservator of Public Reserves appointed under section 18;
- “controlled activity” means an activity to which Part 5 applies;
- “Norfolk Island Plan” means the Norfolk Island Plan in force under the *Planning Act 1996*;
- “permit” means a permit in force under this Act;
- “plan of management”, in relation to a reserve, means the plan of management for the reserve in force under this Act;
- “plant” means —
- (a) any member, alive or dead, of the plant kingdom or the fungus kingdom; or
 - (b) any part of such a member; or
 - (c) seeds;
- “ranger” means a ranger appointed under section 22;
- “reserve” means —
- (a) land for which a declaration under section 6 is in force;
 - (b) a former common continuing in existence as a reserve by virtue of section 50; or
 - (b) a former reserve continuing in existence as a reserve by virtue of section 50;
- “structure” means a thing constructed by human agency and attached to land, or buried within land.

(2) A reference in this Act to a closed reserve shall be read as a reference to a reserve, or part of a reserve, for which a declaration under section 34 is in force.

Application to National Park and Botanic Garden

5. This Act does not apply to land located in the Norfolk Island National Park or the Norfolk Island Botanic Garden.

PART 2 — PUBLIC RESERVES

Declaration

6. (1) The Administrator may declare an area of Crown land to be a public reserve.

(2) A public reserve declared under subsection 6(1) or continued in existence under section 50 shall be under the care and control of the Administrator.

(3) A declaration shall be made by notice published in the Gazette specifying the area of land to which it applies.

Consistency with Norfolk Island Plan

7. An area may not be declared to be public reserve unless its use as a public reserve is consistent with the Norfolk Island Plan.

PART 3 — PLANS OF MANAGEMENT

Establishment

8. (1) There shall be a plan of management for each reserve.

(2) A plan of management shall promote the objects of this Act and shall include —

- (a) a description of the area of the reserve;
- (b) the objectives of the plan;
- (c) the measures by which the objectives are to be attained; and
- (d) the means by which the effectiveness of those measures is to be assessed.

(3) Without limiting the generality of subsection 8(1), a plan of management may include —

- (a) a description of any collaborative arrangements between the Conservator and other authorities concerning the management and use of the reserve; and
- (b) general guidelines, consistent with the other provisions of this Act, for the exercise of powers, or the performance of functions, under this Act.

Applying, adopting or incorporating other instruments

9. A plan of management may make provision in relation to a matter by applying, adopting or incorporating, with or without modification any matter contained in an instrument in force at a particular time or as in force from time to time.

Draft plans

10. (1) The executive member shall prepare a draft plan of management for a reserve as soon as practicable after the reserve has been declared.

(2) As soon as practicable after the commencement of Part 2, the executive member shall prepare a draft plan of management for each reserve that is —

- (a) a former common continued in existence as a reserve by section 50; or
- (b) a former reserve continued in existence as a reserve by section 50.

Public consultation

11. For the purpose of preparing a draft plan of management, the executive member shall ensure that —

- (a) public submissions about the draft plan are invited by notice published in the Gazette; and
- (b) such other measures are taken as he or she considers appropriate for ascertaining public opinion about the draft plan and responding to such opinion.

Gazette notice

12. The Gazette notice referred to in section 11 shall indicate —

- (a) where and when the draft plan is available for inspection by members of the public; and
- (b) where and by when submissions are to be lodged.

Legislative Assembly approval

13. (1) The executive member shall lay before the Legislative Assembly —

- (a) a copy of each draft plan of management; and
- (b) a copy of each submission made in accordance with the public invitation required by paragraph 11(a).

(2) The Legislative Assembly may, by resolution —

- (a) approve the draft plan;
- (b) approve the draft plan subject to its being altered in a specified manner; or
- (c) reject the draft plan.

Making

14. (1) If the Legislative Assembly approves a draft plan of management under paragraph 13(2)(a) or 13(2)(b), the executive member shall refer the plan in the form of the approved draft to the Administrator.

(2) The Administrator may make the plan in the form of the approved draft referred by the executive member under subsection 14(1).

Notification and commencement

15. (1) Notice of the making of a plan of management shall be published in the Gazette.

(2) A provision of a plan of management takes effect —

- (a) on the day on which the notice is published in the Gazette; or
- (b) if the plan specifies a later date of effect for the provision — on that later date.

(3) The notice shall indicate —

- (a) where and when the plan is available for inspection; and
- (b) if paragraph 15(2)(b) applies — when the relevant provision commences.

Variation

16. (1) The executive member may prepare a draft variation to a plan of management.

(2) Subject to subsection 16(3), sections 11 to 15 apply to the draft variation as if it were a draft plan of management.

(3) The executive member may give a copy of a draft variation to a plan of management to the Administrator without first inviting public submissions as required by paragraph 11(a).

(4) Where the executive member acts under subsection 16(3), he or she shall —

- (a)** give to the Administrator a statement of the reasons for not inviting public submissions about the draft; and
- (b)** lay the statement before the Legislative Assembly with the draft variation.

Public inspection

17. The executive member shall ensure that a copy of each of the following documents is available for inspection by members of the public free of charge at the office of the Conservator:

- (a)** a draft plan of management in respect of which public submissions have been invited by the notice required by paragraph 11(a);
- (b)** a draft variation of a plan of management in respect of which public submissions have been invited by the notice required by paragraph 11(a);
- (c)** the plan of management for each reserve.

PART 4 — MANAGEMENT OF RESERVES*Division 1 — Officials***Conservator of Public Reserves**

18. (1) There shall be a Conservator of Public Reserves.

(2) The Conservator shall be appointed in writing by the Administrator.

Acting Conservator

19. (1) The executive member may, in writing, appoint a person to act as the Conservator —

- (a)** during a vacancy in the office of the Conservator, whether or not an appointment has previously been made to the office; or
- (b)** during any period, or during all periods, when the Conservator is for any reason unable to perform the functions of the office.

(2) A person appointed to act as the Conservator during a vacancy in the office of Conservator shall not so act continuously for more than 12 months.

(3) Anything done by or in relation to a person purporting to act pursuant to an appointment under subsection 19(1) is not invalid on the ground that —

- (a) the appointment was ineffective or had ceased to have effect; or
- (b) the occasion to act had not arisen or had ceased.

Functions of Conservator

20. (1) Subject to this Act, the Conservator has the following functions:

- (a) to manage each reserve in accordance with the plan of management for the reserve;
- (b) to supervise the rangers;
- (c) to advise the Administrator and the executive member on matters relating to reserves;
- (d) any function conferred on the Conservator by or under this Act or another law of Norfolk Island;
- (e) to do anything incidental or conducive to the performance of the functions mentioned above.

(2) The Administrator may give written directions, not inconsistent with a plan of management, to the Conservator in relation to the performance of his or her functions, either generally or in relation to a particular matter.

(3) The Conservator shall give effect to any such direction.

General powers of Conservator

21. (1) The Conservator has power to do all things necessary or convenient to be done in connection with the performance of his or her functions.

(2) The Conservator may exercise any of the powers of a ranger under this Act or the Regulations.

Rangers

22. The executive member may, in writing, appoint a person to be a ranger for the purposes of this Act.

Exercise of powers generally

23. In the exercise of a power, or the performance of a function, under this Act, the Conservator or a ranger (as the case may be) shall have regard to the following matters, in addition to any other relevant matter:

- (a) the objects of this Act;
- (b) the objectives of the plan of management for the reserve concerned;
- (c) any general guidelines in the plan of management concerning the exercise of the power or the performance of the function.

Identity cards

24. (1) The executive member shall issue to each ranger an identity card that specifies the ranger's name and office.

(2) Upon ceasing to be a ranger, a person shall not fail, without reasonable excuse, to return his or her identity card to the executive member.

Penalty for contravention of subsection (2): 5 penalty units.

*Division 2 — Permits for controlled activities***Application for permit**

- 25. (1)** An application for a permit shall —
- (a) be in writing given to the Conservator setting out particulars of —
 - (i) the controlled activity for which the permit is sought; and
 - (ii) the grounds on which the application is made; and
 - (b) be accompanied by the fee (if any) prescribed by the Regulations.

(2) For the purpose of determining an application, the Conservator may require an applicant to provide further particulars concerning the activity, by notice in writing given to the applicant.

Determination of applications

- 26. (1)** The Conservator may, on application in accordance with section 25 —
- (a) grant to the applicant an unconditional permit to undertake a specified controlled activity;
 - (b) grant to the applicant a permit to undertake a specified controlled activity subject to specified conditions; or
 - (c) refuse to grant a permit to the applicant.

(2) The conditions to which a permit may be subject include conditions about the following matters in relation to the activity:

- (a) the times at which it may be undertaken;
- (b) the area within which it may be undertaken;
- (c) the nature and placement of any associated signs;
- (d) the use of materials or equipment;
- (e) the use of vehicles, vessels or animals;
- (f) scientific research;
- (g) the carrying out of any works;
- (h) where the activity concerns the picking or removal of plants - the type and quantity of those plants.

Notice of determination

27. The Conservator shall give an applicant written notice of a decision under section 26 in relation to the application.

Duration of permit

- 28.** A permit —
- (a) takes effect —
 - (i) on the day on which it is granted; or
 - (ii) if a later date of effect is specified in the permit - on that later date; and
 - (b) remains in force subject to this Part for the period, not exceeding 12 months, specified in the permit.

Surrender

29. A person to whom a permit has been granted may surrender the permit by giving the Conservator written notice of the surrender together with the permit.

Cancellation

- 30. (1)** The Conservator may cancel a permit granted to a person if —
- (a) the person is convicted of an offence against this Act or the Regulations; or
 - (b) the Conservator believes on reasonable grounds that —
 - (i) the person has contravened a condition to which the permit is subject; or
 - (ii) the circumstances taken into account in granting the permit have so changed as to require the cessation of the activity to which the permit relates.
- (2)** The Conservator shall cancel a permit —
- (a) by giving written notice of the cancellation to the person to whom the permit was granted; or
 - (b) if the Conservator believes on reasonable grounds that it is not practicable to give such written notice — by notice published in the Gazette.

Review of permit decisions

31. Application may be made to the Administrative Review Tribunal for the review of the following decisions of the Conservator:

- (a) a decision to grant a permit, so far as the decision relates to the duration of the permit;
- (b) a decision to grant a permit subject to conditions, so far as the decision relates to the imposition of conditions;
- (c) a decision to refuse to grant a permit;
- (d) a decision to cancel a permit, except where the cancellation is because of a conviction of an offence against this Act or the Regulations.

*Division 3 — Miscellaneous***Directions by rangers**

32. (1) A ranger, who believes on reasonable grounds that a person is undertaking a controlled activity in a reserve, may direct the person to produce a permit for the activity for inspection.

(2) A person shall be taken to have complied with a direction under subsection 32(1) if he or she produces the permit for inspection at the office of the Conservator within 3 days after the direction was given.

(3) A ranger, who believes on reasonable grounds that a person in a reserve is committing, or has committed, an offence against this Act or the Regulations, may direct the person —

- (a) to state his or her full name and principal place of residence; or
- (b) to leave the reserve or an area of the reserve specified in the direction.

(4) A direction under subsection 32(1) or 32(3) may be given orally or in writing.

(5) A person does not have to comply with a direction under subsection 32(1) or 32(3) if, on request by the person, the ranger does not produce his or her identity card for inspection by the person.

Contravention of directions

33. A person shall not, without reasonable excuse, contravene a direction under subsection 32 (1) or 32(3).

Penalty: 10 penalty units.

Temporary closure

34. (1) The Conservator may declare a reserve to be closed to the public for a period not exceeding 3 months if he or she believes on reasonable grounds that it is necessary to do so —

- (a) to protect public safety;
- (b) to protect or conserve the reserve in accordance with the plan of management; or
- (c) to undertake works or other measures in accordance with the plan of management.

(2) A declaration shall be made by notice published in the Gazette specifying —

- (a) the reserve concerned; and
- (b) the period during which the declaration is to remain in force.

(3) A declaration —

- (a) takes effect —
 - (i) on the day on which it is published in the Gazette; or
 - (ii) if it specifies a later date of effect — on that later date; and
- (b) unless revoked, remains in force for the period specified in the declaration.

(4) In this section —

“reserve” includes part of a reserve.

Permits suspended while reserve closed

35. A permit to undertake an activity in a reserve has no effect while the reserve is closed.

Access to closed reserve

36. (1) A person shall not enter, or remain in, a closed reserve after being informed by a ranger that the reserve is closed.

Penalty: 10 penalty units.

- (2)** Subsection 36(1) does not apply to —
- (a) the Conservator;
 - (b) a ranger; or
 - (c) a person authorised in writing by the Conservator to enter, or remain in, the reserve for a purpose connected with a matter referred to in subsection 34(1).

PART 4A – THE CEMETERY*Division 1 – Preliminary***Definitions**

36A. In this Part—

“cemetery” means that part of the Cemetery Reserve established in accordance with the *Public Reserves Act 1997* that is set aside for burial purposes.

“the sexton” means the person appointed in accordance with section 36D or a person acting in his or her stead.

*Division 2 - Burial***Graves**

36B. The Regulations may determine arrangements for the designation of sites for, and the digging of graves, within the cemetery.

Burial Fees

36C. The fee, if any, for burial and grave digging shall be as prescribed.

*Division 3 - Miscellaneous***Sexton**

36D. (1) For the purposes of this Act, the Administrator may appoint the sexton.

(2) The sexton holds office for such period being not more than 3 years, and upon such terms as the Administrator may determine.

(3) At the expiration of his or her term of appointment the sexton may be reappointed upon the same or different terms.

(4) The sexton is responsible for the day to day management and control of the cemetery and has such duties as may be determined by law or the terms of appointment.

(5) Notwithstanding subsection (4), the powers of the sexton must be exercised subject to any lawful directions of the Conservator.

(6) If at any time the sexton is unable to perform his or her duties under this Act the Administrator may appoint a person to act in the place of the sexton for such time and upon such conditions as the Administrator determines.

PART 5 — CONTROLLED ACTIVITIES**Approvals**

37. In this Part, unless the contrary intention appears, a reference to an approval for a purpose in relation to a reserve shall —

- (a) in any case — be read as a reference to an approval for the purpose by or in accordance with —
 - (i) the plan of management for the reserve; or
 - (ii) a notice published in the Gazette by the Conservator; and
- (b) in relation to a particular person — be read as including a reference to an approval for the purpose by or in accordance with a permit granted to the person.

Littering

38. (1) A person shall not deposit litter in a reserve except in an area, or a receptacle, approved for the purpose.

Penalty: 10 penalty units.

(2) In this section —

“litter” includes —

- (a) refuse, garbage, rubble and waste of any description; and
- (b) any other matter or thing of a like nature that, whilst in or on a reserve, causes or contributes to the defacement or defilement of the reserve.

Depositing commercial waste

39. (1) A person shall not deposit commercial waste in a reserve except in accordance with an approval.

Penalty: 20 penalty units.

(2) In this section —

“commercial waste” means —

- (a) waste resulting from institutional, commercial or industrial activities; or
- (b) waste collected and transported in the course of business.

Lighting fires

40. A person shall not light, use or maintain a fire in a reserve except in —

- (a) a fireplace approved for the purpose; or
- (b) a portable barbecue, or portable stove, in which heat is provided by the burning of liquefied petroleum gas.

Penalty: 10 penalty units.

Camping

41. A person shall not camp overnight in a reserve except in an area approved for the purpose.

Penalty: 10 penalty units.

Interfering with natural features or structures

42. (1) A person shall not interfere with —
- (a) a natural feature in a reserve; or
 - (b) a structure in a reserve,

except in accordance with an approval.

Penalty: 10 penalty units.

- (2) In this section —
“interfere” includes remove, move, damage, deface, obscure and tamper.

Plants

43. A person shall not —
- (a) pick a plant in a reserve; or
 - (b) remove a plant from a reserve,

except in accordance with an approval.

Penalty: 10 penalty units.

Motor vehicles

44. A person shall not use or leave a motor vehicle in a reserve except in or on an area approved for the purpose.

Penalty: 10 penalty units.

Horse-riding

45. A person shall not ride a horse, or allow a horse to be, in a reserve except in an area approved for the purpose.

Penalty: 10 penalty units.

Commercial activities

46. (1) A person shall not undertake a commercial activity in a reserve except in accordance with an approval for the activity.

Penalty: 20 penalty units.

- (2) In this section —
“commercial activity” means —
- (a) supplying, or offering to supply, goods or services; or
 - (b) producing goods;
in the course of a business, trade, profession or calling.

Activities inconsistent with plan of management

47. (1) A person shall not use an area of a reserve for an activity if its use for such an activity is inconsistent with the plan of management.

(2) If a plan of management for a reserve provides that an activity of a specified kind shall not be undertaken except in accordance with a permit, a person shall not undertake an activity of that kind in the reserve except in accordance with a permit.

Penalty for a contravention of subsection 47(1) or 47(2): 10 penalty units.

PART 6 — TRANSITIONAL**Interpretation**

- 48. (1)** In this Part —
- “commencement day” means the day on which Part 2 commences;
- “former Act” means the *Commons and Public Reserves Act 1936* as in force immediately before the commencement day;
- “former common” means —
- (a) a common in existence under the former Act ; or
 - (b) land deemed to be declared as a common under the former Act;
- “former reserve” means —
- (a) a public reserve in existence under the former Act ; or
 - (b) land deemed to be declared as a public reserve under the former Act.

Repeal

- 49.** The following Acts are repealed:
- (a) *Commons and Public Reserves Act 1936*;
 - (b) *Commons and Public Reserves Amendment Act 1994*.

Continuation of former commons and public reserves

- 50. (1)** Despite the repeal of the former Act —
- (a) a former common continues in existence as a reserve with the same name; and
 - (b) a former reserve continues in existence as a reserve with the same name;
- subject to the other provision of this Act.
- (2)** For the purposes of subsection 36(3) of the *Interpretation Act 1979* —
- (a) a reserve to which subsection 50(1) applies shall be taken to have been declared under section 6 on the commencement day; and
 - (b) a declaration under section 6 that is expressed to apply to a declaration that is to be taken to have been made on the commencement day has effect as if the latter declaration had been made under section 6.

PART 7 — MISCELLANEOUS**False information**

51. A person shall not, in relation to any matter arising under this Act, knowingly make a statement to the Conservator or a ranger, whether orally or in writing, that is false or misleading in a material particular.

Penalty: 10 penalty units or imprisonment for 6 months, or both.

Obstruction of officials

52. A person shall not, without reasonable excuse, obstruct or hinder the Conservator or a ranger in the exercise of a power or the performance of a function under this Act.

Penalty: 10 penalty units or imprisonment for 6 months, or both.

Delegation

53. The Conservator may delegate in writing any of the Conservator's powers under this Act to a ranger.

Regulations

54. (1) The Administrator may make Regulations, not inconsistent with this Act, prescribing matters —

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The Regulations may prescribe a penalty not exceeding 5 penalty units for a contravention of the Regulations.

Regulations for Part 4A

54A. (1) For the purposes of Part 4A, the Administrator may make Regulations for or with respect to —

- (a) prescribing rules for or with respect to the general care, protection and management of the cemetery;
 - (b) fees;
 - (c) forms;
 - (d) prescribing information;
 - (e) the protection of public health and the maintenance of public order in the cemetery;
 - (f) the care, protection and management of the cemetery;
 - (g) the interment or other disposition of human remains in the cemetery;
 - (h) the structure, maintenance and management of memorials, places of interment and buildings for ceremonies in the cemetery;
 - (i) the disposition or interment of cremated human remains;
 - (j) prescribing penalties not exceeding 20 penalty units for a contravention of the Regulations made under this section.
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NOTES

The *Public Reserves Act 1997* as shown in this consolidation comprises Act No. 8 of 1997 and amendments as indicated in the Tables below.

Enactment	Number and year	Date of commencement	Application saving or transitional provision
<i>Public Reserves Act 1997</i>	8, 1997	s. 1 & 2 comm 1.5.97; rem comm. 23.6.97	
<i>Public Reserves (Amendment) Act 2009</i>	15, 2009	8.1.2010	

Table of Amendments

ad = added or am = amended rep = repealed rs = repealed and substituted
inserted

Provision affected	How affected	
36A	ad	15, 2009
36B	ad	15, 2009
36C	ad	15, 2009
36D	ad	15, 2009
54A	ad	15, 2009

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