

# National Parks and Wildlife Act 1972 (SA) - the case for reform



Melissa Ballantyne  
Solicitor  
Environmental Defenders Office

**12 August 2011**

# Overview

---

- ❑ Key piece of SA conservation legislation
  - ❑ Reserves
  - ❑ conservation provisions – species focus
- ❑ Nearly 40 years old!
- ❑ Since 1972
  - ❑ UN Convention on Biological Diversity
  - ❑ IUCN categories & criteria
    - ❑ Protected areas
    - ❑ Listing of threatened matters

# Objects

---

- There aren't any objects!
- Long title : “An Act to provide for establishment and management of reserves for **public benefit** and enjoyment; to provide for the **conservation of wildlife in a natural environment**; and for other purposes”
- **Recommend**
  - Objects with a **primary conservation purpose & principles for decision makers to follow**
  - Decision makers should be required
    - to **act consistently with & seek to further the objects** (eg Marine Parks Act 2007(SA) s9)
    - to **take into account conservation principles including principles of ecologically sustainable development**

# Biodiversity Terminology

---

- References to animals, plants, species & ecosystems
- Biodiversity “the variability among living organisms from all sources including terrestrial, marine & other aquatic ecosystems, & the ecological complexes of which they are part (**UN Convention on Biological Diversity , Article 2**)
- Components of biodiversity (TSC Act s4):
  - (a) **genetic** diversity—the variety of genes in a population
  - (b) **species** diversity—the variety of species,
  - (c) **ecosystem** diversity—the variety of communities or ecosystems
- **Biodiversity values** (TSC Act s4A), composition, structure & function of ecosystems, and includes threatened matters & their habitats.

# Duty of Care

---

- No duty of care provision! ( cf Marine Parks Act s37 )
- Minimum standard by which the community is required to manage biodiversity**
- No Species Loss Strategy Target 53** – current duty of care for biodiversity on all land tenures..established by 2010
- Recommend**
  - Duty of care provision
  - Benchmarks
  - Supporting guidelines
  - Incentives & reward schemes
  - Phased in approach or assistance with costs

# Administration

---

- National Parks & Wildlife Council**-advise Minister on
  - Management of reserves
  - Conservation of wildlife
  
- Advisory committees** - advise Minister on
  - Classification of species
  - Management of threatened species
  - Harvesting, farming, open seasons, population control, permits
  
- Consultative committees** – represent community interest in managing reserves & wildlife conservation

# Reserves

---

- Creation –statute, proclamation**
- Categories & purpose not clearly defined for**
  - National Parks** – areas of major national scientific or ecological value eg Flinders Ranges
  - Conservation Parks** – areas of particular scientific or ecological value eg to preserve a particular habitat eg Cleland
  - Recreation Parks** – areas set aside mainly for recreational use eg Parra Wirra
  - Game Reserves**- allow hunting to continue eg Bool Lagoon
- Regional Reserves** –multiple use

# Control of Reserves

---

## S35

Minister has control over all reserves (other than co-managed parks)

Co-managed parks

National park which comprises land owned by indigenous peoples/traditional association eg Canunda National Park – Boandik group – association with land in NP

Generally controlled by a co-managed Board



# Management of Reserves

---

## s36

- All reserves ( other than co-managed parks ) under the management of the Director of Parks SA
- Co-managed parks generally managed by co-management board or the Director
- Director must observe directions of Minister

# Objectives of Management

---

## s37

- Preservation/management of wildlife
- Preservation of historic sites, objects
- Preservation of features of geographical, national, scenic interest
- Destruction of dangerous weeds & noxious plants
- Control of vermin & exotic animals
- Bushfire prevention
- Encourage public use & enjoyment

# Management Plans for Reserves

---

- Binding framework for management & development
- Preparation –regard had to
  - Planning Strategy
  - Relevant development plan
- Consultation with
  - Development Policy Advisory Committee
  - Public
  - NPW Council, Co-Managed Board (if applicable)
- Concerns**
  - No requirement to have regard to conservation policies
  - No requirement for an impact statement
  - Not subject to judicial review
  - No requirement for regular review-cf Devt plans

# Protection-Sanctuaries

---

- Sanctuaries can be declared on private & public land
- Must be desirable to conserve animals or plants for which the relevant land serves as natural habitat
- Person must not take animals or plants from a sanctuary (max fine \$10 000 /2 yrs jail)
- Concerns
  - not subject to the same guarantees as reserves
  - don't require management plans

# Protection - Prohibited Areas, Mining

---

- Minister may declare a portion of a reserve to be a prohibited area where necessary to protect human life or conserve plants, animals (s42) max penalty:\$1000
- Rights of entry, exploration & mining heavily restricted(S43)
  - Some parks have been constituted with mining rights over them (where such rights pre-existed)
  - Regional reserves –
    - Env Minister consulted by Mining Minister re exploration licences –should be approval
    - Env Minister approval must be sought re mining licences (if not given can go to the Governor)

# Protection of Native Animals and Plants

---

- ▣ **Offence - take, kill, sell, give away native animal species but permits can be issued**
- ▣ **What is protected?**
  - ▣ Native mammals, birds or reptiles
  - ▣ Endangered, vulnerable & rare species
  - ▣ Migratory mammals, birds or reptiles **but not**
    - ▣ Schedule 10 animals eg galahs , dingos
    - ▣ Animals the subject of open season
    - ▣ Dangerous magpies & reptiles
    - ▣ Animals declared to be unprotected
- ▣ **Offence to take, sell, give away native plants but permits can be issued**

# Protection of Native Animals and Plants - General offences

---

- ❑ Must not be on land for the purpose of taking a protected animal without written permission (max penalty \$1000)
- ❑ Must not interfere with protected animals or engage in activities that could have a detrimental effect on the welfare of a protected animal ( max penalty for endangered \$10 000/2yrs jail)
- ❑ No hunting without a permit (max penalty \$1000 fine)
- ❑ Person who destroys or damages any part of a reserve (max penalty \$2000 fine /6mths jail)

# Endangered, Vulnerable & Rare (Threatened Species) Listing

---

**Schedule 7** – endangered (IUCN critically endangered & endangered –extremely & high risk of extinction ) eg blackfooted rock wallaby

**Schedule 8**-vulnerable ( IUCN vulnerable - high risk of endangerment ) eg southern brown bandicoot

**Schedule 9** –rare ( IUCN near threatened & lower risk – species in decline, natural limited presence ) eg sugar glider

## **Recommendation**

Align with IUCN definitions



# Listing Categories

---

## Recommendations

- Categories to include
  - Threatened populations & ecological communities
  - Critical habitat - essential for the conservation of protected wildlife (including areas not currently occupied)
  - Key threatening processes - threatens or may threaten the survival of a native species etc eg pest animals, land clearing

# Listing Process

---

- No formal process!
- **Recommend formal process of**
  - Public nomination
  - Public consultation
  - Timely published decisions made by Scientific Committee
  - Emergency listing
  - Regular reviews of lists

# Consequences of Listing

---

- s51-Taking etc **native animals** anywhere in SA – fines up to \$10 000/2 yrs jail for endangered species ( cf EPBC Act - maximum fine \$110 000)
- s47-Taking etc **native plants** from a reserve & taking prescribed plant species from private land -similar fines
- Recommend**
  - Higher penalties
  - No prescribed species - remove provision
  - Take – cover destruction of habitat
- Applications to clear native veg-consideration only

# Listing : Recommendations

---

## □ Link listing

- To **recovery planning**- actions necessary to prevent extinction of threatened matters
  - Focused, flexible & incorporate risk
  - Priority system which considers species value, cost & benefits of management & likelihood of success of management
- To **threat abatement planning**-actions necessary to reduce the impact of key threatening process (s) on threatened matters

**Decision makers must act consistently with recovery, threat abatement plans**

# Listing and Development

---

## Development

- Ordinary development -considered if in development plan
- Major developments –can be considered

## **Recommendations**

- Environmental impact assessment
  - where likely to be significant impacts on threatened matters
  - Carried out by independent assessors
  - Binding outcome

# Permits for native animals & plants

---

❑ **Special purpose permit for animals** (s53) –eg scientific research, animal causing damage to environment **but**

- ❑ Whilst Minister's decision is open to review by NPW Council their decision is not binding
- ❑ No requirement for any plan to be developed
- ❑ No public consultation

❑ **Commercial use of animals** (Div 4A)

- ❑ Farm protected animals – trial, ongoing basis (Sched11) – requires Code of Management –public consultation **but** no review rights
- ❑ Harvest protected animals –requires Plan of Management – public consultation **but** no review rights

❑ **Taking and Commercial use of plants** (s49,49A)- recommendations prepared-public consultation **but** no review rights

# Commercial Use – Permits and Plans: Recommendations

---

- **Clear criteria & guidelines** for granting permits eg no adverse affect on conservation
- Permit only granted if **sustainable use plan**
  - Consistent with objects of the Act
  - Assess status of species, habitat & threats
  - Activities subject to environmental impact assessment
  - Management controls
    - to mitigate & monitor impacts
    - to respond to changes to impacts
- **Appropriate public consultation**

# Enforcement

---

- Minister may appoint wardens to enforce Act
- Powers
  - Enter & search
  - Directions re use of motor vehicles
  - Confiscate property
  - Dismantle /remove devices used to illegally take protected animals
  - Power to arrest person who do not comply with order
  - Offence to hinder/harass warden (max \$5000 fine/2 yrs jail )



# Compliance and Enforcement: Recommendations

---

Liability of Executive

Officers

Audits

Warning notices

Infringement notices

Remediation, conservation  
orders

Compensation

Injunctions

Publications

Civil Penalties

Rewards scheme

Private prosecution

Arbiter - ERD Court

Civil remedies,  
appeals

# Summary

---

- No objects
- No duty of care
- Outmoded species protection & terminology– no listing of populations, ecological communities, critical habitat, threatening processes
- Weak regulation on & off reserve
- Decision making largely discretionary, in the hands of Minister & not subject to review
- No formal process for recovery & threat abatement planning
- Poor linkages with planning system
- No mechanism for review of Act
- New Biodiversity Conservation Act ?