

Queensland



ANNO VICESIMO

ELIZABETHÆ SECUNDÆ REGINÆ

No. 25 of 1971

**An Act to Amend the Forestry Act 1959–1968 in certain particulars with a view to providing for the establishment of Marine National Parks**

[ASSENTED TO 22ND APRIL, 1971]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. **Short title and citation.** (1) This Act may be cited as the *Forestry Act Amendment Act 1971*.

(2) *The Forestry Act of 1959* as subsequently amended is in this Act referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Forestry Act 1959–1971*.

2. **Amendment of s. 5.** Section 5 of the Principal Act is amended by—

(a) in the definition “animal life”, adding the words “and includes both marine and fresh-water forms of animal life”;

(b) omitting the definition "contiguous" and inserting in its stead the following definition:—

" "Contiguous"—When used in relation to lands set apart and declared as State Forests, or Timber Reserves or in relation to lands or waters set apart and declared as National Parks, includes lands or, as the case may be, waters that are separated only by a road or roads or by a watercourse, body of water or other natural feature;";

(c) omitting the definition "forest products" and inserting in its stead the following definition:—

" "Forest products"—All vegetable growth and material of vegetable origin whether living or dead and whether standing or fallen:

In relation to a State Forest, Timber Reserve or National Park the term includes—

- (a) honey;
- (b) all form of indigenous animal life;
- (c) any nest, bower, shelter or structure of any form of indigenous animal life;
- (d) fossil remains;
- (e) Aboriginal remains, artifacts or handicraft of Aboriginal origin or traces thereof;
- (f) relics;
- (g) quarry material:

In relation to a National Park the term also includes all other material comprising the land therein or the sea bed therein or the waters above that sea bed:

The term does not include grasses (indigenous or introduced) or crops grown on a Crown holding by the lessee or by the licensee;";

(d) inserting after the definition "interfere with" the following definition:—

" "Land"—Includes the sea bed;";

(e) omitting the definition "National Park" and inserting in its stead the following definition:—

" "National Park"—Land or waters set apart and declared or deemed to be set apart and declared under this Act as a National Park;";

(f) inserting after the definition "recreation area" the following definition:—

" "Recreational purposes"—Any purpose other than a purpose of business;";

(g) inserting after the definition "regulations" the following definition:—

" "Sea bed"—The land lying beneath the waters of the main sea or beneath the waters of any bay, gulf or estuary within or adjacent to the State and the land lying between the mean high-water mark and the mean low-water mark at spring tides of any of those waters;".

**3. Amendment of s. 11.** Section 11 of the Principal Act is amended by, in subsection (1), adding to paragraph (vi) the words “ and the forest products therein and the conduct of investigation and research into the establishment and management of National Parks ”.

**4. Amendment of s. 18.** Section 18 of the Principal Act is amended by—

(a) inserting in paragraph (vi) of subsection (1)—

(i) after the word “ vehicles ” the word “ vessels,”;

(ii) after the word “ vehicle,” the word “ vessel,”;

(b) omitting paragraph (vii) of subsection (1) and inserting in its stead the following paragraph:—

“(vii) Subject to subsection (3) of this section, between sunrise and sunset enter and inspect any place wherein he reasonably suspects are any forest products or quarry material got or interfered with or that he reasonably suspects have been got or interfered with contrary in any respect to this Act and seize, take away and detain forest products and quarry material found therein, and the vehicle or vessel wherein the same are found, and any equipment or gear that he reasonably suspects was used in getting or interfering with the forest products or quarry material, and secure the same pending proceedings;”;

(c) adding the following subsections:—

“(3) **Entry into dwelling.** Before a forest officer enters any part of a place, which part is being used as a dwelling at the time the entry is to be made, he shall, save where he has permission of the occupier of that part to his entry, obtain from a justice a warrant to enter.

This subsection does not apply in respect of the curtilage of any premises.

(4) A justice who is satisfied upon the complaint of a forest officer that there is reasonable cause to suspect—

(a) that there are in any place forest products or quarry material; and

(b) that such forest products or quarry material have been got or interfered with contrary in any respect to this Act,

may issue his warrant directed to the forest officer to enter the place specified in the warrant for the purpose of his exercising therein and with respect thereto the powers conferred on a forest officer by this section.

(5) A warrant issued under subsection (4) of this section shall be, for a period of one month from its issue, sufficient authority—

(a) to the forest officer to whom it is directed and to all persons acting in aid of him to enter the place specified in the warrant; and

(b) to the forest officer to whom it is directed to exercise in respect of the place specified in the warrant all the powers conferred on a forest officer by this section.”.

**5. Amendment of s. 23.** Section 23 of the Principal Act is amended by—

(a) omitting the words “any lands within the State” and inserting in their stead the words “any lands or waters within or adjacent to the State”;

(b) inserting after the words “such lands” the words “or waters”.

**6. Amendment of s. 24.** Section 24 of the Principal Act is amended by—

(a) in subsection (1) inserting after the words “so set apart” the words “or any waters”;

(b) omitting subsection (2) and inserting in its stead the following subsection:—

“(2) If at any time the Conservator of Forests considers that any land or waters should be set apart under and for the purposes of this Act he shall—

(a) refer the matter to the Land Administration Commission for advice as to whether it concurs with the making by the Conservator of Forests of a recommendation that the land or waters be so set apart;

(b) in the case of sea bed or waters, refer the matter to the Under Secretary, Department of Mines, the Permanent Head of the Department of the Government of the State to which the Fisheries Branch of the State is assigned at the material time and the Director of Harbours and Marine for advice as to whether he concurs with the making by the Conservator of Forests of a recommendation that the sea bed or waters be so set apart;

(c) where the interests of any other department of the Government of the State are affected by the proposal to so set apart any land or waters, ascertain the views of that department on the proposal and give consideration to those views.

If the Land Administration Commission or, as the case may be, the Under Secretary, the Permanent Head, or the Director to whom the matter is referred pursuant to paragraph (b) of this subsection advises that it or he does not concur with the making by the Conservator of Forests of a recommendation that the land or waters be set apart under and for the purposes of this Act the Minister may refer the matter to the Chief Commissioner of Lands (or, as the case may be, the Under Secretary or Permanent Head or Director concerned) and the Conservator of Forests for joint investigation and report thereon in writing to the Minister.

Upon receipt of such report the Minister may determine the matter as he thinks fit without being bound by any recommendation or view expressed in the report.”;

(c) in subsection (3), omitting the words “such lands” and inserting in their stead the words “land (other than sea bed)”;

(d) omitting subsection (4) and inserting in its stead the following subsection:—

“(4) Every recommendation to which subsection (1) of this section refers shall be accompanied by an indication of the views required by paragraph (a) or (b) of subsection (2) of this section to be ascertained and, if any views have been ascertained pursuant to paragraph (c) of that subsection, what those views are.”.

7. Amendment of s. 29. Section 29 of the Principal Act is amended by—

- (a) numbering the existing provisions as subsection (1);
- (b) adding the following subsections:—

“(2) By Proclamation the Governor in Council may declare an area or areas extending seawards from the mean high-water mark at spring tides along the maritime boundary of any part of the territory of the State to be a Marine Park Area.

The outer limits of such an area shall be as defined by the Governor in Council in the Proclamation.

In like manner the Governor in Council may from time to time vary the extent of such an area.

(3) Subject to section 24 of this Act the Governor in Council may from time to time on the recommendation of the Conservator of Forests by Order in Council set apart and declare as a National Park—

- (a) any Crown land within a Marine Park Area;
- (b) any part of the sea bed within a Marine Park Area and the waters above that part;
- (c) any part of the waters within a Marine Park Area, which he considers to be of scenic, scientific or historic interest or to be required to be so set apart and declared in the interest of conservation of animal life or forest products found therein.

A National Park set apart and declared pursuant to this subsection shall be assigned a name which includes the word “marine”.

8. Amendment of s. 30. Section 30 of the Principal Act is amended by, in paragraph (a), omitting the words “any land as”.

9. Amendment of s. 31. Section 31 of the Principal Act is amended by—

- (a) in subsection (1)—
  - (i) omitting from the first paragraph the words “by or under this Act of land as” and inserting in their stead the words “under this Act of”;
  - (ii) inserting in the second paragraph after the word “land” the words “or water”;
- (b) in subsection (2), omitting the words “by or under this Act of land as” and inserting in their stead the words “under this Act of”.

10. Amendment of s. 40B. Section 40B of the Principal Act is amended by, in subsection (2)—

- (a) omitting paragraph (a) and inserting in its stead the following paragraph:—
  - “(a) the Conservator of Forests shall not construct any road, building or structure of any description or lookout (not being a building or structure);”;
- (b) inserting in paragraph (d) and paragraph (e) after the word “land” where it occurs in each paragraph the words “or waters”.

**11. Amendment of s. 40D.** Section 40D of the Principal Act is amended by, in subsection (2), inserting in paragraph (a) after the word "picnicking" the words ", boating, under-water diving".

**12. Amendment of s. 40E.** Section 40E of the Principal Act is amended by, in paragraph (d) and in paragraph (e) inserting in each case after the word "land" the words "or waters".

**13. Amendment of s. 42.** Section 42 of the Principal Act is amended by adding the following subsection:—

"(3) With respect to any waters comprised in any National Park other than waters declared as a primitive area or a scientific area the Conservator of Forests, if he is satisfied that the objects of this Part of this Act would not be thereby prejudiced or opposed, may, from time to time grant, subject to such provisions, reservations and conditions as he thinks fit, permits to take fish for commercial purposes by means of a hand line (in this Act referred to as "commercial fishing permits")."

**14. Amendment of s. 43.** Section 43 of the Principal Act is amended by—

(a) numbering the first two paragraphs as subsection (1);

(b) adding to the first paragraph the words "or, where the forest products are fish in a National Park set apart and declared under subsection (3) of section 29 of this Act, under the authority of permission granted pursuant to this section by the Conservator of Forests in relation to that park and in compliance with the matters for the time being stipulated by the Conservator of Forests in relation to that park pursuant to subsection (3) of this section";

(c) numbering the third paragraph as subsection (2);

(d) inserting after subsection (2) the following subsection:—

"(3) **Permission of recreational fishing.** The Conservator of Forests may, by notification published in the Gazette, permit the taking for recreational purposes of fish by means of a hand line to which not more than two hooks are attached and the collection for those purposes, in a manner prescribed, of bait in a National Park set apart and declared under subsection (3) of section 29 of this Act and may in like manner revoke his permission.

Where he permits such fishing the Conservator of Forests—

(a) shall stipulate in the notification whereby he grants the permission where and when such fishing may be carried on and the conditions (if any) subject to which such fishing may be carried on and may from time to time, by a like notification, vary the matters required by this subparagraph (a) to be stipulated and for the time being stipulated;

(b) shall cause notice of the permission and of the matters required by subparagraph (a) of this paragraph to be stipulated and for the time being stipulated to be exhibited in or adjacent to the National Park concerned.

A person may carry on fishing for recreational purposes by means of a hand line to which not more than two hooks are attached (and by no other means) in a National Park in relation to which the Conservator of Forests permits such fishing if he complies with the matters for the time being stipulated by the Conservator of Forests in relation to that Park pursuant to this subsection.”;

(e) omitting the paragraph commencing with the words “This section” and inserting in its stead the following subsection:—

“(4) Saving of existing mining rights and official acts. This section shall not apply in respect of—

- (a) the exercise within a National Park set apart and declared under subsection (3) of section 29 of this Act of rights conferred on a person under a lease, licence or authority relating to mining duly granted by or on behalf of the Crown in respect of an area that is included in the park so set apart and declared;
- (b) the doing of any act or the taking of any step by an officer or employee of the Conservator of Forests for the purpose of executing this Act or in the due execution of his powers and duties under this Act.”.

**15. Amendment of s. 73.** Section 73 of the Principal Act is amended by, in subparagraph (ii), inserting after the word “land” where it firstly occurs the words “or waters”.

**16. Amendment of s. 75.** Section 75 of the Principal Act is amended by inserting after the word “land” the words “or waters”.

**17. Amendment of s. 81.** Section 81 of the Principal Act is amended by—

- (a) in subparagraph (i)—
  - (i) inserting after the word “land” the words “or waters”;
  - (ii) inserting after the word “thereupon” the words “or therein”;
- (b) in subparagraph (ii) adding the words “or therein”;
- (c) in subparagraph (iii)—
  - (i) inserting after the word “land” the words “or waters”;
  - (ii) adding the words “or for the purposes of this Act”.

**18. Amendment of s. 82.** Section 82 of the Principal Act is amended by—

- (a) in subsection (4), omitting the words “petty sessions within the petty sessions district” and inserting in their stead the words “the Magistrates Court within the Magistrates Court District”;
- (b) in subsection (5), omitting the words “court of petty sessions within the petty sessions district” and inserting in their stead the words “Magistrates Court within the Magistrates Court District”;
- (c) inserting after subsection (10) the following subsection:—
  - “(11) **Seizure of equipment.** A forest officer may seize any equipment or gear for taking, getting or interfering with forest products, or equipment for the purpose of carrying on activity prohibited in a National Park which equipment is on a National Park otherwise than under the authority of this Act or of a permit

granted under this Act and may remove such equipment or gear seized from the National Park and may sell or otherwise dispose of the same. The proceeds, if any, of such sale or disposal shall be paid into Consolidated Revenue.”;

(d) renumbering subsection (11) as subsection (12).

**19. Amendment of s. 86.** Section 86 of the Principal Act is amended by, in subsection (1)—

(a) omitting subparagraph (iii) and inserting in its stead the following subparagraph:—

“(iii) Refuse to allow to be removed, seized or detained under this Act any forest products or quarry material or equipment or gear;”;

(b) omitting subparagraph (iv) and inserting in its stead the following subparagraph:—

“(iv) Take, retake, remove or otherwise interfere with or attempt to take, retake, remove or otherwise interfere with forest products or quarry material or equipment or gear removed, seized or detained under this Act;”.

**20. Amendment of s. 88.** Section 88 of the Principal Act is amended by adding the following subsections:—

“(5) When an offence against this Act is committed in a National Park at a place that is not within a Magistrates Courts District a proceeding in relation to that offence may be instituted in any such district that abuts upon a boundary of the park or, if there be no such district, in the Magistrates Courts District a boundary whereof is nearest, by direct measurement, to the place where the offence was committed and the Magistrates Court within that district shall be the competent court having jurisdiction to hear and determine that proceeding in accordance with *The Justices Acts 1886 to 1968*.

(6) When an act or proceeding that is required to be done or taken at a place ascertained by reference to the place where any seizure was made or act was done is to be done or taken in relation to any seizure made or act done within a National Park at a place that is not within a Magistrates Courts District it shall be done or taken in any such district that abuts upon a boundary of the park or, if there be no such district, in the Magistrates Courts District a boundary whereof is nearest, by direct measurement, to the place where the seizure was made or the act was done and in respect of a proceeding so taken the Magistrates Court within that district shall be the competent court having jurisdiction to hear and determine the issue therein as prescribed by this Act.”.

**21. Amendment of s. 94.** Section 94 of the Principal Act is amended by, in the second paragraph, inserting after the word “land” where it twice occurs the words “or waters”

**22. Amendment of s. 97.** Section 97 of the Principal Act is amended by adding the following subsection:—

“(3) The power to make regulations under this Act does not extend to the making of regulations to control traffic in or over the waters of a National Park set apart and declared under subsection (3) of section 29 of this Act.

Such regulations shall be made, at the request of the Conservator of Forests or otherwise, pursuant to the power to make regulations conferred by *The Queensland Marine Acts 1958 to 1967*.

Before a regulation is made under *The Queensland Marine Acts 1958 to 1967* that is directed to controlling traffic in or over the waters of a National Park so set apart and declared the Director of Harbours and Marine and the Conservator of Forests, or officers respectively delegated by them, shall consult thereon."

**23. Amendment of s. 102.** Section 102 of the Principal Act is amended by—

(a) omitting the word " or " where it occurs between reference (v) and reference (vi);

(b) inserting after reference (vi) the following references:—

" (vii) *The Petroleum (Submerged Lands) Act of 1967*;

(viii) *The Fisheries Acts 1957 to 1962*;

(ix) *The Pollution of Waters by Oil Acts 1960 to 1961*;

(x) *The Queensland Marine Acts 1958 to 1967*;

(xi) *The Harbours Acts 1955 to 1966*,";

(c) adding the following paragraph:—

" To the extent that there is any inconsistency between the provisions of this Act and the provisions of *The Petroleum (Submerged Lands) Act of 1967* the provisions of that Act shall prevail."

**24. Amendment of Second Schedule.** The Second Schedule to the Principal Act is amended by—

(a) omitting clause 20 and inserting in its stead the following clause:—

" **20. Prevention of pollution.** Prescribing with respect to the depositing or discharge of effluent, rubbish, refuse, garbage, litter or other matter whether in a solid or fluid state on State Forests, Timber Reserves or National Parks or in waters adjacent to National Parks."

(b) omitting clause 21 and inserting in its stead the following clause:—

" **21. National Parks.** Prescribing in relation to National Parks with respect to—

(i) the management and control of parks;

(ii) the right of access by visitors or campers to parks and to the several parts of parks; the provision of permits to camp therein in such areas as may be prescribed and the terms and conditions upon which such permits may be granted and revoked;

(iii) the conduct and duties of persons in parks;

(iv) recreational activities within the boundaries of parks;

(v) commercial activities within the boundaries of parks;

(vi) salvage of vessels or marine wrecks in parks; the preservation of historical wrecks and wreckage found in parks;

(vii) charges payable for use of facilities and improvements provided in parks;

- (viii) the constitution of offences (including continuing offences) consisting in the contravention or failure to comply with any regulation concerning parks or the forest products therein; the imposition and recovery of penalties for such offences by way of a maximum penalty not exceeding \$400, or a minimum penalty, or, in the case of a continuing offence, a daily penalty not exceeding \$20 for each day on which the offence continues either in substitution for or in addition to any other penalty prescribed.”.