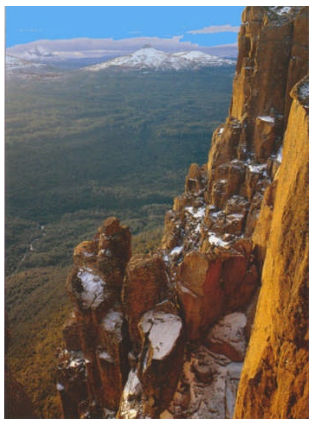
7. Protecting Landscapes, Species and Habitats



Tasmania has extraordinary natural assets – in terms of its stunning scenery, its wilderness and its unique biodiversity.

In the past, areas were set aside in conservation reserves principally to protect landscapes and to provide recreation opportunities. However, in recent years there is far more focus on protection of Tasmania's unique biodiversity – much of which exists outside of our national parks and reserves system.

Chapters 7 to 11 deal with nature conservation issues in a variety of environments – from world heritage areas to offshore marine habitats.

7.1 Managing our parks and wildlife

Reserved lands and wildlife in Tasmania are managed under two pieces of legislation:

Nature Conservation Act 2002

This Act regulates the conservation and protection of flora, fauna and geological diversity within Tasmania; classifies reserved lands in Tasmania and establishes values & objectives for each reserve class and provides for conservation covenants and reservation of private lands.

This legislation is administered by DPIPWE.

National Parks and Reserves Management Act 2002

This Act ensures that reserves are managed in accordance with the management objectives for each reserve class and provides for the development and implementation of management plans for reserved land. Draft management plans are reviewed by the *Tasmanian Planning Commission*.

The *National Parks & Reserves Management Act 2002* is administered by the Parks & Wildlife Service. The Service is headed by a Director who has explicit statutory functions.

The Act also establishes the National Parks & Wildlife Advisory Council (**NPWAC**). This provides a forum for consultation over significant policy issues relating to national parks or wildlife management.

In early 2012, the NPWAC assumed the responsibilities and functions of the former Tasmanian Wilderness World Heritage Area Consultative Committee (**TWWHACC**), whose role it was to report to and advise the Commonwealth Government in relation to management of the Tasmanian Wilderness World Heritage Area.

Parks and Wildlife Regulations

The key pieces of legislation are supported by the following regulations:

National Parks and Reserved Land Regulations 2009

These regulate what land uses and activities are permitted within national parks and reserves.

Wildlife (General) Regulations 2010

These control the general management and conservation of flora and fauna throughout Tasmania.

Both sets of Regulations include wide-ranging rules and offences – such as carrying of firearms, harming flora and fauna etc – with corresponding enforcement provisions and penalties for infringements. The Regulations also make provision for permits and licences to enable certain controlled activities to take place.

National parks rangers (as well as police officers) have powers to confiscate materials and apprehend and arrest people who commit offences under these provisions.

How are national parks and reserves managed?

The Director of Parks and Wildlife is an important position, which carries responsibility for implementation of the *National Parks & Reserves Management Act 2002* and for managing all public reserved land (unless another managing body is appointed by the Governor). There have only been a handful of times when a different managing authority has been appointed by the Governor. For example, in 2009 Clarence City Council became the Managing Authority for Rosny Hill Nature Recreation Area.

Day to day, on-ground management of parks and reserves is carried out by the Parks & Wildlife Service.

The Director is not the managing authority for freehold reserves such as Private Sanctuaries and Private Nature Reserves, unless specifically appointed and with the landowners' consent.

The Parks and Wildlife Service also co-manages marine parks with the Marine Resources Branch of DPIPWE (☛ go to Chapter 9 for information).

7.2 What activities are allowed within national parks and reserves?

Activities and developments within the parks system are controlled through the following mechanisms:

1. Legislation

The *Nature Conservation Act 2002* and the *National Parks & Reserves Management Act 2002* and the accompanying Regulations prohibit a range of general activities and impose controls on a range of other activities (see above).

2. The Reserve classification system

National parks and reserves are set aside for many different purposes, including species protection, recreation and landscape protection.

The categories of Tasmania's various conservation reserves have now been streamlined, largely based on the international IUCN model.

Under this system, Tasmania has the following different types of reserves on public land.

Reserve Type	Enabling Legislation	Responsible Agency
▪ National Park ▪ State Reserve ▪ Nature Reserve ▪ Game Reserve	Nature Conservation Act	Parks and Wildlife Service

Reserve Type	Enabling Legislation	Responsible Agency
▪ Conservation Area ▪ Nature Recreation Area ▪ Regional Reserve ▪ Historic Site	Nature Conservation Act	Parks and Wildlife Service
▪ Public Reserve	Crown Lands Act	DPIPWE
▪ Forest Reserve (*)	Forestry Act	Forestry Tasmania

(*) It is not clear how current government plans regarding the *Tasmanian Forests Agreement Act 2013* will impact on the role and management responsibilities for forest reserves.

In addition, there are two types of reserve categories for private land under the *Nature Conservation Act 2002*:

- Private Nature Reserves
- Private Sanctuaries

Tasmania has over 600 established reserves, including 19 national parks, that are managed by the *Parks and Wildlife Service*. Each of the different categories of reserves offers a different level of protection and specifies management objectives and particular activities that are allowed (or not allowed) to take place within that class of reserve.

One area of specific contention in relation to activities in reserve areas is mining (☛ go to Chapter 11). Mineral exploration is explicitly included in the management objectives for reserves classed as Regional Reserves, Conservation Areas, Nature Recreation Areas, Public Reserves and Forest Reserves. Though mining is not explicitly prohibited within National Parks, it can only occur if it is consistent with the management objectives (which focus on natural heritage and landscape values) or any management plan for the area (see below). Although several management plans recognise the limited continuation of mining leases existing at the time of the park's creation (e.g. Douglas Apsley National Park), no management plans for national parks in Tasmania currently allow for mineral exploration to occur. The approval of both houses of parliament would be required to alter this position (see below).

3. Management Plans

Under the *National Parks & Reserves Management Act 2002* the Director of Parks & Wildlife may draw up a Management Plan for any reserve, in consultation with the Secretary of the Department administering the *Nature Conservation Act 2002* (currently DPIPWE).

The *Regional Forest Agreement 1997* required that all public reserves have a Management Plan by December 2003. While this has been mostly met, management plans remain outstanding for a number of reserves.

Management Plans are important to the public, because they set out the specific activities and developments that may or may not take place within each particular reserve, the responsible authority, management objectives and any licensing issues. The management plan also applies to activities undertaken by the Parks and Wildlife Service itself.

Management Plans are the main opportunity for the public to have input into how their parks and reserves will be managed.

Draft Management Plans for public reserves must be released for public exhibition for at least 30 days, and any person can make a representation about the proposed plan. All representations are forwarded to the Commission which will consider all the issues raised (and may hold public hearings). The Commission then must present a report to the Minister making recommendations about the management plan. The Minister will present the Management Plan (with or without amendments) to the Governor for approval.

Once a Management Plan is approved it will be reviewed in the timeframe set out in the plan – normally every 10 years.

You can inspect reserve management plans (both draft and approved ones) at National Parks offices, download them from the Parks and Wildlife website, or buy them from Service Tasmania centres.

4. Business licences

You must not operate a commercial business of any kind within parks and reserves without first obtaining a business licence from the Minister. This includes businesses which hire equipment, provide guided tours, sell food or undertake commercial filming or photography.

↝ Go to the Parks and Wildlife website for more information about the requirements for business licences.

7.3 Developments inside national parks

How are development proposals assessed?

Controversial past development proposals at Recherche Bay and Pumphouse Point, as well as the Three Capes Track, have highlighted the confusion regarding the interaction of national parks and reserve management systems with the standard development process.

The approval process for development works on reserved lands (including National Parks) remains contentious and no statewide approach has been adopted. A Draft Planning Directive was prepared in 2003 to help guide assessment of development proposals in reserve areas, but the Directive was never finalised.

In practice, any proposed development (other than small licensed business activities) in a national park or reserve will be subject to the standard planning process (☛ see Chapter 5). Planning decisions must not conflict with the management plan for the protected area, or the relevant planning scheme.

For developments in the World Heritage Wilderness Area, proposed developments will be subject to the impact assessment procedures in the TWWHA Management Plan (see below).

How can I have a say in national park developments?

Development inside national parks and reserves such as infrastructure, roading and tourist accommodation tends to be controversial because of the potential to detract from the natural character of the park and threaten its ecological integrity.

If you are concerned about how a park or reserve is managed or about proposed developments, it is advisable to have a say as early as you can:

- Go to the relevant local council office and see what the Planning Scheme provides for in the area. You have the right to request amendment of a Planning Scheme if you have a legitimate concern over its content (subject to the review provisions outlined in Chapter 4).
- If a Management Plan is in the process of being developed for the reserve, the public must be invited to comment. Take this opportunity to have a say as there are few opportunities for public input once the plan is approved.
- If a Management Plan has already been approved for the reserve, become familiar with it and help to ensure that it is complied with.

↝ Go to the Parks and Wildlife website to see current management plans.

Management Plans for reserves may allow use or development of the land other than in accordance with the provisions of the *National Parks & Reserves Management Act 2002* - provided this departure is agreed to by both Houses of Parliament.

- The Minister can issue a licence or lease which allows buildings to be built on reserved lands for tourist accommodation and related facilities, provided such a development would be consistent with the management objectives for that land and "any applicable management plan". If you believe that a building is not consistent with these documents, contact the Minister.
- Note that in the event a Management Plan would have to be altered in order to enable a development to take place, this can only be done through the statutory review process. It is important to keep an eye out for public notices inviting public input.
- If an application for a proposed development is made to the local council, the public will be given an opportunity to make representations and can appeal to the Tribunal against the Council's decision (☛ see Chapter 5).

How are wilderness features protected?

Unlike some other jurisdictions, Tasmania has no specific 'Wilderness Act', nor any particular wilderness class of reserve. However, wilderness protection is a stated objective for the management of national parks and wilderness features are generally protected under the management plan for a particular park.

How can I help enforce the law?

If you suspect any infringement of parks or wildlife regulations (such as lighting of illegal fires, taking wildlife or carrying firearms within a reserve area) you should immediately contact the nearest National Park station or a police officer in the area.

7.4 World Heritage Areas

How are Tasmania's World Heritage Areas managed and protected?

Because Australia is a signatory to international treaties in relation to world heritage, the Constitution gives the Commonwealth government control over World Heritage Areas. These powers are generally exercised through the *Environment Protection and Biodiversity Conservation Act 1999*, known as the EPBC Act (☛ go to Chapter 15 for information about this important national law).

Under the EPBC Act, approval is required for any development or activity that could have a significant impact on the values of a world heritage area. The federal Environment Minister can require comprehensive impact assessments to be carried out before issuing an approval under the Act.

For developments in the Tasmanian Wilderness World Heritage Area, the impact assessment process for Major Projects set out in the Management Plan will need to be followed. An impact assessment must be carried out subject to advice from the National Parks and Wildlife Advisory Committee. The assessment report will then be released for public comment for at least one month before the Minister decides whether to approve the proposed development.

Developments outside the World Heritage area which may impact on the values of the area may still need to be assessed under the EPBC Act. Depending on the nature of the development, the Minister can follow the impact assessment procedures under EMPCA (☛ see Chapter 6), the *State Policies and Projects Act 1993* (☛ see Chapter 5), or the EPBC Act (☛ see Chapter 15).

The Federal Minister also has broad powers under the EPBC Act to revoke a development permit if the conditions are not met, or to seek an injunction if an unauthorised activity or proposed activity threatens the integrity of a World Heritage Area.

In practice, Tasmania's two World Heritage Areas (Western Tasmania and Macquarie Island) are protected and managed on a day-to-day basis through reservation of those areas under Tasmania's National Parks and Reserves Management Act 2002 and by Management Plans and other arrangements agreed to jointly by both federal and state ministers.

In June 2013, the World Heritage Committee approved the extension of the Tasmanian Wilderness World Heritage Area to include an additional 170,000ha of native forest. The Commonwealth government has applied to remove 74,000ha of this area – the World Heritage committee will consider this application in June 2014.

More information about this is available at the Department of Environment website.

What can I do if I disagree with something happening in the World Heritage Area?

It is very important for the public to report any threatening activities or developments to both the Federal and State agencies (the federal Department of Environment and the Tasmanian Parks and Wildlife Service). When you report an issue, make sure that you request that the matter be investigated and action taken to address the impacts.

Under the EPBC Act, any 'interested person' may be able to take legal action to prevent people, companies, a State or the Commonwealth from carrying out unlawful activities within the World Heritage Area (☛ go to Chapter 15 for more information).

Case Study	
Protection of World Heritage values	In December 2000, Dr Carol Booth, a North Queensland conservationist, assisted by EDO Queensland, sought an injunction under the EPBC Act, to restrain a fruit farmer from killing large numbers of Spectacled Flying Foxes through the use of electrical grids. Expert evidence suggested that the flying foxes roost in the adjacent Wet Tropics World Heritage Area. The farmer did not have approval under the EPBC Act for the action of killing flying foxes. In October 2001, Justice Branson in the Federal Court granted Dr Booth an injunction, having found that the killing of large numbers of Spectacled Flying Foxes on the farm was likely to have a significant impact on the World Heritage values of the Wet Tropics World Heritage area. The court explained that 'significant impact' in the EPBC Act meant an "impact that is important, notable or of consequence having regard to its context or intensity". This definition allowed the Court to consider the use of electrical grids, not just in isolation, but as a cumulative impact added to other reasons for the overall mortality of the species. While the Court did give consideration to the financial detriment to the fruit farmer due to the injunction, it was noted that this factor was something that would rarely prevail over the protection of World Heritage values. You can read the decision in *Booth v Bosworth* [2001] FCA 1453 on the Austlii website.

7.5 How are Tasmanian wetlands protected?

Tasmania currently has numerous wetlands in various states of protection. Ten of them have been listed on the international Ramsar listing. Ramsar wetlands are recognised as a matter of national environmental significance under the EPBC Act's assessment and approval provisions.

Long Point wetland, East Coast Tasmania

A person must not take an action that has, will have, or is likely to have, a significant impact on the ecological character of a Ramsar wetland, without approval from the Commonwealth Environment Minister. To obtain approval, the action must undergo a rigorous environmental assessment and approval process.

↝ Go to the DPIPWE website for information about Tasmania's wetlands.

☛ Go to Chapter 10 for information about Tasmania's water laws.

☛ Go to Chapter 15 for information about the federal EPBC Act.

7.6 Protecting Marine Areas

Over the past decade, there has been a growing recognition of the need to provide for marine reserves, as well as reserves on land. Marine reserves can protect biodiversity (particularly threatened marine species) against the impacts of pollution, overfishing and other disturbances and can help make marine environments more resilient to the impacts of climate change, Marine reserves can increase fish populations both within the reserve and in adjacent areas, having flow-on benefits for the fishing industry. Marine reserves can also have tourism benefits (for example, protecting shipwrecks can create popular dive sites) and provide good areas for scientific research and education.

In Tasmania, the Marine Protected Areas Strategy sets out the state's objective to achieve a comprehensive, adequate and representative network of marine national parks. Despite this, only seven marine reserves have been declared to date, including Tinderbox, Ninepin Point, the Kent Group and Port Davey reserves and the water surrounding Macquarie Island.

☛ Go to Chapter 9 for information about protecting Marine Areas.

7.7 Protecting heritage values

Heritage values in Tasmania are primarily protected under State heritage laws, through development restrictions in Planning Schemes and, for those places of national significance, through Commonwealth laws (☛ Go to Chapter 12 for more information).

After an amendment to the EPBC Act in 2004, the Australian Heritage Council was established to replace the Australian Heritage Commission. The Heritage Council is an independent expert advisory board, providing advice to the Federal government (including the Environment Minister) on heritage matters, such as appropriate management plans for listed places. The Australian Heritage Council also assesses places nominated for inclusion on the National Heritage List (see Tarkine case study below).

The National Heritage List

Anyone can nominate a place to be included on the National Heritage List. The place must have outstanding natural, Indigenous or historic heritage value and will be assessed against particular criteria, such as its importance to Australia's cultural history or its uncommon or endangered natural characteristics.

Nominations are initially reviewed by the Department of Environment to remove any considered to be vexatious (e.g nominations of areas that have already been assessed and rejected). All other nominations that comply with the requirements set out in the nominations forms are forwarded to the Australian Heritage Council for assessment.

If you think a place should be included on the National Heritage List, a nomination kit is available from the Australian Heritage Council.

Case Study	
National Heritage Listing - the Tarkine	The Tarkine, in Tasmania's north-west, is famous for its rainforests and beaches, as well as its important flora and Indigenous historical links. It houses Australia's largest Gondwanan rainforest and the only known disease-free population of Tasmanian Devils. The Tarkine was first nominated to be included on the National Heritage List in 2004. In 2009, then Environment Minister Peter Garrett 'emergency listed' the Tarkine as a National Heritage site. The emergency listing was made as a result of a proposal that sought to build a 134km road through the Tarkine's old growth rainforest. In 2010, the Tarkine's emergency listing lapsed and new Environment Minister, Tony Burke, had to decide whether it should be listed permanently. However, the Minister asked the Australian Heritage Council to engage in a more thorough assessment of the area. This assessment concluded amongst other things, that the Tarkine has outstanding heritage value to the nation as the single largest tract of cool temperate rainforest in Australia. The Heritage Council eventually recommended that the entire Tarkine rainforest be permanently placed on the National Heritage list. Despite this recommendation, the Minister announced in February 2013 that only a coastal section containing significant Aboriginal cultural heritage would be included on the National Heritage List. This area, which comprises less than 5% of the area recommended for inclusion, is known as the Western Tasmania Aboriginal Cultural Landscape. Controversially, the Tarkine area is currently subject to a number of proposals for mining and forestry operations.

7.8 How can private land be protected?

There are four mechanisms to protect natural values on private land.

1. Vegetation Clearance Controls

Property owners generally need to obtain approval before large scale clearing of native vegetation. (☛ Go to Chapter 8).

2. Environmental agreements / Part V Agreements

When developments are being approved, property owners can be required to enter into binding agreements restricting their use of the land (☛ Go to Chapter 5)

3. Private reserves

Landowners can choose to have their land declared as a reserve under the state's reserve system (see above).

4. Land covenants

Landowners may enter into conservation covenants to protect their land.

Conservation covenants are attached to land titles, and place legal restrictions on the holder of the title. Covenants are a good way to ensure that biodiversity on private land is protected. They provide binding protection for natural values on that land now and in the future.

Under the *Nature Conservation Act 2002* conservation covenants can include any provisions, including restrictive covenants (that prevent particular activities) and positive covenants (that require particular actions to be taken). The conditions of a covenant (including an associated Management Plan) are worked out jointly by the landowner and DPIPWE.

The Private Land Conservation Program offers three covenanting programs:

Conservation Covenants

Landowners can voluntarily enter a Conservation Covenant to manage defined areas specifically for nature conservation. Under the *Nature Conservation Act 2002*, Conservation Covenants are legally binding and generally continue indefinitely (unless revoked or if the conservation covenant itself specifies a time limit). Conservation Covenants are registered on the land title and will bind any future owner of the land. In general, covenanted land is not subject to land tax and landowners may be eligible for certain compensation payments if they enter into one.

Land for Wildlife Scheme

This Scheme is voluntary, free and non-binding. It helps to protect the habitats of threatened species on private land and recognises land owners who are taking positive steps in conservation and land management. Over 800 properties are currently registered as part of this Scheme. Typically, you must be willing to management land over 2 hectares in size in order to be eligible for this Scheme.

Gardens for Wildlife

The Gardens for Wildlife Scheme is also voluntary and non-binding. However, membership in the program comes at a small fee. The Scheme was instigated as a 'sister program' to the Land for Wildlife Scheme, and is for people who want to make their gardens friendly to local plants and wildlife. This program places no restriction on land size and any garden can contribute to the Scheme, of which there are currently 470 members.

Can anyone covenant their land?

Yes. Any landowners can volunteer to enter into conservation covenants, provided the land has conservation values that can be viable in the long term.

Compulsory covenants

In some situations, covenants can be imposed on landowners to protect threatened species and vegetation communities.

Most importantly, if you apply for a Private Timber Reserve and your application is refused because of the natural values of your land, the Minister can order you to enter into a conservation covenant to protect those values. You will be paid compensation for any losses associated with the covenant (e.g. because you cannot carry out logging activities on the property - see Section 33 of the *Nature Conservation Act*).

How can covenants be enforced?

Once a covenant is in place, a landholder can be prosecuted for not complying with the terms of the covenant (maximum fine $13,000). However DPIPWE prefers to avoid prosecutions by maintaining positive ongoing relationships with landowners.

7.9 Protecting flora and fauna

Thanks to continental drift, receding ice caps and the protection that Bass Strait gives, Tasmania is home to a wonderful array of unique species of plants and animals.

Since European arrival, the state has suffered a high rate of species and habitat loss from a variety of causes, including urban expansion, forestry, fishing, agriculture and hunting.

To date, known extinctions include one mammal, three bird species, eight invertebrates and 32 plant species. Over 650 known Tasmanian plants and animal species are endangered, vulnerable or rare. Similarly, a significant proportion of habitats – wetlands, forest, lakes, heathlands – have been either totally obliterated or severely altered since European settlement.

The rapid decline in viable populations of the Tasmanian Devil highlights the vulnerability of species, and the urgent need to implement more effective protections.

Special laws to protect threatened species

This rather dire situation has prompted the passage of 'species protection' laws in recent years. Consequently, three important processes now govern biodiversity issues in Tasmania.

	Act of Parliament	What it enables
(1)	**Nature Conservation Act 2002** **National Parks and Reserves Management Act 2002**	▪ Declaration of protected areas ▪ Entering into voluntary conservation covenants ▪ Rules for taking protected species or introducing restricted species ▪ Management plans for protected areas and species that have been declared under the *Nature Conservation Act* 2002.
(2)	**Threatened Species Protection Act 1995**	▪ Listing of threatened flora and fauna ▪ Permits to 'take' threatened species ▪ A range of measures to manage species and habitats
(3)	**Environment Protection and Biodiversity Conservation Act 1999**(Commonwealth)	▪ An assessment mechanism when a development is likely to impact on nationally listed flora or fauna, threatened vegetation communities, migratory species and significant wetlands.

The Parks and Wildlife Acts

How do the Nature Conservation Act and the National Parks and Reserves Management Act operate?

The Parks & Wildlife Service has general jurisdiction over flora and fauna management throughout the state (under the *Wildlife (General) Regulations 2010*). With some exceptions, this includes flora and fauna on public land, marine areas, private land and logging areas as well as national parks and reserves.

The Parks & Wildlife Service have responsibility for looking after dolphins, whales and seals, other sea creatures (fish and other non-mammals) are managed under different Acts and by other agencies (☛ go to Chapter 9).

What general protection exists?

The legislation classifies fauna and flora species according to their survival needs – specially protected, protected and partly protected. There are a wide range of offences for taking, trading, exhibiting (such as in a wildlife park) or harming protected species without a permit.

The *National Parks and Reserves Management Act 2002* protects fauna and flora within National Parks and State Reserves. The management plan for a reserved area can make it an offence to disturb or interfere with any wildlife or plant in the reserve.

Harvesting and hunting flora and fauna

The Parks & Wildlife Service manages the harvesting of non-threatened native fauna (such as wallabies) through the issuing of licences and declaration of open and closed hunting seasons (for species such as ducks and shearwaters).

The Wildlife Regulations set out the rules for taking partly protected fauna, including licensing requirements. For instance, duck hunters are required to produce a duck ID certificate, showing knowledge of different duck species, before they can obtain a licence.

Who controls exports of native flora and fauna?

Where native species are harvested for overseas export (such as possum skins, sphagnum moss, shearwaters and tree ferns), the Commonwealth government exercises additional legal controls (☛ see Chapter 4).

Aboriginal rights to take wildlife

Special provision has been made in the *Nature Conservation Act 2002* for people of Aboriginal descent. Aboriginal people are able to undertake cultural activities (including hunting and fishing for personal use), provided the Minister is satisfied that the activities do not have a detrimental effect on species protection (☛ see section 73).

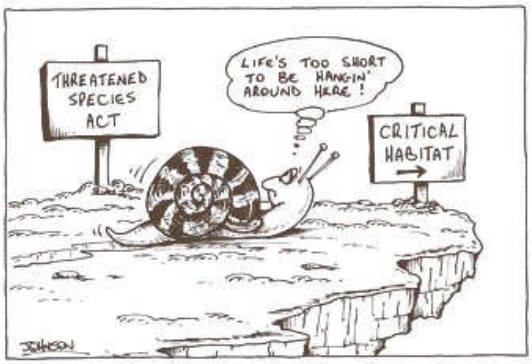
Offences

Tasmania's wildlife protection laws make it an offence to harm any protected native flora or fauna unless:

- you have a permit from the Parks & Wildlife Service (and comply with the permit conditions!)
- an 'open season' has been declared on the species
- you are operating under a certified forest practices plan
- the species was harmed as an unavoidable consequence of performing an activity authorised by an Act of Parliament (roading, commercial logging)
- you harmed a threatened species by accident or by reason of an honest and reasonable mistake
- in cases where an interim protection order has been declared, you have the written authority of the Minister

Threatened Species Protection Act

How does it operate?



This Act sets out special protection measures for native animals and plants that are considered to be 'threatened'. Breaches of the Act can result in much higher penalties than a breach of the *Wildlife Regulations* described above.

Species declared as threatened (including marine mammals and fish as well as terrestrial flora and flora) are listed in the schedules of the Act according to the nature of their threatened status.

- **Endangered:** extinct or in danger of extinction (Schedule 3)
- **Vulnerable:** likely to become endangered (Schedule 4)
- **Rare:** a small population that is not immediately vulnerable but is still at risk (Schedule 5)

By way of example, the forty spotted pardalote is listed as 'endangered', whilst the giant freshwater crayfish is listed as 'vulnerable'.

Species may be upgraded, or downgraded, if conditions affecting their survival change. For example, in May 2008 the status of the Tasmanian Devil was upgraded from "vulnerable" to "endangered", in recognition of the significant threat posed by the Devil Facial Tumour Disease.

Who administers the Threatened Species Act?

The Secretary of the Department of Primary Industries, Parks, Water and Environment is responsible for ensuring that the Act is implemented, though a number of key decisions are ultimately at the discretion of the Minister.

How is a threatened species listed?

A species is listed by the Minister, after receiving a recommendation from the Scientific Advisory Committee (**SAC**). The SAC is an advisory body established under the Act and is made up of 7 members with special knowledge and experience in flora and fauna ecology.

The advisory committee has a key role in recommending to the Minister:

- whether a species should be listed (or not listed), and under what category
- the status of habitats and their protection needs
- threatening processes, and action that is needed to minimise their impacts on species and habitats (including development of threat abatement plans and recovery plans)

Who can nominate a species as being threatened?

There are two avenues for listing or delisting species under the Act:

1. Under Section 13:

The Scientific Advisory Committee may of its own motion, or in response to a regular review process, make a recommendation to the Minister that a species be included in, or removed from, the threatened species list. The Minister can then make an order including the species, removing the species or amending the listing for the species.

Notice is given to the public of the Minister's order and any person can appeal to the Tribunal to challenge the decision (☛ go to Chapters 4 and 14 for information about the appeal process).

2. Under section 16:

Any person may nominate flora or fauna which they consider should be added to (or removed from) the threatened species lists.

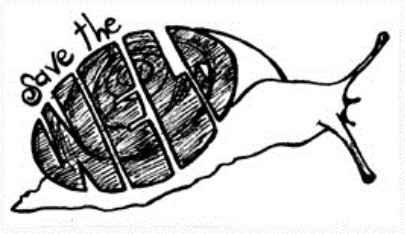
The SAC has a duty to advertise the nomination and consider all public comment made within specified time limits. If a nominated species is rejected, the SAC must notify the Minister and give reasons for the rejection.

The Minister may then decide about the listing and must publish his/her decision. There is no appeal to the Tribunal from this decision, but you may be able to challenge the decision under the *Judicial Review Act 2000*.

↝ For more detailed information on the process for listing or delisting species, visit the DPIPWE website.

- A Case Study -

The Forest Snail Case



In 1999 the *Tasmanian Conservation Trust* initiated the first ever appeal under the Threatened Species Act. The appeal involved a decision by the Minister to remove the north-east forest snail (*Anoglypta launcestonensis*) from the threatened species list (it had been listed as vulnerable).

The Tribunal took scientific evidence from people representing both sides of the argument and eventually handed down a decision to uphold the Minister's decision. The snail was de-listed.

This case illustrates how the appeal system is open to any person – whether it be to try to get greater or lesser protection for any particular species.

Where can I find out if a particular species is listed as threatened?

You can obtain the listings from:

- DPIPWE
- Parks & Wildlife offices
- Threatened Species Protection Act 1995
- Department of Environment

How does the Act protect species?

In five principal ways:

- **Preparing a statewide strategy** for the conservation of threatened species in Tasmania, the Threatened Species Strategy
- **Preparing listing statements** and implementing species recovery plans and threat abatement plans for particular species
- **Implementing land management plans** (including special agreements with landowners and public bodies such as Forestry Tasmania)

  Please note, these plans are rarely entered into.
- **Declaring interim protection orders**
- **Declaring critical habitats** (listed habitats are protected in much the same ways that individual species)

Various procedures and time limits are set out in the Act for these actions. There are opportunities for public comment in relation to decisions to list species, developing recovery and management plans and declaring critical habitats. Landowners and others who are financially affected by decisions may be able to apply to the Minister for financial compensation.

The Threatened Species Protection Act 1995 provides a range of tools to protect the State's species and habitats. Despite this, the Act suffers from a few key deficiencies:

- Offences are limited to taking particular species, rather than affecting their habitat (other than critical habitat)
- Offences are only established if a person "knowingly" takes a species, so it is necessary to prove that a landowner knew, or ought to have known, that a particular species was present on the land, and was threatened
- Land agreements are entirely voluntary, even where critical habitat has been identified
- Poor implementation and under-resourcing has meant that, at the time of writing, many listing statements remain outstanding, no prosecutions have been commenced, no interim protection orders or critical habitats have been declared and no land agreements have been entered into.

In March 2009, the Tasmanian Auditor-General completed a report on the Management of Threatened Species, which highlighted these, and other, deficiencies and recommended actions to improve the protections offered by the legislation. For example, the audit found that, while threatened species recovery plans were implemented, the effectiveness of the recovery plans was rarely assessed. It was recommended that an assessment of the high-priority recovery plans be undertaken.

DPIPWE has been working to address these issues and a follow up report in June 2012 indicated that approximately half of the recommendations had been implemented.

You can find the original assessment and progress report on the Auditor-General's website.

How does the Act affect what people can do?

If a species is listed as threatened then it is prohibited to 'take' it without a special permit (see section 51 of the *Threatened Species Protection Act 1995*).

To 'take' is defined in the Act as to: "kill, injure, catch, damage, destroy or collect" and may also include the destruction of habitat.

A person or corporation can apply to the Secretary of DPIPWE for a permit under the Act to take a threatened species or to take an action that is likely to result in harm.

It is also an offence to take or harm a species or habitat if an interim protection order has been declared for that particular species or habitat. The maximum penalty is $13,000. However, a permit may be issued to a landholder to undertake an activity on land that is subject to a protection order.

A person who takes a species without a permit or who contravenes an interim protection order is liable to prosecution under sections 36 and 51.

7.10 The EPBC Act

The *Environment Protection and Biodiversity Conservation Act 1999*, Australia's primary national law in relation to environmental issues, is described in more detail in Chapter 15.

How does it operate?

The Federal government has international obligations to protect Australia's threatened biodiversity. The EPBC Act provides some legal avenues to protect species and ecological communities that are nationally (or internationally) threatened. These provisions operate in parallel with Tasmanian state laws, described above, and have many similar features.

How are threatened species protected under the EPBC Act?

Similar to the Tasmanian threatened species legislation, the EPBC Act lists species under various categories – 'extinct', 'extinct in the wild', 'critically endangered', 'endangered', 'vulnerable' and 'conservation dependent'.

An entire ecological community can be listed, as can a 'critical habitat' or a 'key threatening process'. Any person can nominate a threatened species, ecological community or a 'key threatening process' for listing.

The federal Environment Minister makes the final decisions on listings after considering advice from a Federal Scientific Committee.

What protection does EPBC listing offer?

Once a species or ecological community is listed, the EPBC Act offers the following protections:

- requiring the assessment and approval of proposals that are likely have a significant impact upon a threatened species, an ecological community or a migratory species
- requiring permits for actions in a Commonwealth area that involve the killing, injuring or taking of a listed threatened species, or ecological community
- recovery plans, threat abatement plans and wildlife conservation plans can be developed and implemented for the species. Activities that are inconsistent with these plans should not be approved.

Heavy penalties (up to $660,000 for an individual or $6.6 million for a company) may be imposed on a person who takes an action anywhere in Australia which is likely to have a significant impact on a nationally listed species or ecological community without an exemption or approval.

CASE STUDY: Lamattina

In 2004, a South Australian farmer, Mr Lamattina, cleared 170 Eucalyptus trees which contained nesting hollows for the endangered South-Eastern Red-Tailed Black Cockatoo. The Federal Environment Minister considered the clearing to have had a significant impact on the threatened species, making it an offence to clear the trees without a permit under the EPBC Act.

The farmer admitted to clearing the trees and agreed with the Minister to pay a financial penalty of $110,000. However, when this agreement was put forward to the Federal Court in 2009, the Court imposed a heavier fine.

The Court stated that:

"… in my view the penalty proposed by the joint submissions is not within the permissible range. The contravention was not within the least serious category of contraventions. The deliberate nature of the conduct, the indifference to its potential consequences, and its significance in relation to the endangered species, and the need for the Court to fix a penalty which will operate as a deterrent to

those who might otherwise be minded to clear native vegetation contrary to s 18(3) of the EPBC Act all point to a penalty significantly greater than that suggested, even taking into account all the matters which weigh in the first respondent's favour to fix a low pecuniary penalty. In my judgment, the appropriate pecuniary penalty is $220,000. …"

This decision demonstrates the seriousness with which contraventions of the EPBC Act are taken. Significant fines can be imposed on any person or company who fails to comply and causes harm to threatened species or vegetation communities.

⇝ For more details about this case, go to EnvLaw.

Environmental Impact Assessments

Any activity (such as new developments or an expansion of an existing development) which is likely to have a 'significant' impact on a nationally threatened species or ecological community must be referred to the federal Environment Minister.

If you are concerned about any development, you should make sure that the developer has made a referral under the EPBC Act. If not, you can bring the development to the attention of the Environment Minister and request that it be 'called in'.

Once a development or activity has been referred to the Minister, s/he must then decide whether it is likely to have a significant impact and, if so, what level of environmental impact assessment is required. The public are given an opportunity to comment on these matters before the Minister makes a decision.

☛ Go to Chapter 15 for more information about this process

Export of protected wildlife

- Part 13A of the EPBC Act sets out rules for the export and import of listed species. Significant penalties can be imposed for exporting or importing regulated species without a permit, or in breach of the permit conditions.
- It is also an offence to kill, injure, take or trade a cetacean (whale, dolphin or porpoise) in the Australian Whale Sanctuary. The Australian Whale Sanctuary extends to the boundary of Australia's exclusive economic zone, which is up to 200 nautical miles from the coast of Australia. It does not generally include coastal waters up to the three nautical mile limit.

What action should I take under national laws?

- The first thing to do is to contact the Department of Environment to find out whether the EPBC Act applies to the activity that you are concerned with.
- If the EPBC Act applies, report your concerns promptly by writing to the Compliance and Enforcement Unit and request that they investigate the issue.
- Make submissions to the Environment Minister in relation to any development which may have a significant impact on threatened species.
- In some circumstances, you may be able to challenge an approval in the Federal Court or seek an injunction to stop an unauthorised activity that will have a significant impact on threatened species.

☛ Go to Chapter 15 for more information about federal laws and how to take action.

7.11 Animal Welfare

Any person who keeps animals, owns animals or looks after animals (whether pets, livestock or animals used for entertainment) has an obligation to protect their welfare. Public concern regarding animal welfare, particularly in relation to battery hens and livestock transport, has increased in recent years.

The principal piece legislation dealing with this issue in Tasmania is the Animal Welfare Act 1993 (the **AWA**). The Act makes it an offence to do anything reasonably likely to result in unreasonable or unjustifiable pain or suffering to an animal in your care.

The Act is administered by the Department of Primary Industries, Parks, Water and Environment (**DPIPWE**).

The *Animal Welfare Act 1993* is currently under review.

Who is responsible for an animal's welfare?

Under the AWA, a person is taken to have the "care or charge" of an animal if the person:

- is the owner of the animal;
- has control, possession or custody of the animal;
- operates or manages premises where the animal is held for commercial purposes (for example, a kennel or pet shop); or
- is the owner, operator or manager of the land where the animal is being agisted (unless a different agreement has been reached in writing); or
- is a share farmer; or
- is a responsible officer of a company that owns the animal.

In some circumstances, an employer will be held responsible for an employee's cruelty if it is shown that the employee was acting on the employer's instructions (see s.48A).

Where this section refers to the 'owner' of an animal, it includes any person who has care or charge of the animal.

What constitutes animal cruelty?

It is an offence under s.8(1) of the AWA to "do any act, or omit to do any duty, which causes or is likely to cause unreasonable and unjustifiable pain or suffering to an animal." Harsher penalties apply for "aggravated cruelty", where the cruelty results in the death or serious disablement of the animal (see s.9).

The AWA also outlines a number of general care requirements, including:

- not wounding, mutilating, torturing, overworking, abusing, tormenting or terrifying an animal (s.8(2)(a))
- not overloading or overcrowding animals (s.8(2)(b)). Please note, the Animal Welfare Regulations 2008 set out minimum space requirements for keeping caged chickens.
- not transporting an animal in a way that causes unreasonable and unjustifiable pain or suffering (s.8(2)©)
- ensuring a work animal is fit for the work (including farm work or providing rides to children (s.8(2)(d))
- providing "appropriate and sufficient" food, drink, shelter and exercise to any animal unable to provide for itself (s.8(2)(e)). This means owners must provide sufficient food and drink to maintain the animal in reasonable body condition, allow the animal to grow and reproduce and to remain hydrated. Shelter provided for an animal must be sufficient to protect the animal from bad weather

- not abandoning an animal usually kept as a domestic pet (s.8(2)(f)). You are taken to abandon an animal if you leave it without ensuring that another person will immediately take over care of the animal.
- ensuring a sick or injured animal is provided with appropriate treatment (s.8(2)(g))
- not using electric shocks, spurs or similar sharpened appliances on an animal (s.8(2)(i) and (j))
- not administering animal toxic substances except for medical or research purposes, putting an animal down humanely, controlling a List A disease (for example, foot and mouth disease – see the Animal Health Act 1995) or controlling a pest animal with an approved poison (such as controlling wallabies with 1080 – see Chapter 10).

The Minister maintains a 'Pest Register' that identifies pest species and the substances which can be used to control them.

↝ You can download a copy of the Pest Register from the DPIPWE website.

DPIPWE also maintains a number of Animal Welfare Standards and Guidelines regarding actions (or inactions) likely to constitute 'cruelty'. Standards outline minimum acceptable practices that **must** be complied with, while guidelines outline industry practices that **should** be complied with. The *Animal Welfare Regulations 2008* adopt the National Consultative Committee of Animal Welfare Standards for the Care and Treatment of Rodeo Livestock.

Guidelines currently exist in relation to the treatment of sheep, cattle, deer, goats, pigs, poultry, horses, emus, mutton birds and animals in saleyards, as well as management guidelines in relation to the following activities:

- Land Transport of Livestock
- Transport of Livestock across Bass Strait
- Trade and Transport of Calves
- Field shooting of Brush-tail Possums
- Capture, Handling and Transport of Brush-tail Possums
- Wallaby Hunting
- Duck Hunting
- Hunting of Wild Fallow Deer
- Intensive Husbandry of Rabbits

The guidelines are not currently mandatory. You can download a copy of these guidelines from the DPIPWE website.

The Dairy Animal Health and Welfare Action Group has also produced a Guide to Tasmanian Dairy Cattle Welfare to assist dairy farmers.

Exemptions

The anti-cruelty provisions under the AWA do not generally apply to hunting activities, recreational or commercial fishing and angling, provided these activities are done in "a usual and reasonable manner" and without causing excess suffering (see s.4).

When mandatory codes of practice are adopted, exemptions may apply for activities carried out in accordance with those codes.

Animals in Agriculture

Animals used for food production are often treated the most cruelly. Following public pressure, in 2012 the State Government allocated $2.5 million towards improving animal welfare. This plan included phasing out battery (caged) hen farming and the use of sow stalls in piggeries, which would make Tasmania the first state in Australia to introduce such regulations.

A cap has been placed on the number of battery hen farms in Tasmania, and the industry is being encouraged to move away from battery operations. No timeframe has been confirmed for a complete ban.

The Government's initial commitment to ban sow stalls by 2017 was brought forward and they recently announced plans to phase out stalls by mid-2013. However, the proposed regulations to implement the ban define "sow stall-free" to allow use of cages for 10 days rather than banning them outright. Animal welfare groups have criticised the regulations for being impossible to enforce.

Baiting, fighting and trapping

The AWA contains a number of offence provisions in relation to using animals as bait or breeding animals for fighting or hunting purposes (for example, using a live rabbit to induce greyhounds to race). Offences include:

- Using an animal to fight, bait, worry, kill or injure another animal;
- Releasing an animal from captivity for the purpose of being killed, worried or injured;
- Promoting activities in which captive animals are released for the purpose of being killed, worried or injured;
- Managing premises where animals fight, bait or injure other animals;
- Supplying animals for the purposes of training another animal (if the animal is likely to suffer) (s.10).

The Act also makes it an offence to trap animals using a leghold trap, glueboard trap or snare (unless you have an exemption from the Minister or a permit to use a mist net or a gillnet). This offence provision does not apply to box traps, cage traps and mousetraps (s.12).

Rodeos, circuses and zoos

Any person organising a rodeo in Tasmania must ensure the event is conducted in accordance with the national Rodeo Standards. Significantly, a veterinary surgeon must be present at any rodeo event and it is an offence to ride sheep, calves or goats (ss.11A-11C).

Killing animals

Any slaughtering of animals must be done in accordance with the Meat Hygiene Act 1985 and relevant Australian Standards for the slaughter of animals (AS 4696-2002) and poultry (AS 2265-2001). Those documents include requirements for the humane treatment of animals prior to slaughter.

It is an offence to kill protected native wildlife, unless subject to a licence issued under the Wildlife (General) Regulations 2010 (☛ see Chapter 7 above).

Scientific research

Animal research may only be carried out at licensed facilities and in accordance with the NHMRC Code of Practice on the Care and Use of Animals for Scientific Purposes.

Reporting animal cruelty

The AWA is enforced by officers appointed under the Act, including RSPCA inspectors, police officers and authorised officers within the Department.

In practice, if you have a concern about animal welfare issues, you should first contact the RSPCA. However, if the RSPCA inspector is not available, you can contact the police. Police officers are often not aware that they have powers in relation to animal cruelty, so you may need to refer them to the definition of 'officer' under the *Animal Welfare Act 1993*. If the matter relates to farm animals, you should also contact the Animal Health and Welfare Branch within DPIPWE.

Officers have powers to enter premises to investigate a complaint, take photographs or video footage, confiscate animals or order medical treatment for an animal or examination by a vet. Officers can issue infringement notices (on-the-spot fines) if they are satisfied that a breach of the Act is being committed.

Offenders can also be prosecuted for offences. Penalties for cruelty offences include fines of up to $65,000 for a company and $13,000 or 12 months in prison for individuals. For aggravated cruelty offences, the penalties are up to $130,000 for a company and $26,000 or 18 months in prison for an individual.

What if no action is taken?

There are currently no civil enforcement proceedings allowing third parties to take action against offenders themselves. If you are not satisfied with the response by the RSPCA, DPIPWE or the police to your complaint, you can:

- Write to the head office of the RSPCA;
- Make a complaint to the Ombudsman regarding the RSPCA's or DPIPWE's failure to investigate your complaint (see Using the Ombudsman).
- Make a complaint under the *Police Service Act 2003*.

The animal protection group, Against Animal Cruelty Tasmania, is also interested to hear about failures by the authorities to act on complaints of animal cruelty.

Cat Management

The Cat Management Act 2009 was introduced in 2009 to try and manage cat populations more effectively. The legislation (and the supporting *Cat Management Regulations 2012*) applies to anyone that owns, breeds or controls cats in Tasmania.

The *Cat Management Act 2009* aims to control domestic cat populations and encourage more responsible pet ownership. The Act also seeks to control the feral cat population (estimated to be as high as 150,000).

The Act provides:

- You cannot breed cats unless you are a registered breeder (s.29);
- Cats cannot be sold unless they are over 8 weeks old, desexed and microchipped (s.12 and s.14)Farmers with livestock may "trap, seize or humanely destroy" feral cats that stray onto their land, provided there are no residences within 1km of the land (s.17)
- A Council may declare certain areas to be 'cat management areas', and prescribe measures to be carried out in order to control domestic and feral cat populations (s.20).

Find out more about cat management in Tasmania on the DPIPWE website.

7.12 Vegetation clearance controls

Land clearance for farming, forestry and bushland urban and fringe developments continues to be a key driver for loss of species, including animals, birds, insects and plants.

☛ see Tasmanian State of the Environment Report 2009.

In 2001, land clearance was recognised as a threatening process under the EPBC Act (☛ see Chapter 15).

Given the impacts of vegetation clearance, it is important to understand the rules controlling land clearing activities.

- The Planning Scheme for your area may regulate land clearing – check whether a permit is required. Many Schemes do not prohibit or regulate land clearing in rural residential or residential zones, even if some blocks adjoin native bush land. (☛ Go to Chapter 8 for more information about the regulation of vegetation clearance).
- You should also check to see whether the Planning Scheme includes a 'protected trees' register.
- If you wish to clear more than 1,000 tonne or one hectare of trees, or any area of threatened native vegetation, you must generally apply to the Forest Practices Authority for certification of a Forest Practices Plan under the Forest Practices Act.

  Changes to the Forest Practices Regulations in 2009 exempted clearing associated with buildings or associated development from the requirement to obtain a Forest Practices Plan. Therefore, Councils are now responsible for regulating vegetation clearing associated with these activities in future, even for threatened vegetation or on vulnerable land.
- A Forest Practices Plan cannot be issued for the 'clearance and conversion' of a threatened native vegetation community (listed under Schedule 3A of the Nature Conservation Act 2002) unless
  - there are exceptional circumstances; and
  - the clearing and conversion will have an "overall environmental benefit" or will not detract from conservation of the vegetation community or conservation values in the vicinity of the vegetation community.
- If land contains critical habitat for threatened species (listed under the *Threatened Species Protection Act 1995*), any activities on the land (including clearing) must be consistent with a land management plan for the area.
- Under the *Nature Conservation Act 2002* you may enter into a conservation covenant to protect a habitat or threatened vegetation community under a management plan (sections 33-47). There may be financial and technical assistance offered to support your covenant. Some councils also offer a rebate on rates if you enter into a conservation covenant.

7.13 How are species protected when new developments are proposed?

Unlike other jurisdictions, in Tasmania there are no provisions for special Species Impact Statements to be carried out.

However, developers must not knowingly affect a listed threatened species without a permit. Before a planning permit is issued under the Land Use Planning and Approvals Act 1993, the developer and planning authority must take into account activities that may threaten critical habitats or significantly affect a threatened species, population or ecological community. It is important to note that where there is a conflict between an *interim protection* order and a

planning scheme, the interim protection order overrides the planning scheme (see section 39 of the *Land Use Planning and Approvals Act 1993*).

Even if a planning authority approves a development, a permit is still required under the *Threatened Species Protection Act 1995* if the development will result in the 'taking' of listed threatened species. However, a person carrying out authorised forestry activities or dam works can 'take' listed threatened species without a permit under the *Threatened Species Protection Act 1995*.

Some planning schemes also require an assessment of the impact of a development on flora and fauna, even if the species is not listed as threatened. Where Environmental Impact Assessments are required to be undertaken, these generally need to include impacts on threatened species and mitigation measures to manage the impacts (☛ go to Chapter 5 for more information).

If you have made a representation in relation a proposed development, you can challenge a decision to approve the development (including the permit conditions) by appealing to the Resource Management and Planning Appeal Tribunal (☛ go to Chapters 5 and 14 for information about the appeal process).

7.14 How are threatened species protected in logging areas?

Threatened native vegetation communities (including forests, grasslands and wetlands) that are listed under Schedule 3A of the *Nature Conservation Act 2002* are now subject to protections against "clearance and conversion" under the *Forest Practices Act 1985*.

As mentioned above, a person carrying out forestry activities under a forest practices plan can 'take' listed threatened species (flora or fauna) without a separate permit under the *Threatened Species Protection Act 1995*.

☛ Go to Chapter 8 for a summary of how threatened species are protected under forestry legislation.

7.15 How can I take action to protect native wildlife?

- If you find any injured native wildlife, you should contact Bonorong Wildlife Sanctuary. Bonorong have a network of volunteer wildlife carers who have been trained to assist in these situations.
- It is worth reviewing information about the species and any relevant Recovery Plans to understand the threats and to see what measures are being taken to protect the species
  ⇝ All State and Federal Recovery Plans are available on the DPIPWE website. You can also ask to inspect the plans at the main offices of Parks and Wildlife.
- You can recommend to the Scientific Advisory Committee that a particular species be listed as threatened (to do this, complete the required form). The SAC is required to assess requests on an urgent basis if necessary.
- Under the *Threatened Species Protection Act 1995* the general public does not have standing to enforce the Act's provisions. If you think someone is committing an offence against the *Threatened Species Protection Act 1995*, *Nature Conservation Act 2002* or the *National Parks and Reserves Management Act 2002*, you should inform the Parks and Wildlife Service and ask them to investigate.

  It may also be important to find out if the offending person has a permit or approval to undertake their activity, and the conditions that apply to their permit.

  ☛ Go to Chapter 13 for advice about how to take action to ensure that provisions of these Acts are properly enforced by the relevant authorities.

- If a species is threatened by a proposed development, you have the opportunity to make submissions to the local council opposing the development, or arguing for stricter management controls over the proposal (☛ go to Chapter 5 for information).
- Take photos or videos of any activity (without trespassing) so that you have evidence of what is happening (☛ go to Chapter 13 for advice about taking action).

The law alone cannot protect threatened species – it is important that the community is educated more broadly about the need to protect species and actions they can take to assist with this. You can become active in education and protection campaigns conducted by groups such as the Threatened Species Network or Landcare.

Strict time limits apply to prosecutions, so it is important to act quickly in reporting any activity that you believe may be an offence. You can get some legal advice from the Environmental Defenders Office to help understand the appropriate action to take.

7.16 Protecting coastal areas

Coasts are tremendously important to most Australians. They provide a range of opportunities for recreation, they have immense cultural significance, they are very important to our quality of life, they are central to much economic activity and they contain very diverse and important habitats for both marine and land-based species.

Despite their importance, Tasmania's coastal areas continue to be managed haphazardly and remain under great pressure from residential, tourism and other developments.

This has resulted in ribbon developments, subdivision occurring in sensitive coastal areas and a loss of character in coastal towns. Insensitive coastal development also continues to contribute to fragmentation and damage to ecological communities and numerous other environmental and social problems.

How are our coastal areas managed and protected?

A wide variety of activities occurs within the coastal zone - everything from agriculture, fishing and recreation to sewage treatment and outfalls. The coastal zone is also affected by activities inland, such as farming, forestry and industry.

Adding to this complexity, a large number of authorities are responsible for managing coastal areas - local councils, national park managers, environmental authorities and fisheries agencies (the level of integration and co-operation between the various bodies varies, depending on location and management needs).

The *State Coastal Policy 1996* was developed in recognition of the need for a more integrated coastal management system to protect our coastal resources.

Where do I find out about coastal zoning?

Land use zoning in coastal areas is contained in local council Planning Schemes. Different zones apply in the coastal zone, including coastal reserve, coastal protection zone or public open space.

To find out the zoning for any area of coast, contact the relevant Council or the Tasmanian Planning Commission. They have copies of the relevant Planning Schemes and will be able to assist you. Councils usually also have planning schemes available to download from their websites.

Also, you can check the Land Information System of Tasmania (**LIST**) to see the land use zone layers on various maps.

Zoning may also apply to some marine areas, for example when an area is set aside as a marine reserve or for marine farming.

The Coastal Policy

In 1996, the State Coastal Policy was developed in an attempt to address concerns about lack of consistent management approaches in coastal areas. The policy is part of Tasmania's Resource Management and Planning System - built around principles of sustainable development

☛ Go to Chapter 4 for details about this system.

The Coastal Policy contains provisions that must be implemented through coastal management plans and local government *Planning Schemes*. However, the Coastal Policy has been contentious since its introduction, and has been the subject of much litigation in relation to development applications in coastal areas.

The Coastal Policy is now extremely outdated and urgently needs to be replaced by a policy that takes into account national and international environmental law best practice and principles. Given that Tasmania has 4,800km of coastline, an updated, more comprehensive and contemporary Policy needs to be implemented in order to protect coastal values.

A few years ago, the government proposed a draft *State Coastal Policy 2008* to replace the existing Policy. However, after careful review, in May 2011, the Tasmanian Planning Commission rejected the draft The Planning Commission found that the draft Policy was largely ineffective, especially in dealing with current problems such as climate change. The draft Policy also failed to take into account established environmental principles such as the Precautionary Principle (☛ see Chapter 15 for more information about the Precautionary Principle).

The Premier accepted the Commission's recommendations and did not adopt the proposed Policy. As a result, the *State Coastal Policy 1996* remains in force.

The Tasmanian Government has established an Interdepartmental Committee to oversee the development of a new "Coastal Protection and Planning Framework". The first phase of that project, a draft Coastal Policy Statement, was released for public comment in July 2013. The second phase, an Implementation Plan outlining how the policy statement will be given effect, has yet to be released.

What is the 'Coastal Zone'?

Defining the Coastal Zone is vital to good management, since it needs to extend not only to coastal habitats, but also far enough inland to embrace all those human activities that have significant impacts on the amenity and environment of the coast.

Following lengthy legal proceedings, the *State Coastal Policy Validation Act 2003* settled on this definition of the coastal zone:

> ***State waters and all land to a distance of one kilometre inland from the high-water mark.***

"State waters" are defined in the *Living Marine Resources Management Act 1995* as:

> ***Waters adjacent to the State out to the outer limit of our territorial sea and inward to include any marine or tidal waters and any land which is swept by those waters to the highest landward extent.***

The definition of "State Waters" specifically excludes inland waters under the *Inland Fisheries Act*, such as Rushy Lagoon and Pittwater.

The definition based on distance provides greater certainty for planners and landowners. However, the arbitrary exclusion of anything outside the 1km zone can potentially exclude areas which influence coastal values, such as extensive inland dune fields and activities higher in the catchment that ultimately impact on water quality in coastal areas.

Management of Coastal Hazards

As result of varying factors such as time, extreme weather and climate change, Tasmania's coast line is continually changing. These influences can cause sea levels to rise, triggering tides, waves and floods, which all contribute to coastal inundation and erosion.

In August 2012, the Tasmanian Climate Change Office released a range of tools to assist the community and decision-makers to better understand, plan for and manage coastal hazards. These include:

- A technical report outlining the importance of understanding climate change in order to better manage the future of Tasmania's coast line;
- Sea Level Rise Planning Allowances; and
- Coastal Inundation mapping

Sea level rise and climate change

Impacts of climate change on the coasts will range from gradual impacts to major events such as flooding, storm surges, erosion and submersion.

According to the Tasmanian State of Environment Report 2009,

> '… *Coastal landforms, and particularly sandy coasts, are one of the most mobile and dynamically changing geomorphic landforms in Tasmania. Coasts can, and do, change their physical form significantly over relatively short periods…More recent sea-level rise (estimated at 10–20 cm during the last century) and climate change are likely to increase or accelerate past coastal hazards where these existed previously, and initiate new phases of flooding and erosion on some shores that were previously in equilibrium.*'

The Tasmanian Climate Change Office has also released a range of guidance documents and case studies to assist councils to plan for sea level rise and related climate impacts.

Local councils have an increasing responsibility for dealing with foreseeable events such as sea level rise, flooding, extreme weather events (leading to erosion or land slips), or increased bushfire. When Councils assess development applications, or revise their ***Planning Schemes***, or provide services they should consider and respond to these hazards.

However, while Council and public authority responsibility is limited by the ***Civil Liability Act 2002***, there is increasing concern that, given the wealth of information currently available regarding climate risks, planning authorities may be held responsible for future damages if the authority has failed to take those matters into account in its planning and assessment activities.

Sea Level Rise Planning Allowances

The Tasmanian Climate Change Office Technical Report analyses predicted future greenhouse emissions to inform the way coastal resources are managed. The information is useful for projecting the impacts of coastal variables and developing strategies to deal with impending coastal hazards.

On the basis of the detailed, statewide analysis, it is recommended that all coastal management policies (including planning schemes) should allow for a sea level rise of 0.2 metres by 2050 and 0.8 metres by 2100.

To date, there are no formal legislative mechanisms which implement these allowances. The Tasmanian Planning Commission and the Department of Emergency Management are in the process of finalising a Coastal Hazards Code to apply to planning schemes throughout the

state. It is likely that the Code will require developments in identified coastal hazard areas to demonstrate that appropriate allowance has been made for sea level rise.

Coastal Inundation and Erosion Maps

Based on the sea level rise planning allowances, the State government has recently released coastal inundation maps to illustrate the likely impacts of inundation over time. This information will inform the *Coastal Hazards Code*, zoning in individual planning schemes and the development of the Coastal Management and Planning Framework.

These maps can also help you to predict how weather will affect your property or the coastline in your area in the future. The inundation maps are available at www.thelist.tas.gov.au. To view the maps, use the LISTmap function and select the 'Coastal Vulnerability' category from the available layers.

You will need to zoom in to a scale of at least 1:20,000 to see the relevant lines on the map which indicate potential inundation.

Coastal erosion maps are also being developed and should be released soon.

How is the State government involved?

The coastal zone is administered by state agencies and local councils under a wide range of statutes (see below).

Government agencies responsible for coastal areas on land are:

- ***Local government*** - generally responsible for handling planning and development approvals
- ***Parks and Wildlife Service*** – responsible for management of national parks and reserves
- ***DPIPWE*** - responsible for giving advice on coastal matters

  DPIPWE no longer has a dedicated Coastal and Marine section, so coastal enquiries are generally directed to the Resource and Conservation Branch.
- ***Crown Land Services*** (also within DPIPWE) - responsible for the management, leasing and sale of Crown land areas, many of which are in coastal areas.

The main government agencies responsible for management of marine based activities are:

- ***Water Management Branch*** (DPIPWE) - administers marine farming and wild fisheries; jointly manages marine reserves
- ***Parks and Wildlife Service*** – jointly manages marine reserves
- The ***Conservation Branch*** also assists with the coordination of scientific and information services.

How is the Federal government involved?

The Federal government has a supportive role too, and has some limited statutory powers in coastal management.

Where coastal developments may have a significant impact on matters of national environmental significance, the Department of Environment will be involved in the assessment and approval of the development (☛ see Chapter 15).

The government's supportive role includes implementation of the *Caring for our Coasts* policy, which comprises the National Coastal Risk Assessment, Community Coast Care Program and the Great Barrier Reef Rescue Plan.

A Coasts and Climate Change Council was founded in 2009 to report to the Minister on coastal issues. The Council delivered its first report in December 2011, advising that a coordinated effort needed to be led by the Federal government in order to effectively manage climate risks.

What laws are used to protect coastal areas?

The following Acts are relevant:

- State Policies and Projects Act 1993
- Land Use Planning and Approvals Act 1993
- Environmental Management and Pollution Control Act 1994
- Living Marine Resources Management Act 1995
- Marine Farming Planning Act 1995
- Nature Conservation Act 2002
- National Parks & Reserves Management Act 2002

The aim of the whole coastal management system is to deliver sustainable development through the different arms of government across the state. The controversy over the *State Coastal Policy* continues to hamper coordinated and effective efforts at coastal management.

How is the community involved?

Community involvement is vital to sound management of coastal areas. You can be involved in a number of ways:

Contribute to coastal planning schemes

Members of the public can formally comment on new or revised local government Planning Schemes, and can have input into or request amendments to planning schemes

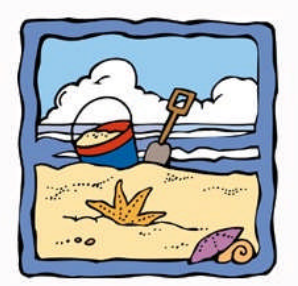
☛ Go to Chapter 5 for more information about this.

New planning schemes or proposed amendments to existing ones are advertised in local newspapers. You can view draft *Planning Schemes* (or amendments) in local council offices during a period of public display and make comments.

Similar rules apply to *Marine Farm Development Plans* and *Fisheries Management Plans*

☛ Go to Chapter 9 for more information about fisheries and marine areas.

Have a say about proposed developments



You can make representations to Council about proposed developments in coastal areas that are advertised in local newspapers.

You can view the applications in the Council offices during the public comment period and then make representations to Council and the Tasmanian Planning Commission (if necessary)

☛ Go to Chapters 5 and 14 for more information.

You should refer to the *Planning Scheme* to find out the criteria that the Council must consider in making a decision.

Lodge an appeal against approval of a coastal development

Members of the public who have made a representation about a development proposal have a right to appeal if they are unhappy with a council decision. These appeals are heard by the Resource Management and Planning Appeal Tribunal

☛ go to Chapter 5 for information about these options.

The Tribunal also handles appeals regarding other resource management issues, such as fisheries

☛ go to Chapter 9 for more information.

Help enforce laws designed to protect coastal environments

Planning and pollution laws:
If you notice illegal development, pollution or other environmental harm taking place, you can contact the authorities and ask them to take action, or you can initiate legal action yourself under the relevant civil enforcement provisions.

Protected species and coastal vegetation:
If threatened vegetation species are being cleared without a permit, you should report this to the Biodiversity Conservation Branch within DPIPWE.

Other laws:
It is an offence to clear vegetation on Crown land without a permit obtained from the relevant State agency. You should report all unauthorised activities, such as clearing, in coastal reserves to *Crown Lands Services*.

It is also an offence to clear more than one hectare of coastal vegetation on private land without a Forest Practices Plan. A Forest Practices Plan should not be issued in respect of threatened native vegetation communities such as wetland vegetation (see Schedule 3A of the Nature Conservation Act 2002).

Also, check to see if landowners are complying with the conditions of any conservation covenant, land management plan or Forest Practices Plan.

If you are concerned about something that is happening in a coastal area:

- Write down as many details as possible of the incident you observed and take photographs if you can.
- Contact the landholder (private, state or local government), if known, and discuss your concerns.
- If you do not know who the landowner is, contact the local council, or call DPIPWE on 6233 6518.

☛ Go to Chapter 13 for more information about taking action.

Contribute to Management Plans

A few Management Plans have been prepared for coastal areas - some are prepared by local councils, some by the *Water and Marine Resources Branch of DPIPWE* and some by the *Parks and Wildlife Service*.

Remember that Management Plans exist for both **terrestrial** as well as **marine** coastal areas. Where a management plan is developed under legislation, there may be a legal requirement for public input so look out for a public notice in local newspapers.

There is no central register for Management Plans. In the first instance, you could contact DPIPWE to see what management plans have been approved in your area (see contacts,

below). You can also ask your Council and your local State member of parliament for information about coastal Management Plans.

Get involved directly in coastal protection

At a government level:

The Natural Resource Management (NRM) process attempts to link all government and non-government people who have an interest in resource management issues. Regional coastal facilitators can be contacted through NRM.

At a community level:

Coastcare community associations - such as the Southern Coastcare Association of Tasmania (SCAT)- help to monitor and manage the coastal zone.