



TASMANIA

**BEN LOMOND SKIFIELD MANAGEMENT AUTHORITY
ACT 1995**

No. 7 of 1995

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**BEN LOMOND SKIFIELD MANAGEMENT AUTHORITY
ACT 1995**

No. 7 of 1995

**AN ACT to establish the Ben Lomond Skifield Management
Authority**

[Royal Assent 23 May 1995]

BE it enacted by His Excellency the Governor of Tasmania,
by and with the advice and consent of the Legislative
Council and House of Assembly, in Parliament assembled, as
follows:—

PART 1

PRELIMINARY

Short title

1—This Act may be cited as the *Ben Lomond Skifield
Management Authority Act 1995*.

Commencement

2—This Act commences on a day to be proclaimed.

Interpretation

3—In this Act—

“**Authority**” means the Ben Lomond Skifield Management Authority established under section 4;

“**authorized officer**” means an authorized officer within the meaning of the *National Parks and Wildlife Act 1970*;

“**Ben Lomond National Park**” means the State reserve the boundaries of which are set out in a plan kept in the Central Plan Register;

“**commencement day**” means the day on which this Act commences;

“**Director**” means the Director of National Parks and Wildlife;

“**employee**” means a person appointed as manager or an employee under section 9;

“**Fund**” means the Ben Lomond Skifield Management Fund established under section 13;

“**Management Plan**” means—

(a) the Ben Lomond National Park and Conservation Area Management Plan 1982 approved under section 19 of the *National Parks and Wildlife Act 1970*; and

(b) any other plan approved under that section altering or substituting that plan;

“**member**” means a member of the Authority;

“**Secretary**” means the Secretary of the Department;

“**Skifield Development Area**” means the area within the Ben Lomond National Park as indicated on Plan No. LD 1579 kept in the Central Plan Register;

“**Skifield Development Plan**” means the plan for the management and development of the Skifield Development Area as referred to in the Management Plan.

PART 2

BEN LOMOND SKIFIELD MANAGEMENT AUTHORITY

Ben Lomond Skifield Management Authority

4—(1) The Ben Lomond Skifield Management Authority is established.

(2) The Authority is a body corporate with perpetual succession and a common seal.

(3) The common seal is to be kept and used as authorized by the Authority.

(4) The Authority may sue and be sued in its corporate name.

(5) The execution of a document sealed by the Authority is to be attested by 2 members of the Authority.

(6) All courts and persons acting judicially must—

(a) take judicial notice of the imprint of the common seal on a document; and

(b) presume that the document was duly sealed by the Authority.

Constitution of Authority

5—(1) The Authority consists of 5 members appointed by the Minister of whom—

(a) one is the Director; and

(b) 4 are persons who have skills or expertise in one or more of the following areas:—

- (i) skiing;
- (ii) the ski industry;
- (iii) business and financial management;
- (iv) tourism and recreation;
- (v) physical infrastructure and engineering;
- (vi) recognition of the needs of skiers and visitors to the Skifield Development Area;
- (vii) conservation management.

(2) The Minister is to appoint one of the members as chairperson of the Authority.

(3) Schedules 1 and 2 have effect with respect to membership and meetings of the Authority.

Effect to be given to Management Plan

6—(1) In the performance of its functions and the exercise of its powers the Authority is to—

- (a) give effect, as far as practicable, to the Management Plan and the Skifield Development Plan; and
- (b) comply with—
 - (i) directions in writing given by the Minister for the purpose of ensuring that effect is given to the Management Plan and the Skifield Development Plan; and
 - (ii) other directions in writing, not inconsistent with this Act, the *National Parks and Wildlife Act 1970*, the Management Plan or the Skifield Development Plan, given by the Minister.

(2) Before giving a direction under subsection (1) (b), the Minister must consult the Authority with respect to the matters proposed to be included in the direction.

Functions of Authority

7—(1) The functions of the Authority are as follows:—

- (a) to plan, manage and monitor the development of the Skifield Development Area by means of, and consistent with, the Skifield Development Plan and the Management Plan;

- (b) to ensure the conservation of geographically significant, endemic, rare or vulnerable communities, habitats and species indigenous to the Skifield Development Area;
 - (c) to provide adequate facilities for the use of visitors to the Skifield Development Area;
 - (d) to ensure the preservation and maintenance of the physical environment and the beauty of the Skifield Development Area;
 - (e) to promote visitor understanding of the environmental and recreational importance of the Skifield Development Area;
 - (f) to advise the Minister on any development proposed for the Skifield Development Area;
 - (g) to carry out, or arrange for the carrying out of, research and other activities necessary for the management of the Skifield Development Area;
 - (h) to use its best endeavours to secure financial assistance by any means to assist in carrying out its functions.
- (2) The Minister may give directions to the Authority with respect to the performance of its functions.
- (3) The Minister must not give directions under subsection (2) so as to—
- (a) require the Authority to do anything that it is not empowered to do by this Act or the *National Parks and Wildlife Act 1970*; or
 - (b) prevent the Authority from performing any function that it is required by this Act to perform, whether conditionally or unconditionally; or
 - (c) interfere with the formation by the Authority of any opinion or belief in relation to any matter that has to be determined as a prerequisite to the performance or exercise by the Authority of any of its functions or powers under this Act.

Powers of Authority

8—The Authority, in performing its functions, may—

- (a) provide and maintain facilities and conveniences for the use or benefit of persons resorting to the Skifield Development Area; and

- (b) sell or let on hire to, or otherwise provide for the use of, those persons goods and other articles and things; and
- (c) obtain and use any produce of, or materials in, the Skifield Development Area; and
- (d) erect any buildings or structure in the Skifield Development Area; and
- (e) permit the use of any part of the Skifield Development Area and the interior of any of its buildings for—
 - (i) the taking of photographs, the making of films and sound recordings and the production of radio or television programme material; and
 - (ii) the conduct of religious, educational, social or cultural functions, of events connected with State occasions or of charitable or other promotional activities; and
- (f) erect, modify, repair, remove or demolish buildings and structures in the Skifield Development Area; and
- (g) construct, maintain and eliminate roads and paths in the Skifield Development Area; and
- (h) provide and maintain water supply, sewerage, drainage and other services in the Skifield Development Area; and
- (i) notwithstanding the *National Parks and Wildlife Act 1970* but subject to the Minister's approval—
 - (i) grant leases and licences to occupy any part of the Skifield Development Area or any building erected on the Skifield Development Area; and
 - (ii) accept leases and licences to occupy land and buildings; and
- (j) purchase or acquire any articles or other things; and
- (k) levy and collect fees and charges in relation to—
 - (i) any of the above matters; and
 - (ii) admission to the Skifield Development Area; and
 - (iii) any buildings in the Skifield Development Area; and
 - (iv) the provision of services; and
- (l) impose any conditions it thinks fit in relation to the exercise by it of its powers; and

- (m) enter into any contract, agreement or arrangement with any person or body; and
- (n) appoint and engage as an independent contractor, on any conditions, any person or group of persons to provide any services the Authority requires in connection with the performance of its functions and the exercise of its powers; and
- (o) do any thing necessary or convenient to perform its functions.

Manager and other employees

9—(1) The Authority is to appoint a manager and may appoint any other persons necessary for the performance of its functions or the exercise of its powers.

(2) Employment under this section may be—

- (a) in a permanent or temporary capacity; and
- (b) on a full-time or part-time basis.

(3) Schedule 3 has effect with respect to the appointment and the conditions of employment of persons appointed under this section.

Committees

10—(1) The Authority may establish any committee to advise it on—

- (a) the planning, management and development of the Skifield Development Area; and
- (b) any other matter relating to the performance of its functions as it may specify.

(2) The Authority may abolish any committee established under subsection (1).

Authorized officers

11—The Minister, subject to and in accordance with the *Tasmanian State Service Act 1984*, may appoint a person as an authorized officer for the purposes of the management of the Skifield Development Area.

Delegation

12—The Authority may delegate to any person, body or committee any of its functions or powers other than this power of delegation.

PART 3

FINANCIAL PROVISIONS

Ben Lomond Skifield Management Fund

13—(1) A fund to be known as the Ben Lomond Skifield Management Fund is established.

(2) The Fund consists of—

- (a) money appropriated by Parliament for the purposes of the Authority; and
- (b) other money received from any other source by the Authority.

(3) The Fund is to be administered by the Authority.

Application of Fund

14—Money in the Fund is to be applied—

- (a) in the payment or discharge of the expenses, charges and obligations incurred or undertaken by the Authority in the performance of its functions and the exercise of its powers; and
- (b) in the payment of any remuneration payable under this Act.

Bank accounts

15—The Authority is to open and maintain in its corporate name any bank account that it considers necessary.

Money held on trust

16—(1) The Authority may—

- (a) accept money or property on trust; and
- (b) act as trustee of money or property held by it on trust.

(2) The Authority may invest any money held by it on trust and any money held by it for which it has no immediate use in any manner in which trustees are authorized to invest trust funds under the *Trustee Act 1898*.

Accounts and records

17—(1) The Authority is to—

- (a) keep proper accounts and records in relation to all its operations; and
- (b) ensure all payments made by it are correctly made and properly authorized; and
- (c) ensure that adequate control is maintained over—
 - (i) any assets of, or in the custody of, the Authority; and
 - (ii) the incurring of liabilities of the Authority.

(2) The Authority, on or before 31 August in each year, is to—

- (a) prepare financial statements with respect to the preceding financial year in the form, and containing the information, determined by the Treasurer; and
- (b) provide the Auditor-General with the financial statements.

Audit

18—The accounts and financial records of the Authority are subject to the *Financial Management and Audit Act 1990*.

PART 4

OFFENCES

Commercial activities not approved by Authority

19—A person in the Skifield Development Area, without the approval of the Authority, must not—

- (a) sell or hire, or offer for sale or hire, any goods; or
- (b) provide, or offer to provide, for reward accommodation or other services.

Penalty: Fine not exceeding 10 penalty units together with a daily penalty of 0.5 penalty unit for each day during which the offence continues.

Damage to Skifield Development Area

20—A person, without the approval of the Authority, must not—

- (a) remove from the Skifield Development Area—
 - (i) any portion of a building or structure; or
 - (ii) any building material; or
- (b) damage any building or other structure in the Skifield Development Area.

Penalty: Fine not exceeding 50 penalty units.

Lighting of fires

21—(1) The Authority may—

- (a) display a sign or notice in the Skifield Development Area designating places in which the lighting of fires is permitted; and
- (b) state in that sign or notice the precautions to be taken in connection with the lighting of fires in those places.

(2) A person must not—

- (a) in lighting a fire in a place referred to in subsection (1), contravene or fail to comply with a sign or notice displayed under that subsection; or

- (b) light a fire in a place in the Skifield Development Area other than a place referred to in subsection (1) except with the written permission, and in accordance with any directions, of the Authority.

Penalty: Fine not exceeding 20 penalty units.

PART 5

MISCELLANEOUS

Other offences

22—A person must not enter the Skifield Development Area unless the person—

- (a) pays the appropriate charge; or
(b) has the approval of the Authority.

Penalty: Fine not exceeding 5 penalty units.

Co-ordination of administration with *National Parks and Wildlife Act 1970*

23—(1) The provisions of this Act do not affect—

- (a) the status under Part III of the *National Parks and Wildlife Act 1970* of any part of the Skifield Development Area; or
(b) the powers conferred on the Minister and on the Director by that Act and the *Aboriginal Relics Act 1975* with respect to matters relating to fauna, flora, aboriginal sites and aboriginal relics.

(2) Subject to subsection (3), the Governor, by proclamation, may—

- (a) declare the whole or part of the Ben Lomond National Park to form part of the Skifield Development Area; or
(b) declare any part of the Skifield Development Area to be a State reserve outside the control of the Authority.

(3) The Governor may not make a proclamation under Part III of the *National Parks and Wildlife Act 1970* altering or otherwise affecting the status of any part of the Skifield Development Area unless the Minister has first obtained from the Authority and the Director their views in relation to the changes proposed to be effected by the proclamation.

(4) Section 26A of the *National Parks and Wildlife Act 1970* and the Management Plan apply in relation to the Skifield Development Area as if references in them to the Secretary or the Director were references to the Authority.

(5) For the purposes of the *National Parks and Wildlife Act 1970*, the Authority is the managing authority for the Skifield Development Area.

Powers of employees

24—(1) An employee who has reasonable grounds for believing that a person has committed, or is committing, an offence against this Act may require that person to—

- (a) state his or her name and address; and
- (b) leave, and remove his or her possessions from, the Skifield Development Area.

(2) A person must comply with a requirement under this section.

Penalty: Fine not exceeding 2 penalty units.

Seizure of articles

25—(1) An employee may seize, or require a person to deliver to the employee, any article which the employee has reasonable grounds for believing was removed from, or brought into, the Skifield Development Area in contravention of this Act.

(2) A person must comply with a requirement to deliver an article.

Penalty: Fine not exceeding 2 penalty units.

(3) An employee may retain any article seized, subject to any directions of the Authority, until the determination of any proceedings under this Act against the person from whom the article was seized.

(4) A person may apply to a magistrate for the return of an article if proceedings are not instituted against the person for an offence under this Act.

(5) A magistrate may direct that the article be returned to the person.

Evidence as to extent of Skifield Development Area

26—In any proceedings for an offence under this Act, any place specified in the complaint as being within the Skifield Development Area is, in the absence of proof to the contrary, taken to be within the Skifield Development Area.

Disclosure of interests

27—(1) If a member of the Authority has or acquires any interest that would conflict with the proper performance of the member's functions in relation to a matter being considered or about to be considered by the Authority, the member must disclose the nature of that interest at a meeting of the Authority.

(2) A disclosure under subsection (1) is to be recorded in the minutes of the meeting of the Authority and the member, unless the Authority otherwise determines, is not to—

- (a) be present during any deliberation of the Authority with respect to that matter; or
- (b) take part in any decision of the Authority with respect to that matter.

(3) A member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates must not take part in the making of a determination under subsection (2).

Protection from liability

28—(1) A member of, or person employed by, the Authority is not personally liable for an honest act or omission done or made in the exercise or purported exercise of a power or in the performance or purported performance of a function under this or any other Act.

(2) Subsection (1) does not preclude the Authority from incurring liability that a member of, or person employed by, the Authority would, but for subsection (1), incur.

Regulations

29—(1) The Governor may make regulations for the purposes of this Act.

(2) Regulations under this Act may make provision for or with respect to the following:—

- (a) the care, control and management of the Skifield Development Area;
- (b) the preservation and protection of, and the prevention of damage or injury to, the Skifield Development Area or anything in it;
- (c) the prohibition or control of the removal of anything from the Skifield Development Area;
- (d) the prohibition or control of the bringing into or over, and the use and possession in or over, the Skifield Development Area of any conveyance or thing;
- (e) the conduct of persons in the Skifield Development Area;
- (f) the exclusion or ejection of persons from the Skifield Development Area or any part of it;
- (g) the making and collection of charges for admission to the Skifield Development Area or any part of it or the use of a public highway in the Skifield Development Area.

(3) The Regulations must not prohibit any person from entering, or remaining in, the Skifield Development Area or part of it unless the prohibition is—

- (a) imposed because of the conduct or condition of the person; or

- (b) on entering, or remaining in, the Skifield Development Area otherwise than in the company of an authorized officer; or
 - (c) necessary for the proper care, control or management of the Skifield Development Area.
- (4) The regulations may authorize any matter referred to in subregulation (2) to be determined, applied or regulated by the Authority or any prescribed person.
- (5) The regulations may—
- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

Administration of Act

30—Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990*—

- (a) the administration of this Act is assigned to the Minister for Environment and Land Management; and
- (b) the Department responsible to the Minister for Environment and Land Management in relation to the administration of this Act is the Department of Environment and Land Management.

Transitional provisions

31—The transitional provisions set out in Schedule 4 have effect.

SCHEDULE 1

Section 5

MEMBERSHIP OF AUTHORITY

Term of appointment

1—A member, other than the Director, is to be appointed for a period, not exceeding 3 years, specified in the member's instrument of appointment.

Holding other office

2—The holder of an office who is required under any Act to devote the whole of his or her time to the duties of that office is not disqualified from—

- (a) holding that office and also the office of a member;
and
- (b) accepting any remuneration payable to a member.

Remuneration of members

3—(1) A member is entitled to receive remuneration, including travelling and subsistence allowances, agreed on by the Minister and the member.

(2) A member employed under the *Tasmanian State Service Act 1984* is not entitled to remuneration under subclause (1) except with the approval of the Minister administering that Act.

Vacation of office

4—(1) A member, other than the Director, vacates office if the member—

- (a) dies; or
- (b) resigns; or
- (c) is removed from office under subclause (2) or (3).

(2) The Minister may remove a member, other than the Director, from office if the member—

- (a) is absent from 2 consecutive meetings of the Authority without the Authority's permission; or
- (b) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for 12 months or longer; or
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of any remuneration or estate for their benefit; or
- (d) fails, without reasonable excuse, to comply with section 27.

(3) The Minister may remove a member from office if satisfied that the member—

- (a) is no longer qualified to be appointed to the Authority; or
- (b) is unable to perform adequately or competently the duties of office.

Filling of vacancies

5—(1) If the office of a member, other than the Director, becomes vacant, the Minister may appoint a person to the vacant office for the remainder of that member's term of office.

(2) If a member is unable for any reason to perform the functions of a member, the Minister may appoint a suitable person to act in the office of that member for a period determined by the Minister.

Validity of proceedings

6—(1) An act or proceeding of the Authority or of a person acting under the direction of the Authority is not invalid by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the membership of the Authority.

- (2) An act or proceeding of the Authority or of a person acting under the direction of the Authority is valid even if—
- (a) the appointment of a member was defective; or
 - (b) a person appointed as a member was disqualified from acting as, or incapable of being, a member.

Presumptions

- 7—In any proceedings by or against the Authority, unless evidence is given to the contrary, proof is not required of—
- (a) the constitution of the Authority; or
 - (b) any resolution of the Authority; or
 - (c) the appointment of any member; or
 - (d) the presence of a quorum at any meeting of the Authority.
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SCHEDULE 2

Section 5

MEETINGS OF AUTHORITY**Interpretation**

1—In this Schedule “meeting” means a meeting of the Authority.

Convening of meetings

2—(1) The chairperson of the Authority—

(a) may convene a meeting at any time; and

(b) must convene a meeting if requested in writing by 2 or more members to do so.

(2) The first meeting of the Authority must be convened in accordance with directions given by the Minister.

Procedure at meetings

3—(1) The quorum at any duly convened meeting of the Authority is 3 members.

(2) Any duly convened meeting of the Authority at which a quorum is present is competent to transact any business of the Authority.

(3) Questions arising at a meeting of the Authority are to be determined by a majority of votes of the members present and voting.

(4) A telephone or video conference between members is a meeting of the Authority at which the members participating in the conference are present.

Chairperson

4—(1) The chairperson of the Authority is to preside at all meetings of the Authority.

(2) If the chairperson of the Authority is not present at a meeting of the Authority a member elected by the members present is to preside at that meeting.

(3) The person presiding at a meeting of the Authority has a deliberative vote and, in the event of an equality of votes, the motion is lost.

General procedure

5—Subject to this Schedule, the procedure for the calling of, or for the conduct of business at, meetings is as determined by the Authority.

SCHEDULE 3

Section 9

**APPOINTMENT AND EMPLOYMENT OF EMPLOYEES OF THE
AUTHORITY****Age of employees**

1—(1) Subject to subclause (2), the Authority must not appoint a person who is 65 years or older as an employee, and an employee who attains that age ceases to be employed by the Authority.

(2) The Authority may employ in a temporary capacity a person who is 65 years or older if the Authority is satisfied that the person has special qualifications and experience.

General conditions of employment

2—The Authority may determine the conditions of employment, including remuneration, allowances and leave, of employees subject to any award or industrial agreement relating to persons engaged in the work for which they are employed.

Employees not subject to *Tasmanian State Service Act 1984*

3—An employee, in his or her capacity as an employee of the Authority, is not subject to the provisions of the *Tasmanian State Service Act 1984*.

Employee under *Tasmanian State Service Act 1984* appointed as employee of Authority

4—(1) If an employee within the meaning of the *Tasmanian State Service Act 1984* is appointed as an employee of the Authority—

- (a) the employee is entitled to retain all existing and accruing rights as if service as an employee of the Authority were a continuation of service as an employee within the meaning of that Act; and

- (b) section 66 of that Act applies in respect of the filling of a vacancy under that Act as if service as an employee of the Authority were service as a permanent employee within the meaning of that Act; and
 - (c) for the purposes of that section, the employee is a permanent employee while remaining an employee of the Authority.
- (2) A person's service as an employee of the Authority is service in the State Service for the purpose of determining any rights as an employee within the meaning of the *Tasmanian State Service Act 1984*, if the person—
- (a) was an employee within the meaning of that Act immediately before being employed by the Authority; and
 - (b) on ceasing to be an employee of the Authority, again becomes an employee within the meaning of that Act.
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SCHEDULE 4

Section 31

TRANSITIONAL PROVISIONS**Agreements bind Authority**

1—(1) On and after the commencement day, any agreement, contract, lease, licence or undertaking in relation to the Skifield Development Area that immediately before that day, was binding on the Minister or the Director, binds the Authority in substitution for the Minister or the Director.

(2) If immediately before the commencement day proceedings to which the Minister or the Director was a party were pending in any court in relation to a matter arising out of the management of any land forming part of the Skifield Development Area, the Minister or the Director, on and after the commencement day, continues to be a party to those proceedings.

Transfer of assets

2—(1) On, or as soon as practicable after, the commencement day, the Minister is to transfer to the Authority any of the assets owned by the State and held or used, immediately before that day, in connection with the management by the Director of any land forming part of the Skifield Development Area that are, in the opinion of the Minister, appropriate to be used by the Authority in connection with the performance of its functions.

(2) The Director—

- (a) is to execute any instrument required for the purposes of subclause (1); and
- (b) is not to be personally subjected to any action, liability, claim or demand in respect of the execution in good faith of that instrument.

(3) On the transfer to the Authority of any asset, the Authority is—

- (a) liable to satisfy the debts, liabilities and obligations of the State in relation to that asset; and

- (b) bound by any covenant or trust in relation to that asset to which the State was subject.

Leases and licences

3—A lease or licence, in respect of any land which forms part of the Skifield Development Area, that was granted by the Minister, on behalf of the Crown, under the *Crown Lands Act 1976* or under any other Act for which that Act was substituted, and had not expired immediately before the commencement day is, on and after that day, taken to be granted, on behalf of the Crown, by the Authority.

Transfer of staff from State Service

5—(1) The Minister by notice in the *Gazette*, after taking into consideration any advice given by the Authority and the Secretary, may specify—

- (a) the offices of the State Service within the meaning of the *Tasmanian State Service Act 1984* the holders of which on the commencement day become employees of the Authority; and
- (b) the temporary employees within the meaning of that Act who, on that day, become temporary employees of the Authority.

(2) On the commencement day—

- (a) the offices referred to in subclause (1) are abolished; and
- (b) the persons holding those offices and the temporary employees referred to in subclause (1) are transferred to the employment of the Authority.

(3) Subject to any other Act or an award made under any other Act, if a person is transferred to the employment of the Authority under subclause (2), that person—

- (a) in respect of that employment, is entitled to the same rights and privileges as if the person had continued to hold an office in the State Service; or

- (b) is employed by the Authority on the same terms and conditions as those to which the person was subject immediately before the commencement day.

*[Second reading presentation speech made in:—
House of Assembly on 5 April 1995
Legislative Council on 13 April 1995]*

