Private Protected Area Handbook

Authors: Revel Pointon,
Michelle Smith and Felicity Shapland



Bush Heritage Australia

It is widely acknowledged that Australia is home to some of the world's most diverse ecosystems and unique assemblages of plants and animals, many of which are under threat or in decline. Much of this biodiversity is found on private land, outside of the National Reserve System. Adequately protecting this land is critical in turning the tide on Australia's biodiversity decline and meeting international commitments.

The mechanisms for protecting land across Australia vary greatly by the jurisdiction, both in how the land is protected, the level of protection available and how the process is administered through different entities. Covenants are an important tool for private landholders and governments supporting landscape protection outcomes, and yet navigating protection can be a complex process.

This handbook has been prepared to outline the statutory and policy frameworks behind each covenanting and conservation agreement framework across the Commonwealth and states of Australia. The Australian Capital Territory and the Northern Territory have not been included in this research as they do not, at the time of writing, have perpetual conservation covenanting frameworks for private protected areas. The covenants that have been included in this handbook contribute to the National Reserve System, being registered on title and providing perpetual protection. The Handbook also does not cover biodiversity or carbon offset frameworks, nor untested approaches to establishing 'Conserved Areas' under Australia's new National Other Effective area-based Conservation Measure Framework.

The research undertaken for this handbook was to inform a review of how well these frameworks support the uptake and continued success of private protected area covenants and agreements – available in the report *Protected Forever* published in 2026. This handbook was developed to assist landholders, covenanting bodies and government in understanding the pathways for enhancing the protections available and outcomes on private land. This work was undertaken by the Environmental Defenders Office, commissioned by Bush Heritage. The legal frameworks and template agreements of each jurisdiction formed the basis of the analysis, along with conversations with covenant administrators and stakeholders working with the frameworks.

We are grateful for the time of numerous experts who have assisted with review of the work in this handbook, including all covenanting agencies consulted in this handbook, Dr Sarah Brugler, Eleanor Hetharia, Michael Cornish and Will Zormann.

Environmental Defenders Office

Environmental Defenders Office is the largest environmental legal centre in Australia, providing free legal services to individuals, community groups and First Nations people defending our environment from harm. We run strategic litigation and test cases for clients, engage in law reform and policy advocacy, and build legal capacity incommunities so they can advocate for themselves, now and into the future.

Bush Heritage Australia

Bush Heritage work to heal and protect the bush, now and for future generations. We are a leading not-for-profit conservation organisation that protects ecosystems and wildlife across the continent. We use the best science, conservation and right-way knowledge to deliver landscape-scale impact. We're on the ground, working with Aboriginal and Torres Strait Islander people and the agricultural sector to make sure our impact is deep, sustainable and collaborative.

alca
Australian Land Conservation Alliance

The Australian Land Conservation Alliance is Australia's peak body for land conservation, representing organisations that protect, steward and restore nature on private and non-government managed land. Independent, non-partisan and member-driven, we unite and amplify our sector's voice and help create the policy, investment and enabling conditions needed for nature and people to thrive.

Cover Photo: Bush Heritage's Pullen Pullen Special Wildlife Reserve, Maiawali Country, QLD. *By* Lachlan Gardiner

New South Wales Perpetual Conservation Agreement 3
Queensland: Nature Refuge Agreement 12
Queensland: Special Wildlife Reserve Agreement 18
South Australia: Biodiversity Agreement 27
Tasmania: Conservation Covenant 34
Victoria: Conservation Covenant 41
Western Australia - National Trust: Restrictive Covenant 48
Western Australia: Transfer of Land Covenant and Biodiversity Conservation Covenant 53
Commonwealth: Conservation Agreements 59

We acknowledge the Traditional Custodians of the places in which we live and work. We recognise and respect the enduring relationships they have with their lands and waters, and pay our respects to Elders, past and present.

New South Wales



Aerial view of Murrumbidgee River on Bush Heritage's Scottsdale Reserve, Ngambri and Ngarigo Country, NSW. By John Kugel

Perpetual Conservation Agreement – including:

- Conservation Partners Agreement
- Fixed Price offer

Covenantee	Biodiversity Conservation Trust **(BCT)**
Enabling Act	*Biodiversity Conservation Act 2016* **(BC Act NSW)**
Purpose of protection	Conserving, enhancing or studying the biodiversity of land.[1]
Level of protection from third party impacts	**Coal and gas extraction** • Coal mining and gas activities can be permitted on conservation agreement land.[2] **Other mining (critical minerals, gold etc. not including uranium, sand or quarrying)** • No legislative restrictions on mining on conservation agreement land.[3] **Pipelines/transmission lines** • A public authority must not carry out development on land subject to a conservation agreement unless it has given written notice to the Minister and landholder, and has received written consent from the Minister.[4] **Other public infrastructure** The Minister may consent to development by a public authority on conservation agreement land where there is no practical alternative or the development is required for an essential public purpose or for a purpose of special significance to the State, or where the Minister does not consider the development will adversely affect management actions or biodiversity protected under the agreement.[5]
Level of protection from landholder impacts[6]	**Infrastructure (private buildings)** • Building infrastructure regulated as per planning law controls relating to the site and per Agreement restrictions.

[1] *Biodiversity Conservation Act* (NSW) (BC Act NSW), s 5.20(1) and 5.22(1)(h).
[2] BC Act NSW, s 5.26 and 5.33.
[3] BC Act NSW, s 5.26 and 5.33.
[4] BC Act NSW, s 5.25(1) and s 5.32(1).
[5] BCT Act NSW, s5.25.
[6] While template covenant agreements have been reviewed for this analysis, covenant agreements are subject to individual negotiation for each covenant, and so specific covenant terms are not detailed in analysis.

Vegetation clearing

- Vegetation clearing regulated as per normal legal controls relating to the site and subject to Agreement restrictions. BCT policy prohibits native vegetation clearing.[7]

Forestry

- The *Forestry Act 2012* (NSW) does not allow forestry activities on land that is subject to a conservation agreement. In particular, a clearing licence may not be issued in respect of land that is subject to a private land conservation agreement under the BC Act NSW, or in which the BCT holds an interest.[8]

Agricultural activities (grazing or cropping)

- No legislative restrictions on undertaking grazing or cropping in areas subject to a conservation agreement. However, grazing and cultivation is generally prohibited via BCT policy[9] and as per agreement terms.

Impacts to cultural heritage

- The *National Parks and Wildlife Act 1974* (NSW) **(NPW Act)** provisions with regard to the protection of cultural heritage apply.
- The BCT policy sets out that BCT will undertake a search of the proposed site for cultural heritage in assessing a proposed conservation agreement site, and assess whether proposed activities are considered low risk to the heritage.[10]
- The agreement provisions provide that clearing of native vegetation is only authorised where "it has regard to the sensitive biodiversity and Aboriginal cultural values present on the land and conducted in a manner that best protects these values." [11]

Applicable to freehold and crown land?

Freehold land:

- Conservation agreements may be placed on freehold.[12]

Crown land:

- Conservation agreements may be placed on Crown land, where the landholder who is a party to the conservation agreement includes an owner via leasehold from the Crown.[13]

[7] BC Act NSW, s 5.22 and s 5.29; NSW Biodiversity Conservation Trust, Conservation partners agreements landholder guide 2026-2027, 6 < https://www.nsw.gov.au/sites/default/files/noindex/2026-07/conservation-partners-agreements-landholder-guide.pdf>.
[8] *Forestry Act 2012* (NSW), ss 44(2)(e) and (f).
[9] NSW Biodiversity Conservation Trust, Conservation partners agreements landholder guide 2026-2027, 6 <https://www.nsw.gov.au/sites/default/files/noindex/2026-07/conservation-partners-agreements-landholder-guide.pdf>.
[10] NSW Biodiversity Conservation Trust, Aboriginal places and objects on private property, <https://www.nsw.gov.au/sites/default/files/noindex/2026-04/aboriginal-places-objects.pdf>.
[11] NSW Biodiversity Conservation Trust, Conservation Agreement Template, January 2026, Attachment 2, Part 4 at p 30.
[12] *Biodiversity Conservation Act 2016* (NSW) s1.5 definitions 'owner'(a)(i).
[13] *Biodiversity Conservation Act 2016* (NSW) s1.5 definitions 'owner' (b) and 'landholder'; 5.2(1).

Declaration/agreement process

Process for commencing by agreement

- All the owners of the land, or tenants/lessees, or mortgagees or chargees, must consent in writing to the agreement, and anyone benefiting from an existing covenant on the relevant land must be consulted.[14]
- The BCT must consult with the Local Aboriginal Land Council if relevant, and the NSW Aboriginal Land Council must consent in writing if land is owned by an Aboriginal Land Council.[15]
- Where the land is Crown-timber lands, the Minister administering the *Forestry Act 2012* (NSW) must consent to the agreement for it to be entered.[16]
- Ministerial consent is needed to enter a conservation agreement over Crown land.[17]
- If the BCT decides to enter the agreement, the BCT notifies the Registrar-General that the conservation agreement has been entered into. The Registrar-General must then register the agreement on the land title.[18]
- The Assurance Policy provides that where a landholder is in the process of entering the conservation agreement, BCT staff will work closely with the landholder to ensure they understand their management obligations and the best management methods to use.[19]
- The conservation agreement has effect from the day specified in the agreement.[20]

Criteria for applying

- The criteria that apply depends on the agreement arrangements. Fixed price offer agreements have a variable minimum size of conservation area able to be subject to an agreement. In relation to the Conservation Partners Agreement, the BCT state that eligible land needs to have "at least 20 hectares of native vegetation in moderate to good condition" but "smaller sites may be considered if they have high conservation values".[21] Good condition vegetation usually has:
  - little disturbance from land use
  - a mix of different plant species in the ground and shrub layers
  - stable soil that isn't eroding or damaged.
- Sites with all these features are more likely to rank highly for a conservation agreement. If the BCT has prioritised the site, their ecologists will come and assess the applicant's property.[22]

[14] BC Act NSW, s 5.21(1)(a)-(d) and s 5.28(1).
[15] BC Act NSW, s 5.21(1)(e) and 5.28(1)(e).
[16] BC Act NSW, s 5.21(4) and s 5.28(4).
[17] BCT Act NSW, s5.21(5).
[18] BC Act NSW, ss 5.12 and 5.13 as interpreted via s5.24.
[19] Biodiversity Conservation Trust, Agreement Assurance Policy, October 2024, p 9.
[20] BC Act NSW, s 5.23(1) and 5.30(1).
[21] NSW Government, *Ongoing conservation opportunities,* https://www.nsw.gov.au/environment-land-and-water/conservation-on-private-land/compare-and-apply/ongoing-conservation-opportunities#standard.
[22] NSW Government, Fixed price offer frequently asked questions, https://www.nsw.gov.au/environment-land-and-water/conservation-on-private-land/how-can-i-protect/fixed-price-offer/fixed-price-offer-frequently-asked-questions.

Typical time frame for processing applications

- Approximately 12 months, but can vary significantly.

Can the application be vetoed?

- The application can be vetoed if it does not meet the eligibility criteria discussed above. In the Assurance Policy, BCT advise that it has discretion to enter conservation agreements.[23]

Management Plan requirements

- Management Plan forms part of the Conservation Agreement. Legally binding as a term of the contractual agreement.

Management requirements ongoing

- A conservation agreement may contain any of the following terms:
  (a) restricting development on the land,
  (b) requiring the owner to refrain from certain activities on the land,
  (c) requiring the owner to carry out specific activities,
  (d) requiring the owner to permit access to the land by specified persons,
  (e) requiring the owner to contribute towards costs incurred which relate to the land or the agreement,
  (f) specifying the manner in which funds provided to the owner are to be applied,
  (g) requiring the owner to repay money if there's a breach of the agreement,
  (h) providing for any other matter relating to the conservation or enhancement of the land.[24]
- A conservation agreement may also require the BCT to:
  (a) provide financial assistance, technical advice or other assistance, or
  (b) carry out specified activities or do specified things, or
  (c) provide for any other matter relating to the conservation or enhancement of the land.[25]

Monitoring and reporting requirements

- The Assurance Policy has a review cycle for conservation agreements that includes a desktop review, annual report review where necessary, site visit where necessary, and management recommendations. A site visit is prioritised if an agreement is in a critical phase for landholder support, a change of ownership occurred, the agreement is deemed to be off track, vegetation clearing or vegetation disturbance has been identified.[26]
- Landholders with funded conservation agreements and conservation partners grants are required to submit annual reports to be BCT.[27]
- Annual review of reporting, if grant funded.[28] Site visits to problem areas.[29]
- Use of aerial monitoring with annual reviews.[30]

Monitoring on successor landholders

- Where there is a change in landowner, owner must notify BCT.[31] BCT then conduct a visit and induction.[32]

[23] Biodiversity Conservation Trust, Agreement Assurance Policy, October 2024, p 9.
[24] BC Act NSW, s 5.22(1), 5.29(1).
[25] BC Act NSW, s 5.22(2).
[26] Biodiversity Conservation Trust, Agreement Assurance Policy, October 2024, p 10.
[27] Biodiversity Conservation Trust, Agreement Assurance Policy, October 2024, pp 11 – 13.
[28] https://www.bct.nsw.gov.au/apply-for-a-conservation-agreement.
[29] BCT, *Agreement assurance policy,* Ch 6.1, 6.4, https://www.bct.nsw.gov.au/sites/default/files/2024-11/agreement-assurance-policy.pdf.
[30] BCT, *Agreement assurance policy,* Ch 6.2, https://www.bct.nsw.gov.au/sites/default/files/2024-11/agreement-assurance-policy.pdf
[31] BCT Conservation Agreement Template cl 12.
[32] BCT, *Agreement assurance policy,* Ch 6.1, https://www.bct.nsw.gov.au/sites/default/files/2024-11/agreement-assurance-policy.pdf.

Landowner incentives and financial support options

Financial support options

- Fixed price offer available: BCT advise that the eligibility criteria for a fixed price offer requires the landowner to be an Australian citizen or company and a fit and proper person. BCT's fit and proper person[33] test policy requires consideration of the land holder's agreement fulfilment record, repute, competence, and financial capability.[34] An interactive map provides an indication whether the land is in an eligible area.[35]
- In-perpetuity conservation agreements are eligible for $15k grants over 3 years – must complete certain actions.[36]
- Funded Conservation Agreements through conservation tender: similar eligibility as fixed price offer, except targets specific ecological assets (e.g. threatened species or ecological communities) in a specific area for a specific time. Management payments are included in the agreement. The landholder sets the price. BCT assesses value-for-money competitively using the BCT Assessment Metric. Management payments are indexed by CPI.

Tax and rate incentives

State Land Tax Exemption

- State Land Tax exemption applicable to land conserved in perpetuity only.[37]

Council Rates Relief

- Council Rates Relief operates statewide.[38]
- If only part of a property is covered by the agreement, then the owner is entitled to a rate reduction for that part.[39]

Federal Tax Deduction

- BCT conservation agreements form part of a conservation covenanting program declared as an 'Approved Program' by the Commonwealth, so as to be eligible for federal income tax concessions.[40]
- Federal Tax Deduction is available as for all states. *The Income Tax Assessment Act 1997* offers two tax concession options for landholders entering a perpetual conservation covenant to protect areas of high conservation value. If eligible, they can receive an income tax deduction for any decrease in land value that results from entering a conservation covenant (provided the landowner receives no payment for entering it).[41]
- Where a conservation covenant is entered into, Capital Gains Tax provisions will apply as if it were a sale or gift of the land.

[33] NSW Government, *Fixed price offer*, https://www.nsw.gov.au/environment-land-and-water/conservation-on-private-land/how-can-i-protect/fixed-price-offer.
[34] Biodiversity Conservation Trust, Agreement Assurance Policy, October 2024, p 8, weblink: Agreement Assurance Policy.
[35] NSW Government, *Fixed price offer*, https://www.nsw.gov.au/environment-land-and-water/conservation-on-private-land/how-can-i-protect/fixed-price-offer.
[36] NSW Government, *Conservation Partners Grants*, https://www.nsw.gov.au/grants-and-funding/conservation-partners-grants.
[37] *Land Tax Management Act 1956* (NSW) ss 10(1)(p1)-(p1A).
[38] *Local Government Act 1993* (NSW) s 555(1)(b1).
[39] *Local Government Act 1993* (NSW), s 555(3)
[40] DCCEEW, Conservation covenanting programs approved by the Environment Minister, https://www.dcceew.gov.au/environment/biodiversity/conservation/covenants/approved-programs. Australian Taxation Office, *Claiming Conservation Covenant Concessions*, https://www.ato.gov.au/businesses-and-organisations/not-for-profit-organisations/gifts-and-fundraising/in-detail/fundraising/claiming-conservation-covenant-concessions; *Income Tax Assessment Act 1997* (Cth) Div 31.
[41] Department of Climate Change, Energy, the Environment and Water, 'Conservation tax incentives', Conservation tax incentives (Web Page) <https://www.dcceew.gov.au/environment/biodiversity/publications/tax-incentives-for-conservation#:~:text=The%20Income%20Tax%20Assessment%20Act,More%20information>

Who is the agreement binding on?	**Binding on parties to the agreement:** • BCT; [42] and • the 'owner from time to time', which includes successors in title.[43] **Binding on other parties:** • Occupiers are bound to the Conservation Agreement terms by occupation agreements subordinated to it, as mandated by the conservation agreement.[44] These are only enforceable by the landowner.
Third party right to enforce	• No third party right to enforce.[45]
Enforcement Powers	• Conservation agreements are enforceable by the Minister, or any person with the Minister's consent.[46] • Minister (or delegate) may bring court proceedings.[47] This involves applying for a remedy in the Land and Environment Court for a remedy to restrain a breach of any private land conservation agreement.[48] • The BC Act NSW provides authorised officers with investigation powers to enter land.[49] However, entry onto the land requires approval of the Agency Head or a delegate.[50] • If a court is satisfied that a breach has been or may be committed, it may make such orders as it thinks fit to remedy or restrain a breach.[51] • The Court may award damages against the landholder for an intentional, negligent or reckless act or omission that led to a breach of the conservation agreement.[52] • The template Conservation Agreement provides that the Minister must attempt negotiation first.[53] However, this does not prevent any party from seeking urgent interlocutory relief or the BCT or the Minister exercising their rights under the BC Act NSW.[54]
BCT Enforcement Powers	• Right to enter land to remedy and charge landowner as debt is provided for in the template agreement.[55] • Landholders must notify BCT as soon as they become aware of a breach of the agreement.[56]

[42] BC Act NSW, s 5.22(2).
[43] BC Act NSW, s 5.22(1).
[44] BCT Conservation Agreement Template cl 11.
[45] BC Act NSW, s 13.15(2).
[46] BC Act NSW, s 13.15(2).
[47] BC Act NSW, ss 13.15(2), 14.4(2).
[48] BC Act NSW, s 13.15(2).
[49] BC Act NSW, ss 12.11 and 12.2(2).
[50] BC Act NSW, ss 12.28, 14.4(2).
[51] BC Act NSW, s 13.15 (3).
[52] BC Act NSW, s 13.15 (4)(a).
[53] BCT Conservation Agreement Template cl 23.
[54] NSW Biodiversity Conservation Trust, template conservation agreement, clause 23(c).
[55] BCT Conservation Agreement Template cl 28.2.
[56] BCT Funded Conservation Agreement Template cl 10.

Court Orders

- If a Court is satisfied that a breach has been or may be committed, it may make such orders as it thinks fit to remedy or restrain a breach.[57]
- The Court may award damages against the landholder for an intentional, negligent or reckless act or omission that led to a breach of the conservation agreement.[58]
- In assessing damages, the Court may have regard to:
  - any detriment to the public interest arising from the breach, and
  - any financial or other benefit that the owner or previous owner gained or sought to gain by committing the breach, and
  - any other matter that it considers relevant.[59]
- The template Conservation Agreement provides that the Minister must attempt negotiation first.[60] However, this does not prevent any party from seeking urgent interlocutory relief or the BCT or the Minister exercising their rights under the BC Act NSW.[61]

Rights against trespassers who breach covenant terms

- The Minister or someone acting under consent of the Minister may bring court proceedings to remedy or restrain a breach of a conservation agreement against a landowner.[62] Landowner must notify BCT if a trespasser breaches the agreement.[63] Landowner is responsible for taking action against trespassers.[64]

Powers of Termination and Variation

Variation Conditions

- The conservation agreement can be varied on approval by BCT and all the owners of the land at the time of the variation, with the effect of increasing or reducing the area covered.[65]
- The conservation agreement can be varied by the BCT without agreement of landowners only where the BCT believes that the land is no longer needed for, or is no longer capable of being used to achieve, any purpose of the agreement.[66]
- The BCT is not to vary the conservation agreement without the landowners' consent unless it has given notice and provided the owners with at least 28 days to make submissions.[67]
- The Minister may direct BCT to vary a conservation agreement if a mining or petroleum authority has been granted in respect of the land, and BCT must comply.[68] In the case of a conservation agreement, the Minister must provide an opportunity for owners and BCT to make submissions prior to this direction being given.[69]
- If BCT vary the agreement unilaterally for any of the above reasons, the owners are not entitled to compensation,[70] however there may be provision for reimbursement of the costs of entering the agreement.[71]

[57] BC Act NSW, s 13.15 (3).
[58] BC Act NSW, s 13.15(4)(a).
[59] BC Act NSW, s 13.15.
[60] BCT Conservation Agreement Template cl 23.
[61] NSW Biodiversity Conservation Trust, template conservation agreement, clause 23(c).
[62] BC Act NSW, s 13.15(2).
[63] BCT Conservation Agreement Template cl 10.
[64] BC Act NSW, s 13.15(4).
[65] BC Act NSW, s 5.23(2) and 5.30(2). The BCT Variation or Termination of Agreement Policy also states BCT only vary where there is a net biodiversity conservation gain, unless exceptional circumstances, https://www.nsw.gov.au/sites/default/files/noindex/2026-03/variation-and-termination-policy.pdf.
[66] BC Act NSW, s 5.23(4).
[67] BC Act NSW, s 5.23(5).
[68] BC Act NSW, s 5.23(7) and 5.30(4).
[69] BC Act NSW, s 5.23(8).
[70] BC Act NSW, s 5.23(9).
[71] BC Act NSW, s 5.23(10).

Termination Conditions

- The agreement can be terminated by the BCT only where the BCT believes that the land is no longer needed for, or is no longer capable of being used to achieve, any purpose of the agreement.[72]
- The BCT is not to terminate a conservation agreement without the landowners' consent unless it has given notice and provided the owners with at least 28 days to make submissions.[73]
- The landowner can only terminate a conservation agreement by written notice to the BCT where the BCT varies the agreement without the landowner's consent.[74]
- The Minister may direct BCT to terminate an agreement if a mining or petroleum authority has been granted in respect of the land, and BCT must comply.[75] In the case of a conservation agreement under Division 3 of the Act, the Minister must provide an opportunity for owners and BCT to make submissions prior to this direction being given.[76]
- If BCT terminate the agreement unilaterally for any of the above reasons, the owners are not entitled to compensation,[77] however there may be provision for reimbursement of the costs of entering the agreement.[78]

[72] BC Act NSW, s 5.23(4). The BCT Variation or Termination of Agreement Policy also states termination is generally not supported, https://www.nsw.gov.au/sites/default/files/noindex/2026-03/variation-and-termination-policy.pdf.
[73] BC Act NSW, s 5.23(5).
[74] BC Act NSW, s 5.23(6).
[75] BC Act NSW, s 5.23(7), 5.30(4).
[76] BC Act NSW, s 5.23(8).
[77] BC Act NSW, s 5.23(9).
[78] BC Act NSW, s 5.23(10).

Queensland



Aerial view of Bush Heritage's Special Wildlife Reserve – Edgbaston, Bidjara Country, QLD. *By* Calumn Hockey

Nature Refuge Agreement

Covenantee	Queensland Department of the Environment, Tourism, Science and Innovation
Enabling Act	*Nature Conservation Act 1992* (Qld) **(NC Act Qld)**
Purpose of protection	A nature refuge is to be managed to: (a) conserve the area's significant cultural and natural resources; (b) provide for the controlled use of the area's cultural and natural resources; and (c) provide for the interests of landholders to be taken into account.[79]
Level of protection from third party impacts	**Coal and gas extraction** • Coal mining and gas activities are not specifically prohibited on nature refuges.[80] **Other mining (critical minerals, gold etc. not including uranium, sand or quarrying)[81]** • No legislative restriction on mining on nature refuge areas.[82] **Pipelines/transmission lines** • Pipelines and transmission lines not specifically prohibited.[83] **Other public infrastructure** • Compulsory acquisition powers can apply for the development of public infrastructure.[84]
Level of protection from landholder impacts	**Infrastructure (private buildings)** • Building infrastructure regulated as per planning law controls relating to the site and per Agreement restrictions. **Vegetation clearing** • Vegetation clearing regulated as per normal planning law controls relating to the site and per Agreement restrictions. No prohibition under the NC Act Qld specifically.

[79] *Nature Conservation Act 1992* (Qld) (NC Act Qld), ss 22.
[80] NC Act Qld, s27. However mining applications have been refused for reasons including impacts to the nature refuge via environmental approval assessment processes, see *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* (No 6) [2022] QLC 21, [1934] – [1941].
[81] See definition of minerals owned by the Crown at: *Mineral Resources Act 1989* (Qld) s 6.
[82] NC Act Qld, s27.
[83] NC Act Qld, ss 22, 27, 44, 45.
[84] *Acquisition of Land Act 1967* (Qld).

Forestry

- Clearing and harvesting of timber by the landholder is prevented unless an exempted activity.[85]
- State timber interests may undertake selective logging on leasehold land.[86]

Agricultural activities (grazing or cropping)

- Grazing activities are allowed to continue where previously allowed under leasehold land terms, and per the Agreement terms and restrictions.
- No express prohibition on grazing and cropping activities under the NC Act Qld specifically.[87]

Impacts to cultural heritage

- Taking, use, keeping or interfering with cultural or natural resources of the protected area can be allowed via exemption in regulation,[88] or if an approval is given.[89]
- Otherwise the *Aboriginal Cultural Heritage Act 2003* (Qld) and *Torres Strait Islander Cultural Heritage Act 2003* (Qld) apply in their respective Countries.
- General protection under s15, where an interim or declared management intent for a protected area must contain a statement of the area's significant cultural and natural resources and the proposed management intent for, and any proposed uses of, the area.[90]

Applicable to freehold and leasehold land?

Freehold land:

- Nature refuge agreements can apply to freehold land.[91]

Crown land:

- Nature refuge agreements can apply to Crown land, where the landholder who is a party to the conservation agreement includes the lessee of Crown land. [92]

Declaration/agreement process

Process for commencing by agreement

- Minister must be satisfied an area should be declared a nature refuge and then make a proposal describing the land and the proposed management intent.[93]
- Minister notifies all landholders affected by the proposal, or publishes notice in a newspaper and invites submissions by a determined date.[94]
- Nature refuge can be declared by regulation after agreement, specifying the management intent and duration of the Agreement.[95]

[85] NC Act, s62(1)(e).
[86] The conservation agreement does not affect the existing rights of the State to access and to permit the sale or getting of Forest Products and Quarry Material (as those terms are defined in the *Forestry Act 1959* (Qld)) on the Nature Refuge.
[87] NC Act Qld, ss 22, 27, 44, 45.
[88] NC Act Qld, s62(1)(e).
[89] NC Act Qld, s62(1)(a) and (d).
[90] NC Act Qld, 15(3).
[91] NC Act, s45(1).
[92] NC Act, schedule 'landholder' (b).
[93] NC Act Qld, s44(1) and (2).
[94] NC Act Qld, s44(3) and (4).
[95] NC Act Qld, s46.

Criteria for applying

- Individuals can informally approach government for protection of their own land if criteria are met:
  - If property contains significant conservation values and aligns with the Private Protected Area Program's[96] priorities, it may be eligible for a nature refuge. The Department states that 'Priority consideration will be given to land that:
    - meets the requirements of the NatureAssist funding program
    - provides habitat for threatened species and/or ecosystems
    - establishes landscape scale corridors and connectivity to or between existing protected areas
    - contains remnant vegetation communities that are poorly represented within the existing protected area system
    - contains significant wetlands including springs.'[97]
- A regulation may be declared over state land or other area by conservation agreement.[98]
- Minister/Governor in Council may compulsorily declare a nature refuge where agreement isn't reached and Minister considers the area to be of major interest or a critical habitat,[99] with compensation provided to landholder.[100]

Typical time frame for processing applications

- Department website states assessment process and the development of a conservation agreement will take from 12 to 18 months from commencement to completion and may take longer if complex.[101]

Can the application be vetoed?

- If the rights of any persons with interests in a lease, mining interest, geothermal tenure or greenhouse gas authority, or who has the benefit of an encumbrance over the area, will be materially affected by the Agreement, that person's written consent is needed prior to Agreement being entered.[102]
- All State interests are considered prior to declaration, so any Department representing a State interest, such as for State development, transport, energy, water storage projects etc. could veto a proposal of a nature refuge.

Management Plan requirements

- Management Plan (known as a management statement) not a requirement of conservation agreement and does not form part of the legally binding obligations. [103]

[96] Queensland Government, Private Protected Area Program, https://www.qld.gov.au/environment/parks/protected-areas/private/program.
[97] Queensland Government, *Is my property suitable for a nature refuge?*, https://www.qld.gov.au/environment/parks/protected-areas/private/program.
[98] NC Act Qld, s46(1) and 45(1).
[99] NC Act Qld, s49.
[100] NC Act Qld, s67.
[101] See: https://www.qld.gov.au/environment/parks/protected-areas/private/program.
[102] NC Act Qld, s45(2).
[103] There are no management plans/statements required under the NC Act for a nature refuge, except if a compulsory declaration of a nature refuge is provided under NC Act s 49, whereby the Minister then has an obligation to prepare a management statement under NC Act s111(1)(b). To date this has never occurred.

Management requirements ongoing

- To be managed in accordance with declared management intent and the Agreement.[104]
- The management requirements for nature refuges are outcome focused and outlined in a series of management conditions in the Agreement.

Monitoring and reporting requirements?

- There are presently no mandatory legislative monitoring requirements in place for nature refuges.[105] However there are management conditions required under the Agreement.
- Monitoring and reporting requirements are associated with grants (where applicable/available) supporting the nature refuge.

Monitoring of successor landholders?

- It is a requirement of the Agreement that a landholder notify the Department upon entering a contract of sale for their nature refuge. The Department proactively monitors changes in title and has an active program of contacting new landholders taking ownership of Nature Refuges, to ensure they are aware of the Agreement and its obligations and to provide support.[106]
- They are working with the Titles Office currently to gain automatic notification of transfers of title of nature refuges.[107]
- Currently the Department employs regional staff across Queensland to support new, existing and successor landowners and to undertake compliance.[108]

Landowner incentives and financial support options

Financial support options

- NatureAssist grants[109] support eligible landholders to establish a new nature refuge or significantly expand an existing nature refuge; only in areas the Department deems a strategic priority.
- Nature Refuge Landholder grants are available from time to time for eligible existing landholders.[110]
- Nature refuge landholders may also be eligible to apply for disaster recovery funding where available to address damage to their nature refuges following declared natural disasters.

[104] NC Act Qld, s15(1)(b)(iv).
[105] Email from DETSI officers to EDO on 6 March 2026.
[106] Email from DETSI officers to EDO on 6 March 2026.
[107] Meeting with DETSI officers in March 2026.
[108] Email from DETSI officers to EDO on 6 March 2026.
[109] Queensland Government, NatureAssist, https://www.qld.gov.au/environment/parks/protected-areas/private/natureassist.
[110] Queensland Government, Private Protected Areas, accessed on 21 March 2026, available online at: https://www.qld.gov.au/environment/parks/protected-areas/private.

Tax and rate incentives

State Land Tax Exemption

- At the time of writing, Queensland does not offer land tax exemptions for private protected areas.

Council Rates Relief

- Some local governments offer rate rebates proportional to the part of the property protected via Agreement, for example Mackay Regional Council and Livingstone Shire Council.[111]

Federal Tax Deduction

- Nature Refuge conservation agreements form part of a conservation covenanting program declared as an 'Approved Program' by the Commonwealth, so as to be eligible for federal income tax concessions. [112] Federal Tax Deduction is available as for all states. The *Income Tax Assessment Act 1997* offers two tax concession options for landholders entering a perpetual conservation covenant to protect areas of high conservation value. If eligible, they can receive an income tax deduction for any decrease in land value that results from entering a conservation covenant (provided the landowner receives no payment for entering it).[113]
- Where a conservation covenant is entered into, Capital Gains Tax provisions will apply as if it were a sale or gift of the land.

Who is the Agreement binding on?

Binding on parties to the agreement:[114]

- the State where terms of the Agreement stipulate this,[115] otherwise State liability limited;[116]
- a landholder;[117]
- the landholder's successors in title;[118]

Binding on other parties:

- any other person with an interest in land in the nature refuge to the extent stated in the Agreement.[119]

Third party right to enforce

Potentially for taking natural resources.[120]

[111] Email from DETSI officers to EDO on 6 March 2026.
[112] DCCEEW, Conservation covenanting programs approved by the Environment Minister, https://www.dcceew.gov.au/environment/biodiversity/conservation/covenants/approved-programs. Australian Taxation Office, *Claiming Conservation Covenant Concessions*, https://www.ato.gov.au/businesses-and-organisations/not-for-profit-organisations/gifts-and-fundraising/in-detail/fundraising/claiming-conservation-covenant-concessions; *Income Tax Assessment Act 1997* (Cth) Div 31.
[113] Department of Climate Change, Energy, the Environment and Water, 'Conservation tax incentives', Conservation tax incentives (Web Page) <https://www.dcceew.gov.au/environment/biodiversity/publications/tax-incentives-for-conservation#:~:text=The%20Income%20Tax%20Assessment%20Act,More%20information>.
[114] Noting older Agreements may have different conditions.
[115] NC Act Qld, s45(4)(a).
[116] NC Act Qld, s68A.
[117] NC Act Qld, s45(4)(b).
[118] NC Act Qld, s45(4)(b).
[119] NC Act Qld, s51(2).
[120] NC Act Qld, ss 62, 173D.

Enforcement Powers	• Minister party to Agreement and has relevant right to enforce under this Act.[121] May enter land and make interim conservation order.[122] • Conservation officers hold powers to investigate, monitor and enforce compliance provided by NC Act.[123] • Conservation officer power to enter and search premises to determine whether this Act is being complied with.[124]
Court Orders	• For significant breaches threatening conservation.[125] • The template Agreement states that the parties must attempt negotiation and mediation first.
Rights against trespassers who breach covenant terms	• Offence to trespass, landholder rights to take action to ask the person to leave, but offence provisions are enforceable by the Department only.[126] • Orders for interfering with cultural and natural resources, enforceable by any person.[127] • Numerous offence provisions under the *Nature Conservation (Protected Area Management) Regulation 2024* (Qld).[128]
Powers of Termination and Variation	**Variation Conditions** • At landowner request. The legislation includes an example whereby a request to vary and remove part of a Nature Refuge can only be made by the original landholder that entered into the Nature Refuge agreement and only if the Minister considers the area is no longer capable of achieving the declared management intent.[129] **Termination Conditions** • At landowner request, with Minister's approval only if the Minister considers the nature refuge is no longer capable of achieving the declared management intent.[130] • Governor in Council may revoke a declaration of a nature refuge in whole or part.[131]

[121] NC Act Qld, S 15.
[122] NC Act Qld, s 102 and s103.
[123] NC Act Qld, S 127A.
[124] NC Act Qld, S 145.
[125] NC Act Qld ss 173D - 173I.
[126] NC Act Qld, s100.
[127] NC Act Qld, ss 62, 173D, 173G.
[128] See particularly for example Part 7 and Part 8.
[129] NC Act Qld, s 48(1).
[130] NC Act Qld, s 48.
[131] NC Act Qld, s50.

Special Wildlife Reserve Agreement

Covenantee	Queensland Department of the Environment, Tourism, Science and Innovation
Enabling Act	*Nature Conservation Act 1992* (Qld) (**NC Act** Qld)
Purpose of protection	A special wildlife reserve is to be managed to – (a) permanently protect the area's exceptional natural and cultural resources and values; and (b) protect the area's exceptional scientific values; and (c) present the area's cultural and natural resources and values; and (d) ensure the only use of the area is nature-based and ecologically sustainable.[132] Also, a special wildlife reserve is to be managed to do any of the following stated in the Agreement for the reserve – (a) allow controlled scientific study and monitoring of the area's natural resources; (b) provide opportunities for educational and recreational activities in a way consistent with the area's natural and cultural resources and values; (c) provide opportunities for ecotourism in a way consistent with the area's natural and cultural resources and values; (d) provide for the manipulation of the area's natural and cultural resources to protect or restore the area's natural or cultural values; (e) provide for the manipulation of threatened wildlife's habitat and the control of threatening processes relating to threatened wildlife, including threatening processes caused by other wildlife.
Level of protection from third party impacts	**Coal and gas extraction** • There is a prohibition on the granting of a mining interest for coal and gas extraction in a special wildlife reserve.[133] • However, there are exceptions, including for some existing authorities, for survey licences for petroleum and gas activities, and pipeline licences.[134]

[132] *Nature Conservation Act 1992* (Qld) (NC Act Qld), S 21B.
[133] NC Act Qld, S 27(1)(g), s43C(1)(d)(i).
[134] NC Act Qld, S 27(2).

Other mining (critical minerals, gold etc. not including uranium, sand or quarrying)

- There is a prohibition on the granting of a mining interest for minerals in relation to a special wildlife reserve.[135]

Pipelines/transmission lines

- Transmission lines and pipelines can be approved over special wildlife reserve areas if the landholder and chief executive of the Department, or solely by the Minister or chief executive of another Act and the Governor in Council, are satisfied various criteria are met, including that the development is consistent with the management principles and Agreement for the reserve.[136]

Other public infrastructure

- Compulsory acquisition powers can apply for the development of public infrastructure.[137]

Level of protection from landholder impacts

Infrastructure (private buildings)

- Building infrastructure regulated as per planning law controls relating to the site and per Agreement restrictions.

Vegetation clearing

- Vegetation clearing regulated as per normal planning law controls relating to the site and per Agreement and management program restrictions. No prohibition under the NC Act Qld specifically.

Forestry

- The sale of forestry products from Crown land must be prohibited under the terms of an Agreement and under the *Forestry Act 1959* (Qld).[138]
- Otherwise forestry activities are not expressly prohibited under legislation, but may be prohibited via Agreement terms.

Agricultural activities (grazing or cropping)

- Stock grazing is not permitted on a special wildlife reserve unless an authority has been granted for that purpose prior to declaration.[139] Also, an authority may be granted with consent of the landholder and chief executive of the Department, or by another Minister and the Governor in Council, if consistent with the management principles and Agreement.[140]

[135] NC Act Qld, S 27(1)(g), *Mineral Resources Act 1989* (Qld) s6 'mineral' for which mining interests can be asserted.
[136] NC Act Qld, s 43F and s43G. See also s27(1)(g) and 27(2)(a)(ii) allowing pipeline licences in special wildlife reserves.
[137] *Acquisition of Land Act 1967* (Qld).
[138] NC Act Qld, s43C(d)(ii), Forestry Act 1959 Qld), s46(1).
[139] NC Act Qld, S 43H(2).
[140] NC Act Qld, s43F.

Impacts to cultural heritage

- A 'resources permit' may be granted to take, use, keep or interfere with cultural resources only if granted for conservation, educational or scientific purpose.[141]
- Taking, use, keeping or interfering with cultural or natural resources of the protected area can be allowed if an approval is given.[142]
- Otherwise the *Aboriginal Cultural Heritage Act 2003* (Qld) and *Torres Strait Islander Cultural Heritage Act 2003* (Qld) apply in their respective Countries.
- General protection under s15, where an interim or declared management intent for a protected area must contain a statement of the area's significant cultural and natural resources and the proposed management intent for, and any proposed uses of, the area.[143]

Applicable to freehold and leasehold land?

Freehold land:

- Special wildlife agreements can apply to freehold land.[144]

Crown land:

- Special wildlife agreements can apply to Crown land,[145] where the landholder who is a party to the conservation agreement includes the lessee of Crown land.[146]

Declaration/agreement process

Process for commencing by agreement

- The Minister must prepare a proposal for the declaration once satisfied that the area should be declared a Special Wildlife Reserve either in the State interest, or due to the area's exceptional natural and cultural resources and values.[147] 'State interest' means an interest the Minister considers to be an economic, environmental or community interest of the State.[148]
- The Minister must give written notice of the proposal to each person who has an interest in the land, and the notice must state a day by which the person may make submissions to the Minister about the proposal.[149]
- The Minister must enter into an Agreement for a proposed special wildlife reserve if the Minister and the landholder agree the land should be a special wildlife reserve and on the terms for the reserve. [150] There must also be an approved management program for the reserve.[151]
- However, the Minister must not enter into an Agreement if the rights or interests of stakeholders with an interest in the land, including resource authority holders, would be materially affected by the Agreement, except by written consent of the relevant party. [152]

[141] *Nature Conservation (Protected Areas Management) Regulation 2024* (Qld), s63 and 64.
[142] NC Act Qld, s62(1)(a) and (d).
[143] NC Act Qld, 15(3).
[144] NC Act Qld, S 43(1)(a).
[145] Ibid.
[146] NC Act, schedule 'landholder' (b).
[147] NC Act Qld, s43A.
[148] NC Act Qld.
[149] NC Act Qld, s43A.
[150] NC Act Qld, s43B(1).
[151] NC Act Qld s43B(1)(b).
[152] NC Act Qld, s43B(2).

- A regulation may declare an area of land the subject of an Agreement as a Special Wildlife Reserve.[153]
- Terms of the Agreement:
  - Must be consistent with the management principles for a special wildlife reserve; state it is binding on the landholder of the land and the landholder's successors in title; contain details of the management program for the special wildlife reserve; and contain terms prohibiting unauthorised activity of s43C(d).[154]
- A management program must state management outcomes for the protection, presentation and use of the special wildlife reserve and actions to achieve the outcomes.[155]

Criteria for applying

- No legislated process for an application to declare a Special Wildlife Reserve. The Queensland Government calls for expressions of interest for a Special Wildlife Reserve by invitation.[156]

Typical time frame for processing applications

- Two to four years depending on complexity of the application.[157]

Can the application be vetoed?

- Those with an interest in the land prior to the Agreement must provide their consent to the Agreement, including resource authority holders.[158]

Management Plan requirements

- Management Program is required for making a conservation agreement for a Special Wildlife Reserve.[159] To be developed by the landholder under the NC Act[160] but in practice developed in conjunction with the Queensland Government, landholder and First Nations Custodians where applicable. Legally binding agreement between the landholder and the State of Queensland, and landholder legislatively required to give effect to the management program for the reserve.[161] Required to be reviewed by the chief executive and landholder every 5 years.[162]

[153] NC Act Qld, s43D.
[154] NC Act Qld, s43C(1).
[155] NC Act Qld, s120EC(1).
[156] Queensland Government 'Special wildlife reserves', (web page accessed 15 January 2026) 'How is a special wildlife reserve established?' (https://www.qld.gov.au/environment/parks/protected-areas/private/special-wildlife-reserves).
[157] Email from DETSI officers to EDO on 6 March 2026.
[158] NC Act Qld, s43B(2).
[159] NC Act Qld, s43B(1)(b). See also s43B(4): An 'approved management program' for a special wildlife reserve, means a management program for the reserve approved by the Minister under section 120EC.
[160] NC Act Qld, s120EA.
[161] NC Act Qld, s120EE.
[162] NC Act Qld, s120GA.

Management requirements ongoing

- To be managed in accordance with the Agreement and management program for the area.[163]
- Special Wildlife Reserves have prescriptive management requirements through a statutory management program, including annual monitoring and reporting requirements.[164]
- Costs are likely to include:
  - independent legal advice,
  - obtaining expert surveys and reports to demonstrate suitability of both the property and landholder, and
  - staffing costs to coordinate the application and ongoing management, monitoring and reporting for the reserve.[165]

Monitoring and reporting requirements

- Special Wildlife Reserves require annual monitoring and reporting, submitted to the Department of the Environment, Tourism, Science and Innovation.[166]
- The chief executive, being the Department Director-General, and the landholder of land in a Special Wildlife Reserve must jointly review the management program for the reserve no later than 5 years after the program first takes effect and subsequently at intervals of not more than 5 years after the first review. [167]

Monitoring of successor landholders

- Successor landholders will be monitored in equivalence to the requirements of the initial landholder, as they are equally bound by the terms of the Agreement.[168]
- If a person intends to transfer the lease of land over which a Special Wildlife Reserve is declared, they must obtain the chief executive's written consent.[169]
- It is a requirement of an Agreement that a landholder notify the department if they enter into a contract of sale or agreement to transfer the land over which a special wildlife reserve is declared.
- The Department proactively monitors changes in title and has an active program of contacting new landholders taking ownership of special wildlife reserves, to ensure they are aware of the Agreement and its obligations and to provide support.[170]

[163] NC Act Qld, s15(1)(iii).
[164] Email from DETSI officers to EDO on 6 March 2026.
[165] Email from DETSI officers to EDO on 6 March 2026.
[166] Email from DETSI officers to EDO on 6 March 2026.
[167] NC Act Qld, s120GA.
[168] NC Act Qld, s43C(1)(b).
[169] NC Act Qld, s43L.
[170] Email from DETSI officers to EDO on 6 March 2026.

Landowner incentives and financial support options

Financial support options

- The Agreement may contain terms requiring the State to provide financial or other assistance.[171]
- The landholder is entitled to be paid by the State the reasonable compensation because of the restriction or prohibition that is agreed between the State and the landholder or, failing agreement, decided by the Land Court.[172]

Grant programs

- The Queensland Government offers grants via NatureAssist where Special Wildlife Reserves are new areas in the protected area estate (but not for existing protected areas).[173] However, the Department does provide funding for Traditional Owners to undertake a cultural heritage assessment of the area and to assist the landholder to implement the management program. NatureAssist offers financial incentives to support the creation and management of private protected areas. Eligible landholders can apply for a grant under the scheme to fund the protection and active management of the significant biodiversity values of their land.

Tax and rate incentives

State Land Tax Exemption

- There is no state land tax exemption in Queensland for landowners of private protected areas.

Council Rates Relief

- Limited council rates relief currently available for special wildlife reserves particularly.

Federal Tax Deduction

- Special Wildlife Reserve conservation agreements form part of a conservation covenanting program declared as an 'Approved Program' by the Commonwealth, so as to be eligible for federal income tax concessions.[174]
- Federal Tax Deduction is available as for all states. *The Income Tax Assessment Act 1997* offers two tax concession options for landholders entering a perpetual conservation covenant to protect areas of high conservation value. If eligible, they can receive an income tax deduction for any decrease in land value that results from entering a conservation covenant (provided the landowner receives no payment for entering it).[175]
- Where a conservation covenant is entered into, Capital Gains Tax provisions will apply as if it were a sale or gift of the land.

[171] NC Act Qld, S 43C(2).
[172] NC Act Qld, S 137A(2).
[173] Queensland Government, 'NatureAssist', Private protected areas (Web Page) <https://www.qld.gov.au/environment/parks/protected-areas/private/natureassist>.
[174] DCCEEW, Conservation covenanting programs approved by the Environment Minister, https://www.dcceew.gov.au/environment/biodiversity/conservation/covenants/approved-programs. Australian Taxation Office, Claiming Conservation Covenant Concessions, https://www.ato.gov.au/businesses-and-organisations/not-for-profit-organisations/gifts-and-fundraising/in-detail/fundraising/claiming-conservation-covenant-concessions; *Income Tax Assessment Act 1997* (Cth) Div 31.; Queensland Government, The private protected area program, https://www.qld.gov.au/environment/parks/protected-areas/private/program.
[175] Department of Climate Change, Energy, the Environment and Water, 'Conservation tax incentives', Conservation tax incentives (Web Page) <https://www.dcceew.gov.au/environment/biodiversity/publications/tax-incentives-for-conservation#:~:text=The%20Income%20Tax%20Assessment%20Act,More%20information>.

Who is the Agreement binding on?	Binding on parties to the agreement: • the state where terms of the Agreement stipulate this,[176] otherwise state liability limited;[177] • a landholder;[178] • the landholder's successors in title.[179] Binding on other parties: • Any other person with an interest in land in the reserve who consented to the Agreement.[180]
Third party right to enforce	Potentially for taking natural resources.[181]
Enforcement Powers	• Minister party to Agreement and has relevant right to enforce under this Act.[182] May enter land and make interim conservation order.[183] • Conservation officers hold powers to investigate, monitor and enforce compliance provided by NC Act Qld.[184] • Conservation officer power to enter and search premises to determine whether this Act is being complied with.[185]
Court Orders	• On conviction of a person for an offence against this Act, the Court may order the person to pay to the State such amount as it considers appropriate for, or towards, the cost of rehabilitation or restoration of critical habitat, cultural or natural resource or protected area.[186] • The court may make an enforcement order if the court is satisfied that an offence is being committed or will be committed unless the enforcement order is made.[187]
Rights against trespassers who breach covenant terms	• Offence to trespass, landholders rights to take action to ask the person to leave,[188] but offence provisions is enforceable by the Department only. • Orders for interfering with cultural and natural resources, enforceable by any person.[189] • Numerous offence provisions under the *Nature Conservation (Protected Area Management) Regulation 2024* (Qld).[190]

[176] NC Act Qld, s43C(2)(a)-(c).
[177] NC Act Qld, s68A.
[178] NC Act Qld, s43K(1)(a).
[179] NC Act Qld, s43K(1)(b).
[180] bis, S 43K(1)(c).
[181] NC Act Qld, ss 62, 173D.
[182] NC Act Qld, S 15.
[183] NC Act Qld, s 102 and s103.
[184] NC Act Qld, S 127A.
[185] NC Act Qld, S 145.
[186] NC Act Qld, s 168.
[187] NC Act Qld, s 173F.
[188] NC Act Qld, s 100(2).
[189] NC Act Qld, ss 62, 173D, 173G.
[190] See particularly for example Part 7 and Part 8.

Powers of Termination and Variation

Variation Conditions

- The Agreement may be varied by agreement between the Minister and landholders bound by an Agreement,[191] but subject to the requirements for the terms of Special Wildlife Reserves.[192] However, the amendment must not adversely affect the conservation of the nature in the reserve.[193] Further, if another person's rights or interests are impacted by the variation their written consent is also needed to make the amendment.[194]

Termination Conditions

- A Special Wildlife Reserve may be revoked in whole or in part by regulation.[195] This may occur only if the Legislative Assembly has, on a motion of which 28 days notice at least has been given, pass a resolution requesting the Governor in Council to make the revocation.[196]

[191] NC Act Qld, s 43E(1).
[192] NC Act Qld, s43E(5).
[193] NC Act Qld, s 43E(2).
[194] NC Act Qld, s 43E(4).
[195] NC Act Qld, s 43J(1).
[196] NC Act Qld, s 43J(2).

South Australia



Plains-wanderer *Pedionomus torquatus* on Bush Heritage's Boolcoomatta Reserve, Adnyamathanha & Wilyakali Country, SA.
By Saskia Gerhardy

Biodiversity Agreement (Heritage Agreement under prior law)

Covenantee	South Australia Minister for Environment
Enabling Act	*Biodiversity Act 2025* **(B Act)** – *Biodiversity Agreement* *Native Vegetation Act 1991* **(NV Act)** – *Heritage Agreement*[197]
Purpose of protection	Conservation, restoration or enhancement of biodiversity.[198]
Level of protection from third party impacts	**Coal and gas extraction** • Biodiversity Agreement land is not exempt from coal mining, or petroleum or conventional gas activities.[199] • There is a moratorium on coal seam gas or fracking for 10 years from 2024 in 7 council districts.[200] Outside of the listed districts unconventional gas activities may be proposed for Biodiversity Agreement land. **Other mining (critical minerals, gold etc. not including uranium, sand and quarrying):** • Biodiversity Agreement land is not exempt from mining.[201] **Pipelines/transmission lines** • Biodiversity Agreement land is not exempt from applications or pipelines or transmission lines, and may also be subject to compulsory acquisition for these purposes. **Other public infrastructure** • Compulsory acquisition powers can apply for the development of public infrastructure.[202]

[197] *Biodiversity Act 2025* (B Act), Part 1 (3) 'Biodiversity Agreement' definition (b) provides that a heritage agreement under a repealed Act is to be known as a biodiversity agreement for the purpose of this Biodiversity Act. *The Native Vegetation Act 1991* (SA), which provides for heritage agreements, will be repealed upon commencement of the Biodiversity Act and no further heritage agreements will be created after this point.
[198] B Act s 98(1).
[199] *Mining Act 1971* (SA) ss 6, 9; Minister may exempt land from mining activities as a special declared area. As a reference point, national parks in South Australia are not exempt from mining; *Energy Resources Act 2000* (SA) ss 4, 12.
[200] *Energy Resources Act 2000* (SA) ss 11A.
[201] *Mining Act 1971* (SA) ss 6, 9.
[202] *Land Acquisition Act 1969* (SA).

Level of protection from landholder impacts

Infrastructure (private buildings)

- Building infrastructure regulated as per planning law controls and per Agreement restrictions. No legislative restriction on Biodiversity Agreement land. The Heritage Agreement Template prohibits the following activities, unless permission is explicitly granted:
  - subdivision; [203] and
  - building structures.[204]

Vegetation clearing

- There are legislative restrictions on vegetation clearing of native vegetation on Biodiversity Agreement land, however it can be allowed if provided for in the Agreement or by the Minister.[205]
- Additionally, the Heritage Agreement Template prohibits native vegetation removal, unless permission is explicitly granted.[206]

Forestry

- Intentionally sown or planted native plants are regulated activities on Biodiversity Agreement land[207] and there are legislative restrictions on native vegetation clearing and forestry on Biodiversity Agreement land.[208] Additionally, the Heritage Agreement Template does not allow the planting of vegetation, whether native or exotic.[209]

Agricultural activities (grazing or cropping)

- No legislative restriction on Biodiversity Agreement land, with applicable laws continuing to apply.[210] The Heritage Agreement Template prohibits the following activities, unless permission is explicitly granted:
  - grazing;
  - planting of vegetation;
  - other activities likely to damage native vegetation or wildlife, unless specified for management reasons, in accordance with a Management Plan approved by the Native Vegetation (or new Biodiversity) Council, with consent from Minister, under appropriate monitoring.[211]

Impacts to cultural heritage

- B Act protects Culturally Significant Biodiversity Entities, reflected in policies developed by Aboriginal Biodiversity Committee.[212]
- Aboriginal cultural practices enabled by legislation; may need to be incorporated in management plan.[213]

[203] Heritage Agreement Template cl 7.
[204] Heritage Agreement Template cl 3; Department for Environment and Water (SA), A Review of Heritage Agreements (Report, 2023) 3, 6.
[205] B Act ss 42, 56, see also Schedule 2, particularly s 2(4).
[206] Heritage Agreement Template cl 3; Department for Environment and Water (SA), A Review of Heritage Agreements (Report, 2023) 3, 6.
[207] B Act Schedule 2, Part 2 s3(iii).
[208] B Act ss 42, 56, see also Schedule 2, particularly s2(4) and s30.
[209] Heritage Agreement Template cl 3; Department for Environment and Water (SA), A Review of Heritage Agreements (Report, 2023) 3, 6.
[210] B Act ss 42, 56, see also Schedule 2, particularly s30.
[211] Heritage Agreement Template cl 3; Department for Environment and Water (SA), A Review of Heritage Agreements (Report, 2023) 3, 6.
[212] B Act ss 20-22.
[213] Department for Environment and Water (SA), A Review of Heritage Agreements (Report, 2023) 6.

Applicable to freehold and Crown land?

Freehold land:

- Biodiversity Agreements may be placed on freehold land.[214]

Crown land:

- Biodiversity Agreements can apply to Crown land, where the lessee is classified as 'owner'. [215]

Declaration/agreement process

Process for commencing by agreement

- Entry into the agreement is at the Minister's discretion.[216]
- State Biodiversity Council must approve entry into Biodiversity Agreement.[217]

Criteria for applying

- Criteria not specified in legislation but is elaborated in policy documents.[218]
- Must contain high native species diversity, or contain threatened or endangered species or communities, include underrepresented species in the state's conservation portfolio, or is part of a conservation corridor or buffer.[219]

Typical time frame for processing applications

- Landowners can apply online and the time taken to agreement is around a year, or longer if the landowner wants changes to the agreement template.[220]
- Agreement is in place for not less than 20 years, or in perpetuity if no timeframe stipulated.[221]

Can the application be vetoed?

- The Minister cannot enter a Biodiversity Agreement without the consent of the Biodiversity Council.[222]

Management Plan requirements

- A biodiversity management plan may be required and would form part of the agreement that is registered on title,[223] and can be enforced if in place and breached.[224]

[214] B Act ss 98(1) and s 3(1) 'owner' (b).
[215] B Act ss 98(1) and 3 'owner'(c),; Pastoral Act objects include allowing pastoral land to be used for conservation purposes, see *Pastoral Land Management and Conservation Act 1989* (SA) s 4(g), including allowing Biodiversity Agreements, see *Pastoral Land Management and Conservation Act 1989* (SA) s 3 definitions 'conservation purposes' and 'pastoral lease', as amended by BA Schedule 5, Part 25, s 81.
[216] B Act s 98(1).
[217] B Act s 98(10).
[218] Department for Environment and Water (SA), A Review of Heritage Agreements (Report, 2023) 5.
[219] Department for Environment and Water (SA), A Review of Heritage Agreements (Report, 2023) 5.
[220] Department for Environment and Water (SA), A Review of Heritage Agreements (Report, 2023) 9; Interview with DEW staff on 12 March 2026.
[221] B Act s98(3) and (4).
[222] B Act s 98(10).
[223] B Act s 98(2)(d).
[224] B Act s 116(13).

Management requirements ongoing

Monitoring and reporting requirements?

- Current lack of monitoring and reporting of Heritage Agreements and their effectiveness.[225]
- Currently limited Departmental resources for monitoring. Funding varies with different governments.[226] Working on remote monitoring solutions with other SA government departments to help with this.[227]

Monitoring of successor landholders?

- Landowner must notify Minister/Department of change in ownership of land,[228] but this is not always done. There is no automated monitoring of property transfers.[229]

Landowner incentives and financial support options

Financial support options

- Department covers cost of establishing Agreements.[230]
- Legislation enables incentive payments and payments for loss of value of land.[231]
- Minister may demand repayment of financial support following breach of agreement.[232]
- In the past there have been grants to support fencing and weed control. Funding is variable by government and by year. Low funding at the moment has resulted in low level of applications for agreements versus much higher levels in prior years.[233]
- General lack of funding to support ongoing management obligations has been reported.[234]

Tax and rate incentives

State Land Tax Exemption

- Biodiversity Agreement land is exempt from land tax.[235]
- Past taxes may need to be repaid upon agreement breach.[236]

Council Rates Relief

- Council rate relief applies to land covered by Biodiversity Agreements.[237] However, in practice, there is not much relief as council rates are higher than for developed land.[238]
- Past rate relief may need to be paid back upon agreement breach.[239]

[225] Department for Environment and Water (SA), A Review of Heritage Agreements (Report, 2023) 9-10.
[226] Interview with DEW staff on 12 March 2026.
[227] Interview with DEW staff on 12 March 2026.
[228] Often required in Agreement per Interview with DEW staff on 12 March 2026.
[229] Interview with DEW staff on 12 March 2026.
[230] Interview with DEW staff on 12 March 2026.
[231] B Act s 98(2)(g), (h).
[232] B Act ss 98(15)-(16).
[233] Interview with DEW staff on 12 March 2026.
[234] Department for Environment and Water (SA), A Review of Heritage Agreements (Report, 2023) 7.
[235] *Land Tax Act 1936* (SA) s 4(1)(ba); *Biodiversity Act* ss 98(2)(g)(i), 98(12); *Native Vegetation Act* s 23A (2)-(3).
[236] Heritage Agreement Template cl 13.
[237] B Act ss 98(2)(g)(i), 98(12); Department for Environment and Water (SA), A Review of Heritage Agreements (Report, 2023) 8.
[238] Interview with DEW staff on 12 March 2026; Department for Environment and Water (SA), A Review of Heritage Agreements (Report, 2023) 8.
[239] Heritage Agreement Template cl 13.

Federal Tax Deduction

- Heritage Agreements are part of a conservation covenanting program approved by the Commonwealth Environment Minister as eligible for federal income tax concessions.[240]
- Federal Tax Deduction is available for Heritage Agreements as for all states. The *Income Tax Assessment Act 1997* offers two tax concession options for landholders entering a perpetual conservation covenant to protect areas of high conservation value. If eligible, they can receive an income tax deduction for any decrease in land value that results from entering a conservation covenant (provided the landowner receives no payment for entering it).[241]
- Where a conservation covenant is entered into, Capital Gains Tax provisions will apply as if it were a sale or gift of the land.
- Biodiversity Agreements under the B Act have not yet been brought into an approved program because the relevant sections of the Act have not yet commenced as at drafting.

Who is the Agreement binding on?

Binding on parties to the agreement:

- Minister;[242]
- landholder.[243]

Binding on other parties:

- the landholder's successors in title;[244]
- occupier of land.[245]

Third party right to enforce

- Persons who are party to the agreement or who have any other legal or equitable interest in land that may be affected by a breach may enforce the breach in court.[246]
- Other person with permission of court,[247] including an Aboriginal person with cultural/spiritual connection.[248]

[240] DCCEEW, Conservation covenanting programs approved by the Environment Minister <https://www.dcceew.gov.au/environment/biodiversity/conservation/covenants/approved-programs> Australian Taxation Office, Claiming Conservation Covenant Concessions, <https://www.ato.gov.au/businesses-and-organisations/not-for-profit-organisations/gifts-and-fundraising/in-detail/fundraising/claiming-conservation-covenant-concessions>; *Income Tax Assessment Act 1997* (Cth) Div 31.

[241] Department of Climate Change, Energy, the Environment and Water, 'Conservation tax incentives', Conservation tax incentives (Web Page) <https://www.dcceew.gov.au/environment/biodiversity/publications/tax-incentives-for-conservation#:~:text=The%20Income%20Tax%20Assessment%20Act,More%20information>.

[242] As a party to the agreement per conditions, BA s 98(2)(g) and (h) for example; Heritage Agreement Template.

[243] As a party to the agreement per conditions, BA ss 98(1) and (2), (8); Heritage Agreement Template.

[244] B Act s 98(8).

[245] B Act s 98(9).

[246] B Act s 116(1)(d).

[247] B Act s 116(1)(g).

[248] B Act s 116(1)(f).

Minister Enforcement Powers	• Minister (or delegate) may enter land to monitor condition, and to construct or repair fences under the template agreement conditions.[249] • Breach of a Biodiversity Agreement or biodiversity management plan is a breach of the B Act, giving the Minister all enforcement powers available under that Act.[250] • Minister may demand repayment of amounts paid under the Biodiversity Agreement as a debt due to the state.[251] • Minister may order repayment of back taxes (land tax) and council rates if breach is not remedied.[252]
Court Orders	• Court may determine whether Biodiversity Agreement is breached where Minister makes order for payment due to breach.[253] • Court orders include: ordering restoration, issuing injunctions, ordering payment of damages, including exemplary damages and repayment of financial gains.[254] • Single case of court enforcement for native vegetation clearing on Heritage Agreement property, resulting in landowner fine.[255]
Rights against trespassers who breach covenant terms	• No action against third parties appears available for breach of Biodiversity Agreement.
Powers of Termination and Variation	**Variation Conditions** • Mutual agreement between Minister and landowner.[256] • Variation must be approved by state Biodiversity Council.[257] • Variation must not diminish protection for biodiversity.[258] **Termination Conditions** • Mutual agreement between Minister and landowner.[259] • Termination must be approved by state Biodiversity Council.[260] • Termination must not diminish protection for biodiversity.[261] **Variation or termination due to mining or compulsory acquisition** • Native vegetation removal requires Ministerial approval for any mining project or infrastructure building on land subject to a Biodiversity Agreement.[262] • Transmission lines have resulted in variations to Heritage Agreements, but this involved approval from Native Vegetation Council.[263]

[249] Heritage Agreement Template cl 10, 12.
[250] B Act s 116(13).
[251] B Act s 98 ss (15)-(16).
[252] Heritage Agreement Template cl 13.
[253] B Act s 98(17).
[254] B Act s 116(7).
[255] *Grant v Caparra Pty Ltd* [2018] SAERDC 42.
[256] B Act s 98(5).
[257] B Act s 98(10).
[258] B Act s 98(7).
[259] B Act s 98(5).
[260] B Act s 98(10).
[261] B Act s 98(7).
[262] B Act s 56; B Act Schedule 2 ss 10(3), 11(3), 15(4).
[263] Interview with DEW staff on 12 March 2026.

Tasmania



Bush Heritage's Oura Oura Reserve, Tasmanian Aboriginal Country, TAS. *By* Bee Stephens

Conservation Covenant

Covenantee	Tasmanian Minister for Environment
Enabling Act	*Nature Conservation Act 2002 (Tas)* **(NC Act Tas)**
Purpose of protection	Covenants arise under 4 circumstances: (1) Covenants arising from refused private timber reserve applications under the *Forest Practices Act 1985* **(FP Act)** that involve compensation for lost property rights. [264] (2) Covenants arising from amendments to forest practices plan applications under the FP Act to address impacts to threatened species or native vegetation communities.[265] (3) Covenants applicable to private sanctuaries or private nature reserves under the NC Act Tas.[266] (4) Other Covenants voluntarily entered into by the landowner that the Minister considers necessary or desirable from a conservation purpose.[267]
Level of protection from third party impacts	**Coal and gas extraction** • Covenanted land is not exempt from coal mining, gas or petroleum activities.[268] • Minister may exempt land from being subject to a mining, gas or petroleum licence.[269] **Other mining (critical minerals, gold etc. but not including uranium, sand and quarrying)[270]:** • Covenanted land is not exempt from mining activities.[271] • Minister may exempt land from being subject to a mining licence.[272] **Pipelines/transmission lines** • Covenanted land may be subject to compulsory acquisition for infrastructure, including for pipelines or transmission lines. • Tasmanian Department seeks to vary Covenant with no net loss of conservation value for infrastructure projects that conflict with conservation on covenanted properties.[273]

[264] *Nature Conservation Act 2002* (Tas) (NC Act Tas) s 39.
[265] NC Act Tas s 33, 40.
[266] NC Act Tas s 34(4).
[267] NC Act Tas s 34(1).
[268] *Mineral Resources Development Act 1995* (Tas) ss 3, 5.
[269] *Mineral Resources Development Act 1995* (Tas) s 5.
[270] *Mineral Resources Development Act 1995* (Tas) ss 3, 6.
[271] *Mineral Resources Development Act 1995* (Tas) ss 3, 5.
[272] *Mineral Resources Development Act 1995* (Tas) s 5.
[273] Discussion with Department of Natural Resources and Environment staff on 6 March 2026.

Other public infrastructure

- Compulsory acquisition powers can apply for the development of public infrastructure.[274]

Level of protection from landholder impacts

Infrastructure (private buildings)

- Building infrastructure regulated as per planning law controls and per Agreement restrictions. No legislative restriction on a covenanted site. The Covenant Template prohibits the following activities, unless permission is explicitly granted:
  - subdivision;
  - building structures.[275]

Vegetation clearing

- No legislative restriction on a covenanted site, with applicable laws continuing to apply. The Covenant Template prohibits clearing native vegetation or controlling native wildlife, unless permission is explicitly granted.[276]

Forestry

- No legislative restriction on a covenanted site, with applicable laws continuing to apply. The Covenant Template prohibits the following activities, unless permission is explicitly granted:
  - Clearing native vegetation;
  - Planting of any plants. [277]

Agricultural activities (grazing/cropping)

- No legislative restriction on a covenanted site, with applicable laws continuing to apply. The Covenant Template prohibits the following activities, unless permission is explicitly granted:
  - Introduction of any non-native species (plant or animal);
  - Taking of water and interfering with flow of water;
  - Use of fertiliser, herbicides and other chemicals.[278]

Impacts to cultural heritage

- Covenants may protect cultural values.[279]
- Aboriginal cultural activities are protected under the NCA, unless prevented by the Minister if the Minister considers it may have a detrimental effect on fauna or flora in a way that is inconsistent with the Act.[280]
- Other Aboriginal cultural heritage laws continue to apply.

[274] *Land Acquisition Act 1993* (Tas).
[275] Covenant Template cl 3(b).
[276] Covenant Template cl 3(b).
[277] Covenant Template cl 3(b).
[278] Covenant Template cl 3(b).
[279] NC Act Tas s 39.
[280] NC Act Tas s 73.

Applicable to freehold and Crown land?

Freehold land:

- Covenants apply to freehold land.[281]

Crown land:

- 'Landowner' for Covenants includes lessees of any land, which implies Crown land.[282]

Declaration/agreement process

Process for commencing by agreement

- Minister may approve or refuse to approve a Covenant.[283]
- Covenants may arise in the future from amendments to a forest practices plan to protect natural resources, where compensation is paid.[284]

Criteria for applying

- Criteria for NC Act Tas s 40 Covenants is that a forest practices plan has been approved, subject to amendments, or that it has been refused on the grounds that it would threaten a threatened species or endangered plant community.[285] Additionally, the affected landowner must have applied for compensation for related lost property rights.[286]
- Covenants on private sanctuaries or private nature reserves must not be inconsistent with the management plan for that class of reserve or the management plan for that reserve.[287]

Typical time frame for processing applications

- Time taken to agreement between 6 – 8 months, but can take longer if landowner wants amendments or is unable to move forward for large amounts of time.[288] Covenant processing timeframes can be variable and are dependent on ongoing resourcing of the Department.

Can the application be vetoed?

- The Minister for Environment can reject an application if the Minister deems the Covenant is not necessary or not desirable for a conservation purpose.[289]

Management Plan requirements

- A management plan may be required and would be recorded on title.[290]

Management requirements ongoing

- Covenant templates reference 'management prescriptions for the Land by the Minister'.[291]

[281] NC Act Tas s 34(1).
[282] NC Act Tas s 33.
[283] NC Act Tas s 34(1).
[284] NC Act Tas s 40.
[285] NC Act Tas s 33.
[286] NC Act Tas s 40.
[287] NC Act Tas s 34(4).
[288] Discussion with Department of Natural Resources and Environment staff on 6 March 2026.
[289] NC Act Tas ss 34(1), 35(1).
[290] NC Act Tas ss 25, 37(1).
[291] Conservation Covenant Template cl 3(c).

Monitoring and reporting requirements?

- Monitoring is challenged by lack of staff and other resources. Looking at technology solutions and ways to get the landowner to do self-reporting, such as the use of photo monitoring points.[292]
- Properties might only be visited at 5-year intervals.[293]

Monitoring of successor landholders?

- Landowner must notify Minister of change in ownership of land.[294]
- Engagement with successor landowners is considered a high priority by the Department. Department staff actively monitor real estate listings and get automatic notifications from title registry of conserved properties that change ownership. Covenanted property list is publicly available so there is more transparency to prospective purchasers.[295]

Landowner incentives and financial support options

Financial support options

- Legislation facilitates compensation where a forest management plan is amended to facilitate conservation requirements through the use of a Covenant.[296]
- Covenant may contain provisions relating to repayment of compensation,[297] which may be ordered by a court on breach of Covenant.[298]

Tax and rate incentives

State Land Tax Exemption

- Covenant on title makes land exempt from land tax, a status not altered on breach of Covenant.[299]

Council Rates Relief

- Council rate relief for Covenants in some councils.[300]

[292] Discussion with Department of Natural Resources and Environment staff on 6 March 2026.
[293] Richardson, Benjamin and Tom Baxter, 'Governance of Tasmania's private bushlands: Artful ensemble or hodgepodge?' (2016) 33(1) *Environmental and Planning Law Journa*l 47, 62.
[294] Conservation Covenant Template cl 6.
[295] Discussion with Department of Natural Resources and Environment staff on 6 March 2026.
[296] NC Act Tas ss 33, 44(1).
[297] NC Act Tas s 34(3)(b).
[298] NC Act Tas s 46(2)(a).
[299] *Land Tax Act 2000* (Tas) s 19A.
[300] Tasmanian Government, *If you own a conservation covenant,* https://nre.tas.gov.au/conservation/conservation-on-private-land/private-land-conservation-program/if-you-own-a-conservation-covenant-property#:~:text=Page%20Content,for%20a%20council%20rate%20reduction.

	Federal Tax Deduction • Conservation Covenants are part of a conservation covenanting program approved by the Commonwealth Environment Minister as eligible for federal tax concessions.[301] • Federal Tax Deduction is available as for all states. The *Income Tax Assessment Act 1997* offers two tax concession options for landholders entering a perpetual conservation covenant to protect areas of high conservation value. If eligible, they can receive an income tax deduction for any decrease in land value that results from entering a conservation covenant (provided the landowner receives no payment for entering it).[302] • Where a conservation covenant is entered into, Capital Gains Tax provisions will apply as if it were a sale or gift of the land.
Who is the Covenant binding on?	Binding on parties to the Covenant: • Minister;[303] • landholder. [304] Binding on other parties: • the landholder's successors in title;[305] • any person deriving title under the parties to the Covenant as a restrictive covenant;[306] • occupiers through an occupation agreement, mandated by the Covenant, but only enforceable by the landowner.[307]
Third party right to enforce	• None.[308]
Minister Enforcement Powers	• Offence to contravene a Covenant, with penalty fines applicable.[309] • Minister (or delegate) may enter land and inspect property.[310] • Minister (or delegate) may conduct work to remedy the breach.[311] • Minister may enforce as a restrictive covenant (for equitable remedies) against successor landowners.[312]

[301] DCCEEW, Conservation covenanting programs approved by the Environment Minister <https://www.dcceew.gov.au/environment/biodiversity/conservation/covenants/approved-programs> Australian Taxation Office, Claiming Conservation Covenant Concessions, <https://www.ato.gov.au/businesses-and-organisations/not-for-profit-organisations/gifts-and-fundraising/in-detail/fundraising/claiming-conservation-covenant-concessions>; Income Tax Assessment Act 1997 (Cth) Div 31.

[302] Department of Climate Change, Energy, the Environment and Water, 'Conservation tax incentives', Conservation tax incentives (Web Page) <https://www.dcceew.gov.au/environment/biodiversity/publications/tax-incentives-for-conservation#:~:text=The%20Income%20Tax%20Assessment%20Act,More%20information>.

[303] NC Act Tas ss 34(1), 34(6)(b).

[304] NC Act Tas ss 34(1), 34(6)(b).

[305] NC Act Tas ss 34(6).

[306] NC Act Tas s34(6)(b).

[307] Covenant Template cl 3(c)(viii).

[308] NC Act Tas ss 34(6), 46.

[309] NC Act Tas s 46(1).

[310] NC Act Tass 45.

[311] Conservation Covenant Template cl 10.

[312] NC Act Tas s 34(6).

Court Orders

- Where the court has found a Covenant has been breached (an offence under the NCA), in addition to penalties, the court may order: repayment of past compensation for the Covenant, losses incurred by the Crown from the breach, repayment of gains from the breach.[313]
- Equitable remedies for breach of restrictive covenant against successor owners.[314]
- Contractual remedies for breach of Covenant against original covenantor. [315]

Rights against trespassers who breach covenant terms

- No action against third parties appears available, only for breach of Covenant, which implies against the landowner/occupier only.[316]

Powers of Termination and Variation

Variation Conditions

- Mutual agreement between Minister and landowner.[317] If the land subject to a conservation covenant is a private nature reserve, the covenant is not capable of being varied in a way that might threaten the natural or cultural values of the land, or of being discharged, until the land ceases to be or form part of a private nature reserve.[318]
- For land covered by Regional Forest Agreements, the Covenant may also provide that variation or termination requires prior consent of the Commonwealth Government.[319]

Termination Conditions

- Covenants on private nature reserves may not be varied or terminated in a way that threatens natural or cultural values, unless the private nature reserve designation is removed by proclamation of the Governor, as approved by each House of Parliament.[320]
- Variation or termination of Covenants where the landowner received compensation for the Covenant must be noticed for 30 days in the Gazette.[321]

Variation or termination due to mining or compulsory acquisition

- Mining may force termination or variation under *Mineral Resources Development Act* (Tas).[322]
- Tasmanian Department seeks to vary Covenants with no net loss of conservation value for infrastructure projects that conflict with conservation on covenanted properties.[323]

[313] NC Act Tas s 46(2).
[314] NC Act Tas s 34(6).
[315] Covenant Template.
[316] NC Act Tas ss 34(6), 46.
[317] NC Act Tas s 35(1).
[318] NC Act Tas s35(3).
[319] NC Act Tas s 35(2).
[320] NC Act, ss 21, 35(3).
[321] NC Act, s 35(4).
[322] *Mineral Resources Development Act 1995* (Tas) s 5.
[323] Discussion with Department of Natural Resources and Environment staff on 6 March 2026.

Victoria



Sacred Kingfisher *Todiramphus sanctus*, Yorta Yorta & Taungurung Country, VIC. *By* Grassland Films

Conservation Covenant[324]

Covenantee	**Trust for Nature (Victoria) ('TfN')**
Enabling Act	*Victorian Conservation Trust Act 1972* (Vic) **(VCT Act)**
Purpose of protection	Characteristics of land that may be covenanted: • ecologically significant; or • natural interest or beauty; or • of historic interest; or • of importance in relation to the conservation of wildlife or native plants.[325]
Level of protection from third party impacts	**Coal and gas extraction** • Covenanted land is not exempt from coal mining[326] or conventional gas[327] activities. • Coal seam gas or fracking are permanently banned in Victoria.[328] • Relevant Minister may exempt land of significant environmental importance from being subject to a mining or petroleum licence.[329] **Other mining (critical minerals, gold etc. not including uranium, sand and quarrying):[330]** • Covenanted land is not exempt from mining.[331] **Pipelines/ transmission lines** • Covenanted land may be subject to compulsory acquisition for infrastructure, including for pipelines or transmission lines. • TfN engages with relevant departments to make them aware of covenanted properties so they can be considered through planning processes.[332] **Other public infrastructure** • Compulsory acquisition powers can apply for the development of public infrastructure.[333]

[324] Along with legislation, Standard Covenant Template from December 2025 reviewed.
[325] *Victorian Conservation Trust Act 1972* (Vic) (VCT Act) s 3A(1).
[326] *Mineral Resources (Sustainable Development) Act 1990* (Vic) s 6.
[327] *Petroleum Act 1998* (Vic) s11.
[328] *Mineral Resources (Sustainable Development) Act 1990* (Vic) s8AC and 8AD; *Petroleum Act 1998* (Vic) s16A
[329] *Mineral Resources (Sustainable Development) Act 1990* (Vic) s 7; *Petroleum Act 1998* (Vic) s 12.
[330] See definition of 'mineral' in: *Mineral Resources (Sustainable Development) Act 1990* (Vic) s 4.
[331] *Mineral Resources (Sustainable Development) Act 1990* (Vic) s 6.
[332] Discussion with Trust for Nature staff on 12 March 2026.
[333] *Land Acquisition and Compensation Act 1986* (Vic) and *Major Transport Projects Facilitation Act 2009* (Vic).

Level of protection from landholder impacts

Infrastructure (private buildings)

- Building infrastructure regulated as per planning law controls and covenant restrictions. No legislative restriction on a covenanted site. The Covenant Template prohibits the following activities, unless permission is explicitly granted:
  - Subdivision;
  - Building structures.[334]

Vegetation clearing

- Vegetation clearing regulated as per normal laws relating to the site and per covenant. No legislative restriction on a covenanted site specifically. The Covenant Template prohibits the following activities, unless permission is explicitly granted:
  - Native vegetation removal.[335]

Forestry

- No legislative restriction on a covenanted site, with applicable laws continuing to apply. The Covenant Template prohibits the following activities, unless permission is explicitly granted:
  - Timber removal;
  - Planting of flora other than local indigenous flora.[336]

Agricultural activities (grazing/cropping)

- No legislative restriction on a covenanted site, with applicable laws continuing to apply. The Covenant Template prohibits the following activities, unless permission is explicitly granted:
  - Grazing;
  - Use of fertiliser.[337]

Impacts to cultural heritage

- Cultural resources are protected by the *Aboriginal Heritage Act 2006* (Vic) and the Heritage Act 2017 (Vic).

Applicable to freehold and Crown land?

Freehold land:

- Covenant applies to freehold land.[338]

Crown land:

- Covenants have not been applied to Crown land.[339]

[334] Covenant Template cl 4, Annexure 2.
[335] Covenant Template cl 4, Annexure 2.
[336] Covenant Template cl 4, Annexure 2.
[337] Covenant Template cl 4, Annexure 2.
[338] While the VCT Act does not explicitly refer to freehold land, s 3A(1) refers to an "owner" as relevant to covenants which Trust for Nature (TfN) interprets as requiring ownership of the land and the existence of a permanent title as is the case with freehold land, per personal communication from TfN representative on 17 July 2026.
[339] Personal communication from TfN representative on 17 July 2026; matter not addressed in the VCT Act.

Declaration/agreement process

Voluntary agreement between TfN and landowner.[340]

Process for commencing by agreement

- Minister may approve or refuse to approve a proposed Covenant.[341]
- Minister may provide details of a proposed Covenant to landowners in the vicinity of land proposed to be conserved for their comments.[342]
- Minister shall consider vicinity landowner submissions in approving or refusing to approve a Covenant. [343]

Criteria for applying

- Must meet criteria in VCT Act s 3A(1), being: ecologically significant, of natural interest or beauty, of historic interests, or of importance in relation to the conservation of wildlife or native plants.
- Must meet Trust for Nature's Covenanting Criteria found at https://trustfornature.org.au/wp-content/uploads/2025/06/Covenanting-Requirements-Trust-for-Nature-2025.pdf

Typical time frame for processing applications

- Average is around 10 months.[344]

Can the application be vetoed?

- Once agreed between TfN and landowner, only the Minister can refuse the Covenant.[345]

Management Plan requirements

- No legislative requirement to make a management plan. Covenant Management Plans are referenced in the Covenant Template but not required.[346]

Management requirements ongoing

- Management requirements not specified in VCT Act.
- VCT Act permits the Covenant to specify that TfN may enter the land and remain for certain purposes but does not specify those purposes.[347]

Monitoring and reporting requirements?

- Monitoring of each covenant is currently via on-site visit once every five years.[348] TfN is working on remote monitoring tools that will increase monitoring frequency. [349]
- Cost of Covenant is $35,000, which includes initial set-up and ongoing monitoring and stewardship costs in perpetuity. These funds are provided upfront by the original covenantor or may be covered via government grants or donations.[350]

[340] VCT Act s 3A(1).
[341] VCT Act s 3A(8).
[342] VCT Act ss 3A(6)-(7).
[343] VCT Act s 3A(8).
[344] https://trustfornature.org.au/wp-content/uploads/2025/03/Conservation-Covenant-FAQ-2025.pdf p6.
[345] VCT Act s 3A(8).
[346] Covenant Template cl 7, 17.
[347] VCT Act s 3A(2).
[348] Discussion with Trust for Nature staff on 12 March 2026.
[349] Discussion with Trust for Nature staff on 12 March 2026.
[350] Discussion with Trust for Nature staff on 12 March 2026.

Monitoring of successor landholders?

- Per the Covenant, the landowner must notify TfN of sale of the land.[351]
- Internal policies govern engagement strategy with successor landowner – visit and induction.[352]

Administrative requirements ongoing

Revision of Management Plans

- Management plans are created by TfN to provide guidance on covenantor obligations.[353]
- Management plans revised every five years and cost of doing this is built into full covenant costs described above.[354]

Financial support options

- Trust for Nature receives grant-related project funding from time to time which can fund the cost of a covenant, depending on eligibility.

Landowner incentives and financial support options

Tax and rate incentives

State Land Tax Exemption

- Covenanted land is exempt from land tax (with no requirement for repayment on breach.[355]

Council Rates Relief

- Council rate relief varies by council.[356]

Federal Tax Exemption

- Conservation Covenants are part of a conservation covenanting program approved by the Commonwealth Environment Minister as eligible for federal tax concessions.[357]
- Federal Tax Deduction is available as for all states. The *Income Tax Assessment Act 1997* offers two tax concession options for landholders entering a perpetual conservation covenant to protect areas of high conservation value. If eligible, they can receive an income tax deduction for any decrease in land value that results from entering a conservation covenant (provided the landowner receives no payment for entering it).[358]
- Where a conservation covenant is entered into, Capital Gains Tax provisions will apply as if it were a sale or gift of the land.

[351] Covenant Template cl 5.2.
[352] https://trustfornature.org.au/wp-content/uploads/2025/03/Conservation-Covenant-FAQ-2025.pdf p5.
[353] Covenant Template s 17.
[354] Discussion with Trust for Nature staff on 12 March 2026.
[355] *Land Tax Act 2005* (Vic) s 86A.
[356] Trust for Nature, Council rebates for covenants, https://trustfornature.org.au/resources/council-rebates-for-covenants/.
[357] DCCEEW, *Conservation covenanting programs approved by the Environment Minister* <https://www.dcceew.gov.au/environment/biodiversity/conservation/covenants/approved-programs> Australian Taxation Office, Claiming Conservation Covenant Concessions, https://www.ato.gov.au/businesses-and-organisations/not-for-profit-organisations/gifts-and-fundraising/in-detail/fundraising/claiming-conservation-covenant-concessions; *Income Tax Assessment Act 1997* (Cth) Div 31.
[358] Department of Climate Change, Energy, the Environment and Water, 'Conservation tax incentives', Conservation tax incentives (Web Page) <https://www.dcceew.gov.au/environment/biodiversity/publications/tax-incentives-for-conservation#:~:text=The%20Income%20Tax%20Assessment%20Act,More%20information>.

Who is the Covenant binding on?	Binding on parties to Covenant: • the owner of land;[359] • TfN.[360] Binding on other parties: • the landholder's successors in title (as a restrictive covenant only);[361] • occupiers, and others with interests on the land through agreements, as mandated by the Covenant, but only enforceable by the landowner.[362]
Third party right to enforce	None[363]
Enforcement Powers	• Certain powers are granted to TFN by the Covenant to address breaches, not by legislation. • Legislation provides for TfN to enter the land for 'certain purposes',[364] and to enforce a Covenant as a restrictive covenant.[365]
Court Orders	• Equitable remedies for breach of restrictive covenant against successor owners.[366] • Contractual remedies for breach of Covenant against original covenantor.[367] • Must attempt negotiation, mediation and arbitration first, according to Covenant.[368]
Rights against trespassers who breach covenant terms	• No rights granted to enforce the Covenant against encroaching third parties.
Powers of Termination and Variation	**Variation Conditions** • Mutual agreement between TfN and all persons with an interest in the land and bound by the Covenant.[369] • Variation must have Minister approval.[370] • Minister may seek input from landowners in the vicinity of the property before making a determination to vary the Covenant.[371]

[359] VCT Act s 3A(1); Covenant Template.
[360] Covenant Template.
[361] VCT Act s 3A(11).
[362] Covenant Template cl 5.3.
[363] VCT Act s 3A(11).
[364] VCT Act s 3A(2).
[365] VCT Act s 3A(11).
[366] VCT Act s 3A(11).
[367] Covenant Template.
[368] Covenant Template cl 15.
[369] VCT Act s 3A(3).
[370] VCT Act s 3A(3).
[371] VCT Act ss 3A(5)-(8).

Termination Conditions

- Mutual agreement between TfN and all persons with an interest in the land and bound by the Covenant.[372]
- Release must have Minister approval. [373]
- Original covenantor may apply to Governor in Council if TfN does not agree to release of Covenant.[374]
- There have been no instances of termination.

Variation or termination due to mining or compulsory acquisition

- Mining may force release or variation under the *Mineral Resources Act*.[375]
- Projects of 'State or Regional Significance' can result in release of a Covenant.[376]

372 VCT Act s 3A(3).
373 VCT Act s 3A(3).
374 VCT Act s 3A(4).
375 *Mineral Resources (Sustainable Development) Act 1990* (Vic) s 6.
376 *Planning and Environment Act 1987* (Vic) ss 201(N)-201(O).

Western Australia



Shy Featherflower *Verticordia fimbrilepis* on Bush Heritage's Kojonup Reserve, Goreng Noongar Country, WA. *By* Genevieve Hayes

National Trust: Restrictive Covenant

Covenantee	National Trust of Australia (WA) **(NTAWA)**
Enabling Act	*National Trust of Australia (W.A.) Act 1964* (WA) **(NTA Act)**
Purpose of protection	Preserve places of natural beauty and the flora and fauna of WA.[377]
Level of protection from third party impacts	**Coal and gas extraction** • Covenanted land is not exempt from coal mining,[378] or petroleum or gas[379] activities. **Other mining (critical minerals, gold etc. not including uranium, sand and quarrying):** • Covenanted land is not exempt from mining.[380] **Pipelines/transmission lines** • Covenanted land may be subject to compulsory acquisition for infrastructure, including pipelines or transmission lines, under applicable laws. **Other public infrastructure** • Compulsory acquisition powers can apply for the development of public infrastructure.[381]

Level of protection from landholder impacts	**Infrastructure (private buildings)**
	• Building infrastructure regulated as per planning law controls relating to the site and per covenant restrictions. No legislative restriction on a covenanted site. The Covenant Template prohibits the following activities, unless permission is explicitly granted:
	  • subdivision;[382] and
	  • building structures.[383]
	Vegetation clearing
	• Vegetation clearing regulated as per normal laws relating to the site and per covenant. There are no specific legislative restrictions on vegetation clearing on a covenanted site. The Covenant Template prohibits native vegetation removal, unless permission is granted.[384]

[377] *National Trust of Australia (W.A.) Act 1964* (NTA Act) Schedule Part (a).
[378] *Mining Act 1978* (WA) s 27.
[379] *Petroleum and Geothermal Energy Resources Act 1967* (WA) s 15.
[380] *Mining Act 1978* (WA) s 27.
[381] *Land Administration Act 1997* (WA).
[382] Restrictive Covenant Template cl 2.
[383] Restrictive Covenant Template cl 2.
[384] Restrictive Covenant Template cl 2.

Forestry

- There are no legislative restrictions on forestry on a covenanted site. The Covenant Template does not allow timber removal or the planting of non-Indigenous flora. [385]

Agricultural activities (grazing or cropping)

- No legislative restriction on a covenanted site, with applicable laws continuing to apply. The Covenant Template prohibits the following activities, unless permission is explicitly granted:
  - Planting of non-Indigenous flora;
  - Taking of water and interfering with flow of water;
  - Introduction of non-Indigenous fauna.[386]

Impacts to cultural heritage

- Covenants may provide provisions to protect cultural values. [387]

Applicable to freehold and Crown land?

Freehold land:

- Covenants apply to freehold land.[388]

Crown land:

- Covenants are not prevented from applying to Crown land.[389] Minister for Lands must consent to Covenant and Covenant language specify lessee's obligations.[390] Lease holders could be bound derivatively under conditions.

Declaration/agreement process

Voluntary agreement between Trust and landowner.[391]

Process for commencing by agreement

- Where any person is willing to agree to enter the agreement the Trust may approve or refuse to approve a Covenant.[392]

Criteria for applying

- High natural heritage values, may take smaller properties than state department.[393]

Typical time frame for processing applications

- Time taken to finalise agreement between 12 – 18 months.[394]

Management Plan requirements

- Bushland Management Plan prepared by the National Trust. Management plans included in Deed and Covenant Template, and therefore part of covenant registered on title.[395]
- Management plans are not mentioned in NTA Act.

[385] Restrictive Covenant Template cl 2.
[386] Restrictive Covenant Template cl 2.
[387] Restrictive Covenant Template Recitals, cl 2.
[388] NTA Act s 21A(1), due to ability to bind the land by agreement.
[389] Ibid.; Discussion with NATWA staff on 26 February 2026.
[390] Email from NATWA staff on 15 June 2026.
[391] NTA Act s 21A(1).
[392] NTA Act s 21A(1).
[393] Discussion with NATWA staff on 26 February 2026.
[394] Discussion with NATWA staff on 26 February 2026.
[395] Deed Template cl 2; Restrictive Covenant Template cl 1-2.

Management requirements ongoing

Monitoring and reporting requirements?

- Monitoring is challenged by lack of staff and lack of financial resources. There are currently no stewardship staff – visits are undertaken via consultancy.[396]
- Properties visited at best at 4-year intervals, or may not have been visited in a much longer time. Visit schedule is now at 5-year intervals as per minimum requirements for updating Management Plans under Guidelines for approval of a conservation covenanting program.[397]

Monitoring of successor landholders?

- Landowner must notify Trust of change in ownership of land, and Trust must approve the sale. This requirement is only secure when an absolute caveat is on title. There are some Covenants with no accompanying caveat.[398]
- Limited resources to ensure successor landowners understand the Covenant. Lack of understanding can lead to landowner resistance to Covenants.[399]
- Problems with successor landowners are manifesting in breaches, which haven't been enforced, due to limited resources and the costs of going to court.[400]
- Deed Template places a caveat on title to secure the obligations of the landowner, and for the payment of damages arising from breach of the Covenant.[401]
- Majority of Covenants are subject to the caveat, but the remaining covenanted land is not.[402]

Administrative requirements ongoing

Revision of Management Plans

- Amended through the consent of both parties.[403]

Landowner incentives and financial support options

Tax and rate incentives

State Land Tax Exemption

- Covenant on title makes land exempt from land tax, with no alteration on breach. [404]

Council Rates Relief

- Council rate relief for Covenants in some councils.[405]

[396] Discussion with NATWA staff on 26 February 2026.
[397] Discussion with NATWA staff on 26 February 2026.
[398] Deed Template cl 3.2.
[399] Discussion with NATWA staff on 26 February 2026.
[400] Discussion with NATWA staff on 26 February 2026.
[401] Deed Template cl 6.3; Discussion with NATWA staff on 26 February 2026.
[402] Discussion with NATWA staff on 26 February 2026.
[403] Deed Template cl 2.2.
[404] *Land Tax Assessment Act 2002* (WA) s 41.
[405] Department of Environment and Conservation, Partnerships in Nature Conservation: A guide for landowners (Guide, October 2010) 8, 21; Discussion with NATWA staff on 26 February 2026.

	Federal Tax Deduction • Restrictive Covenants are part of a conservation covenanting program approved by the Commonwealth Environment Minister as eligible for federal tax concessions.[406] • Federal Tax Deduction is available as for all states. *The Income Tax Assessment Act 1997* offers two tax concession options for landholders entering a perpetual conservation covenant to protect areas of high conservation value. If eligible, they can receive an income tax deduction for any decrease in land value that results from entering a conservation covenant (provided the landowner receives no payment for entering it).[407] • Where a conservation covenant is entered into, Capital Gains Tax provisions will apply as if it were a sale or gift of the land.
Who is the Covenant binding on?	Binding on parties to Covenant: • Trust, should any conditions bind the Trust;[408] • landholder.[409] Binding on other parties: • the landholder's successors in title;[410] • including occupiers of the land under successor owners.[411]
Third party right to enforce	• None.
Trust Enforcement Powers	• As a restrictive covenant.[412] • Trust may enter land to undertake inspections, carry out work to prevent damage to the land and recover costs as a debt.[413] • Landowner obligations may be enforced through a caveat on title specified in the deed.[414] In practice this has never been done due to the costs of a court case. There are cases where landholders wishing to sell will quickly rectify breaches as the National Trust will not remove the caveat without the action being rectified, for example reinstall fencing.[415] • Most common significant breaches relate to vegetation clearing and damage from grazing.[416] • In practice these breaches have not been remedied using the available enforcement powers due to the costs of a court case.[417]

[406] DCCEEW, Conservation covenanting programs approved by the Environment Minister <https://www.dcceew.gov.au/environment/biodiversity/conservation/covenants/approved-programs> Australian Taxation Office, Claiming Conservation Covenant Concessions, https://www.ato.gov.au/businesses-and-organisations/not-for-profit-organisations/gifts-and-fundraising/in-detail/fundraising/claiming-conservation-covenant-concessions; Income Tax Assessment Act 1997 (Cth) Div 31.
[407] Department of Climate Change, Energy, the Environment and Water, 'Conservation tax incentives', Conservation tax incentives (Web Page) <https://www.dcceew.gov.au/environment/biodiversity/publications/tax-incentives-for-conservation#:~:text=The%20Income%20Tax%20Assessment%20Act,More%20information>.
[408] NTA Act s 21A(1).
[409] NTA Act s 21A(1).
[410] NTA Act ss 21A(1), (4).
[411] NTA Act ss 21A(1), (4).
[412] NTA Act ss 21A(1), (4).
[413] Deed Template cl 2.3, 6.2.
[414] Deed Template cl 6.3.
[415] Discussion with NATWA staff on 26 February 2026.
[416] Discussion with NATWA staff on 26 February 2026.
[417] Discussion with NATWA staff on 26 February 2026.

Court Orders

- Contractual remedies against the original covenantor.[418]
- Equitable remedies for breach of restrictive covenant against successor owners.[419]
- Charge on the land for damages resulting from breach, enabled by the caveat on title.[420]
- Must attempt negotiation and mediation first.[421]

Rights against trespassers who breach covenant terms

- No rights to take action against persons breaching Covenant except landholders/occupiers only for breach of Covenant or deed.[422]

Powers of Termination and Variation

Variation Conditions

- Not covered in NTA Act. There are ways for variations under Clause 3 of the Covenant. Covenants entered into prior to 2018 have a variation clause: 'If the owner seeks a variation to this Covenant at any time, the owner may seek a variation from the Trust. As long as the natural and cultural qualities of the Bushland are not significantly affected, the Trust will consider whether, in the Trust's opinion it is reasonable to make the variation.'

Termination Conditions

- The *Transfer of Land Act 1893 (WA)* provides that restrictive covenants may be varied or terminated by agreement between both parties, or through a court order.[423]

Variation or termination due to mining or compulsory acquisition

- Mining may force termination or variation under *Mining Act 1978* (WA),[424] and the same can occur for infrastructure projects.

[418] Deed and covenant template.
[419] NTA Act s 21A(1), (4).
[420] Deed Template cl 6.3.
[421] Deed Template cl 6.1.
[422] NTA Act s 21A(1), (4); Deed Template cl 6.3.
[423] *Transfer of Land Act 1893* (WA) s 129B.
[424] *Mining Act 1978* (WA) s 27.

Transfer of Land Covenant and Biodiversity Conservation Covenant

Covenantee	**Director ('CEO') of Department of Biodiversity, Conservation and Attractions ('DBCA')**
Enabling Act	*Biodiversity Conservation Act (2016)* **(BC Act WA)** *– Biodiversity Conservation Covenant* *Transfer of Land Act 1893* **(TL Act)** *– TLA Covenant*
Purpose of protection	(a) Conservation, protection or management of biodiversity or biodiversity components on the land; (b) the conservation, protection or management of — (i) a specially protected species that occurs on the land; or (ii) a threatened species that occurs on the land; or (iii) a threatened ecological community that occurs on the land; (c) scientific purposes consistent with a purpose referred to in paragraph (a) or (b); (d) public education purposes consistent with a purpose referred to in paragraph (a) or (b).[425]
Level of protection from third party impacts	**Coal and gas extraction** • Covenanted land is not exempt from coal mining,[426] or petroleum or gas[427] activities. **Other Mining (critical minerals and gold etc. not including sand and quarrying): [428]** • Covenanted land is not exempt from mining. [429] **Pipelines/transmission lines** • Covenanted land may be subject to compulsory acquisition for infrastructure, including pipelines or transmission lines. **Other public infrastructure** • Compulsory acquisition powers can apply for the development of public infrastructure.[430]

[425] *Biodiversity Conservation Act 2016* (WA) (BC Act WA) s 122(1).
[426] *Mining Act 1978* (WA) s 27.
[427] *Petroleum and Geothermal Energy Resources Act 1967* (WA) s 15.
[428] See definition of minerals owned by the Crown at: *Mining Act 1978* (WA) ss 8-9.
[429] *Mining Act 1978* (WA) s 27.
[430] *Land Administration Act 1997* (WA).

Level of protection from third party impacts

Infrastructure (private buildings)

- Building infrastructure regulated as per planning laws and per covenant restrictions. No legislative restriction on a covenanted site. The TLA Covenant Template[431] prohibits the following activities, unless permission is explicitly granted:
  - Subdivision;[432] and
  - Building structures.[433]

Vegetation clearing

- Vegetation clearing regulated as per normal laws relating to the site and per covenant. There are no legislative restrictions on vegetation clearing specific to a covenanted site. The TLA Covenant Template prohibits native vegetation removal, unless permission is granted.[434]

Forestry

- There are no legislative restrictions on forestry on a covenanted site. The TLA Covenant Template does not allow native flora or fauna removal, or the introduction of non-Indigenous flora or fauna.[435]

Agricultural activities (grazing or cropping)

- No legislative restriction on a covenanted site, with applicable laws continuing to apply. The TLA Covenant Template prohibits the following activities, unless permission is explicitly granted:
  - Introduction of non-Indigenous flora;
  - Taking of water and interfering with flow of water;
  - Introduction of non-Indigenous fauna.[436]

Impacts to cultural heritage

- Covenants may protect cultural values, but National Trust Covenants are more aligned with cultural protections.[437]

Applicable to freehold and Crown land?

Freehold land

- TLA Covenants and Biodiversity Conservation Covenants apply to freehold land. [438]

Crown land

- DBCA do not currently register covenants with leaseholders.[439]

[431] Under the Transfer of Land Act 1893 (WA) (TL Act).
[432] TLA Covenant Template cl 1.
[433] TLA Covenant Template cl 1.
[434] TLA Covenant Template cl 1.
[435] TLA Covenant Template cl 1.
[436] TLA Covenant Template cl 1.
[437] Discussion with DBCA Staff on 19 March 2026.
[438] BC Act WA ss 124, 129, TL Act, s4 'proprietor'.
[439] Personal communication with DBCA officer on 21 July 2026.

Declaration/agreement process

- Voluntary agreement between chief executive officer (CEO) of the Department[440] and landowner.[441]
- However, many of the Covenants under the TL Act[442] are conditions of planning and subdivision law, rather than being voluntary.[443]

Process for commencing by agreement

- The CEO may approve or refuse to approve a Covenant.[444]

Criteria for applying

- Large areas of vegetation with high conservation value and low requirement for active management.[445]

Typical time frame for processing applications

- Time taken by DBCA to develop agreement is between 6 – 12 months.[446] Total timeframe is variable and dependent on the processes and priorities of other parties. [447]

Management Plan requirements

- Management plans are not a requirement under the BC Act WA nor the TL Act. Management Guidelines are specified in the TLA Template Covenant and therefore run with the registration on title.

Management requirements ongoing

- Monitoring is challenged by lack of staff and lack of financial resources.[448] There are no stewardship staff.[449]

Monitoring and reporting requirements?

- There are no site monitoring visits after inception.[450]
- Post inception contact with landowners is driven by landowner enquiries.[451]
- Breach detection relies on reporting, for example by neighbours or other departments.[452]

Monitoring on successor landholders?

- Under the BC Act WA, the landowner must notify CEO of change in ownership of land, and CEO must approve the sale.[453] However, in practice, landowners may not do this and DBCA has no way to monitor transfer of property.[454]
- Too few resources to engage with successor landowners to ensure they understand obligations under the Covenant.[455]

[440] *Conservation and Land Management Act 1984* (WA) s 3.
[441] BC Act WA s 122(1).
[442] *TL Act.*
[443] Discussion with DBCA Staff on 19 March 2026.
[444] BC Act WA s 122(1).
[445] Discussion with NATWA staff on 26 February 2026, Discussion with DBCA Staff on 19 March 2026.
[446] Discussion with DBCA Staff on 19 March 2026.
[447] Personal communication from DBCA staff on 16 July 2026.
[448] Discussion with DBCA Staff on 19 March 2026.
[449] Discussion with DBCA Staff on 19 March 2026.
[450] Discussion with DBCA Staff on 19 March 2026.
[451] Discussion with DBCA Staff on 19 March 2026.
[452] Discussion with DBCA Staff on 19 March 2026.
[453] BC Act WA s 131.
[454] Discussion with DBCA Staff on 19 March 2026.
[455] Discussion with DBCA Staff on 19 March 2026.

Landowner incentives and financial support option

Financial support options

- Legislation, deed and Covenant do not mention compensation.
- Many new Covenants are conditions of planning and subdivision law, rather than being voluntary, meaning compensation is not applicable.[456]

Tax and rate incentives

State Land Tax Exemption

- Covenant on title makes land exempt from land tax, with no alteration on breach.[457]

Council Rates Relief

- Council rate relief for Covenants in some councils. [458]

Federal Tax Relief

- TLA Covenants and Biodiversity Conservation Covenants are part of a conservation covenanting program approved by the Commonwealth Environment Minister as eligible for federal tax concessions.[459]
- Federal Tax Deduction is available as for all states. The *Income Tax Assessment Act 1997* offers two tax concession options for landholders entering a perpetual conservation covenant to protect areas of high conservation value. If eligible, they can receive an income tax deduction for any decrease in land value that results from entering a conservation covenant (provided the landowner receives no payment for entering it).[460]
- Where a conservation covenant is entered into, Capital Gains Tax provisions will apply as if it were a sale or gift of the land.

Who is the Covenant binding on?

Binding on parties to Covenant:

- DBCA CEO where conditions bind them;[461]
- landholder.[462]

Binding on other parties:

- the landholder's successors in title.[463]

Third party right to enforce

- None.

[456] Discussion with DBCA Staff on 19 March 2026.
[457] *Land Tax Assessment Act 2002* (WA) s 41.
[458] Department of Environment and Conservation, Partnerships in Nature Conservation: A guide for landowners (Guide, October 2010) 8, 21; Discussion with NATWA staff on 26 February 2026.
[459] DCCEEW, Conservation covenanting programs approved by the Environment Minister <https://www.dcceew.gov.au/environment/biodiversity/conservation/covenants/approved-programs> Australian Taxation Office, Claiming Conservation Covenant Concessions, <https://www.ato.gov.au/businesses-and-organisations/not-for-profit-organisations/gifts-and-fundraising/in-detail/fundraising/claiming-conservation-covenant-concessions>; *Income Tax Assessment Act 1997* (Cth) Div 31.
[460] Department of Climate Change, Energy, the Environment and Water, 'Conservation tax incentives', Conservation tax incentives (Web Page) <https://www.dcceew.gov.au/environment/biodiversity/publications/tax-incentives-for-conservation#:~:text=The%20Income%20Tax%20Assessment%20Act,More%20information>.
[461] BC Act WA s 122(1).
[462] BC Act WA s 124.
[463] BC Act WA s 129.

CEO Enforcement Powers	• Under the BC Act WA it is an offence to breach a Covenant with up to $50,000 fine,[464] however this is not yet being administered.[465] There are no fines applicable for breaches of Restrictive Covenants under the TL Act. • CEO or delegate with consent of or notice to owner or occupier of land may enter land to undertake inspections, carry out work to prevent damage to the land and recover costs as a debt.[466]
Court Orders	• Under the BC Act WA, costs of remedial action can be recovered as a debt.[467]
Rights against trespassers who breach covenant terms	• No rights to take action against breaches of Covenant by third parties, only against landowners.[468]
Powers of Termination and Variation	**Variation and Termination Conditions** • Under the TL Act and BC Act, mutual consent required, CEO must approve for variation or termination to occur.[469] **Variation or termination due to mining or compulsory acquisition** • Mining may force termination or variation under *Mining Act 1978* (WA).[470] • Similarly with infrastructure projects.

[464] BC Act WA s 130.
[465] Email correspondence from National Trust staff on 4 May 2026.
[466] BC Act WA ss 217, 219.
[467] BC Act WA ss 216-219.
[468] BC Act WA ss 122, 124, 129, 218-219.
[469] BC Act WA ss 125-126.
[470] *Mining Act 1978* (WA) s 27.

Commonwealth



Eastern Shriketit *Falcunculus frontatus* on Bush Heritage's Sanstrom Block, Dja Dja Wurrung Country, VIC. *By* Rowan Mott

Conservation Agreements

Covenantee	**Commonwealth Minister for the Environment**
Enabling Act	*Environment Protection and Biodiversity Conservation Act 1999* (Cth) – Conservation Agreements
Purpose of protection	To provide for protection and conservation of the following: (i) biodiversity; (ii) the world heritage values of declared World Heritage properties; (iii) the National Heritage values of National Heritage places; (iv) the Commonwealth Heritage values of Commonwealth Heritage places; (v) the ecological character of a declared Ramsar wetland; (vi) the environment, in respect of the impact of a nuclear action; (vii) the environment in a Commonwealth marine area; (viia) a water resource, in respect of the impact of an action involving unconventional gas development or large coal mining development; (viii) the environment on Commonwealth land.[471] A conservation agreement may include a declaration that actions do not need approval under Part 9 of the EPBC Act.[472]
Level of protection against third party impacts	**Coal and gas extraction** • Conservation agreement land is not exempt from coal mining, or petroleum or gas activities. **Other Mining (critical minerals and gold etc. not including sand and quarrying):** • Conservation agreement land is not exempt from mining.

[471] EPBC Act s304(1) and (2).
[472] EPBC Act ss 37M, 306A.

Pipelines/transmission lines

- Land under conservation agreement may be subject to compulsory acquisition for infrastructure if the matter concerns an issue the Commonwealth Government can legislate on, which includes telegraphic, telephonic and other like services and external affairs.[473]

Other public infrastructure

- Covenanted land may be subject to compulsory acquisition for infrastructure if the matter concerns an issue the Commonwealth Government can legislate on, which includes telegraphic, telephonic and other like services and external affairs. [474]

Level of protection against landholder impacts

Infrastructure (private buildings)

- Building infrastructure regulated as per normal laws and per agreement restrictions. No legislative restriction on a conservation agreement site.

Vegetation clearing

- Vegetation clearing regulated as per normal laws and per agreement. There are no legislative restrictions on vegetation clearing on a conservation agreement site.

Forestry

- There are no legislative restrictions on forestry on a conservation agreement site, with applicable laws continuing to apply.

Agricultural activities (grazing or cropping)

- No legislative restriction for agricultural activities on a conservation agreement site, with applicable laws continuing to apply.

Impacts to cultural heritage

- No legislative restrictions on impacting cultural heritage specific to conservation agreement areas, with applicable laws continuing to apply.

Applicable to freehold and Crown land?

Freehold land

- Conservation agreements under the EPBC Act apply to freehold land.[475]

Crown land

- Conservation agreements under the EPBC Act may apply to Crown land,[476] except Commonwealth reserves.[477]

[473] Commonwealth of Australia Constitution Act, s51(xxxi). See also Lands Acquisition Act 1989 (Cth), Part IV.
[474] Commonwealth of Australia Constitution Act, s51(xxxi). See also Lands Acquisition Act 1989 (Cth), Part IV.
[475] EPBC Act s 305(1).
[476] EPBC Act s 305(1)(h).
[477] EPBC Act, s305(1) Note; s305(4).

Declaration/agreement process

Voluntary agreement between the Minister, on behalf of the Commonwealth, with the landowner.[478]

Process for commencing by agreement

- The Minister must not enter into a conservation agreement unless satisfied that various factors are met as relevant to the matters of national environmental significance relevant to the site.[479] For example, the Minister must only enter into agreements for the protection and conservation of biodiversity if the agreement will result in 'a net benefit to the conservation of biodiversity' and is consistent with 'a recovery plan, threat abatement plan or wildlife conservation plan'.[480]
- The Minister must take into account Articles 8(j), 10(c) and 18(4) of the 1992 Rio Convention on Biodiversity, along with objective 1.8.2 of the National Strategy for the Conservation of Australia's Biological Diversity, when entering a conservation agreement for biodiversity protection or conservation.[481]

Criteria for applying

- The activity must relate to a matter regulated under the *EPBC Act*, for example where the activity may pose significant impacts on a matter of national environmental significance.
- Conservation Agreements under the EPBC Act are not widely used. Most current Conservation Agreements are with state governments or are related to offset projects.[482] Conservation is an outcome of a Conservation Agreement under the EPBC Act but is not necessarily the primary purpose for entering the Conservation Agreement, which may otherwise be, for example, protection of heritage values.[483]

Typical time frame for processing applications

- No estimate available.

Management Plan requirements

The requirement for a management plan is considered on a case-by-case basis and depends on the circumstances/outcomes of the relevant Conservation Agreement.[484]

Management requirements ongoing

Monitoring and reporting requirements

- A conservation agreement may provide for monitoring to ensure compliance with the agreement.[485]

Monitoring on successor landholders

- The agreements are binding on future landholders, but there is currently no program to monitor successor landholders within the Department.[486]

[478] EPBC Act s 305(1).
[479] EPBC Act s305(2).
[480] EPBC Act s 305(2)(a).
[481] EPBC Act s 305(6).
[482] Conservation agreements under the EPBC Act in Australia, *Conservation agreements under the EPBC Act in Australia - DCCEEW.*
[483] Ibid and EPBC Act, s. 305(1).
[484] EPBC Act, s 306(2)(g).
[485] EPBC Act s 305(1)(c).
[486] Personal communication with DCCEEW staff on 6 October 2026.

Landowner incentives and financial support options

Financial support options

- Financial support options have not been available for Conservation Agreements to date, given they have related to offset provision to meet the EPBC Act assessment requirements.

Tax and rate incentives

State Land Tax Exemption

- State land tax exemptions don't apply.

Council Rates Relief

- Council rate relief doesn't apply.

Federal Tax Relief

- Federal tax relief does not apply to Conservation Agreements.[487]

Who is the Covenant binding on?

Binding on the parties to the conservation agreements:

- the Commonwealth[488]
- the party whom the Minister enters into the conservation agreement with[489]

Binding on other parties:

- the landholder's successors in title. This party may be the successor of whole or of part of the interest[490]

Third party right to enforce

- None.

Enforcement Powers

- Minister may apply to the Federal Court for an order seeking compliance with a remediation provision to address contravention of EPBC Act Part 3.[491]
- Power to seek an injunction to address contraventions of agreements by the CEO, any person bound to by the agreement, or the Director of a Commonwealth reserve or conservation zone under the EPBC Act. [492]

Court Orders

- For an application to remedy non-compliance with a remediation provision, the Court may order compliance or any other order the Court considers appropriate.[493]
- Court may order an injunction restraining a contravention, to take an action (including repair or mitigation), or to grant an interim injunction to do either of these things.[494]

Rights against breaching trespassers

- No rights to take action against breaches of Covenant by third parties, only against landowners.

[487] Personal communication with DCCEEW staff on 6 October 2026.
[488] EPBC Act s 307(a).
[489] EPBC Act s 307(b).
[490] EPBC Act s 307(c).
[491] EPBC Act s 307A(5).
[492] EPBC Act s476.
[493] EPBC Act s 307A(6).
[494] EPBC Act s 476(2)-(5).

Powers of Termination and Variation

Variation and Termination Conditions

- May be varied if the Minister enters into a variation agreement with the other party bound by the conservation agreement.[495]
- May be terminated through the mutual agreement of the minister and the other party to the conservation agreement,[496] or by matters and circumstances specified in the agreement.[497]
- The Minister may terminate or vary the conservation agreement, by order published in the Gazette, if satisfied that the conservation agreement is incapable of achieving its purpose.[498] The Minister will vary the agreement in any way that is necessary for the conservation agreement to achieve its purpose. This can be done without the agreement of the other party bound by the agreement.[499]
- The agreement may also be terminated where it is varied by an order. In this circumstance the other party bound by the agreement must give written notice to the Minister, to terminate the agreement.[500]

Variation or termination due to mining or compulsory acquisition

- As above for infrastructure projects.

[495] EPBC Act s 308(1).
[496] EPBC Act s 308(3)(a).
[497] EPBC Act s 308(3)(b).
[498] EPBC Act s 308(4).
[499] EPBC Act s 308(5).
[500] EPBC Act s 308(7).

Bush Heritage Australia

PO Box 329 Flinders Lane, VIC 8009

T 1300 NATURE

E info@bushheritage.org.au

www.bushheritage.org.au

This handbook is intended as a point in time reference as of November 2026. It is hoped that as legislation changes, the handbook can be updated in future iterations.