

1989

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

NATURE CONSERVATION (AMENDMENT) BILL 1989

EXPLANATORY MEMORANDUM

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Nature Conservation (Amendment) Bill 1989

The Nature Conservation Act 1980 (the Act) provides for the protection and conservation of wildlife and for the control of reserve areas and wilderness zones.

The Commonwealth Government and the People's Republic of China have entered into an agreement for co-operation between the two countries to protect migratory birds and their habitats. The Commonwealth Government proposed that the agreement would be implemented through nature conservation legislation already in existence in the States and the Northern Territory and sought assurances from the State Premiers and the Chief Minister of the Northern Territory that their legislation was adequate to give effect to the agreement. Legislation in the ACT is not adequate to give effect to the agreement.

The Nature Conservation (Amendment) Bill 1989 (the Bill) proposes significant changes to the Act to give effect to the agreement to protect migratory birds and to ensure that the legislation provides more effective and efficient protection of wildlife.

Wildlife in the Territory will be protected by a dual regulatory system. The Bill will amend the Act by providing that certain species of wildlife that are the subject of an Act of the Commonwealth, or of any convention, agreement or treaty entered into by the Commonwealth or are vulnerable or threatened with extinction may be given special protection status. The Bill will also simplify the procedure to identify the categories of wildlife that come within the ambit of the Act by deleting the requirement to identify species in schedules to the Act and by providing that the Conservator may declare species to be exempt, protected or restricted wildlife. Declarations by the Conservator will be disallowable instruments for the purposes of the Subordinate Laws Act 1989 and as such must be notified in the Australian Capital Territory Gazette and laid before the ACT Legislative Assembly within 15 sitting days after the date of notification. This will ensure that such declarations will be subject to scrutiny by the Assembly.

Once a species is given special protection status, or has been declared a protected or restricted species it will be an offence to take, keep, or sell the species unless the person has a permit or licence from the Conservator. The Bill will incorporate the terms of the agreement to restrict the circumstances under which the Conservator may grant a permit or licence in respect of any species that has special protection status. The Act specifies the criteria the Conservator is to consider before granting a permit or licence in respect of protected or restricted wildlife.

The level of penalty in respect of declared species will be graduated to recognize the importance of species that have special protection status. Existing penalties will also be significantly increased to bring such penalties into line with Commonwealth and State legislation.

The Bill will amend the Act by removing limitations on the Conservator to enforce a direction in regard to conservation or the treatment of diseased wildlife where the Conservator has reasonable cause to consider such a direction necessary having regard to wildlife and significant ecosystems in the Territory. Any such direction will be subject to review by the Administrative Appeals Tribunal.

The Bill will have no effect on either income or expenditure.

Details of the Bill are included in the Attachment.

ATTACHMENT

Nature Conservation (Amendment) Bill 1989

Clause 1 will cite the Bill, when enacted, as the Nature Conservation (Amendment) Act 1989.

Clause 2 will cite the Principal Act as the Nature Conservation Act 1980.

Clause 3 will amend section 5 of the Act which is an interpretation provision. Paragraph 3(a) will amend the definition of 'animal'. Paragraph 3(b) will substitute new definitions of 'restricted animal wildlife', 'restricted plant wildlife' and the term 'sell'. Paragraph 3(c) will insert definitions of the terms 'exempt animal', 'protected fish', 'protected invertebrate' and 'special protection status'.

Clause 4 will amend the Act by inserting new sections 16, 17 and 18.

New section 16 will enable the Conservator to declare certain species of wildlife as having special protection status.

New subsection 16(1) will enable the Conservator to declare, by instrument, that certain species of wildlife will have special protection status if:

- (a) protection of that species is the object, or part of the object, of an Act of the Commonwealth, or of a convention, agreement or treaty entered into by the Commonwealth; or
- (b) the Conservator believes on reasonable grounds that the species of wildlife is vulnerable to, or is threatened with, extinction.

New subsection 16(2) will provide that a declaration made under subsection 16(1) shall specify the grounds in that subsection on which it is made.

New section 17 will facilitate the protection of plants and animals.

New subsection 17(1) will provide that the Conservator may by instrument, declare members of a species of:

- (a) fish or invertebrates to be protected fish or protected invertebrates;
- (b) animals to be exempt animals;
- (c) plant wildlife to be restricted plant wildlife; and
- (d) animal wildlife to be restricted animal wildlife.

New subsection 17(2) will provide that in making a declaration under subsection 17(1) the Conservator must take into account the need to protect wildlife generally in the Territory and significant ecosystems of the Territory, New South Wales and Australia.

New section 18 will provide that an instrument made under either new section 16 or 17 will be a disallowable instrument for the purposes of the Subordinate Laws Act 1989 and as such must be notified in the ACT gazette and laid before the ACT Legislative Assembly within 15 sitting days after the date of notification.

Clause 5 will amend the heading to Part III of the Act by inserting the words "and Fish" so that the amended heading will be "Protection of Animals and Fish".

Clause 6 will amend the Act by deleting the heading to Division 1 of Part III.

Clause 7 will amend the Act by inserting new section 24 to protect the nest, or the environment of such a nest, of an animal that is wildlife.

New subsection 24(1) will provide that a person shall not, except in accordance with a permit, interfere with a nest of an animal that is wildlife, or with anything in the immediate environment of such a nest if the interference:

- (a) places the animal or its progeny in danger of death; or
- (b) places the animal in danger of not being able to breed -
 - (i) if the interference occurs during the animal's breeding season - during that season; or
 - (ii) in any other case - during the animal's next breeding season.

A penalty of \$10,000 or imprisonment for 5 years or both will apply if the animal has special protection status or, in any other case, a penalty of \$5000 or imprisonment for 2 years, or both, will apply.

New subsection 24(2) will prohibit, except in accordance with a permit, interference with a nest of an animal that is wildlife or with anything in the immediate environment of such a nest. A penalty of \$2000 will apply if the animal has special protection status, or in any other case, a penalty of \$1000 will apply.

New subsection 24(3) will provide that it is a defence to a prosecution under new subsection 24(1) if it is established that the defendant believed on reasonable grounds that the alleged danger did not exist.

New subsection 24(4) will provide that it will be a defence to a prosecution under either new subsection 24(1) or 24(2) if it is established that the defendant believed, on

reasonable grounds, that the place, structure, or object alleged to have been interfered with was not a nest or was not in the immediate environment of a nest.

New subsection 24(5) will define the term "interfere with" to include "damage" or "destroy" and the word "nest" in relation to wildlife, as:

- (a) a particular place, structure or object that is, or has been within the previous 2 years, used as a nesting place by the animal; or
- (b) a partially constructed nest that has not been used as a nesting place by the animal.

Clause 8 will amend section 25 of the Act to provide that a person shall not, except in accordance with a permit, kill an animal that is wildlife. A revised penalty of \$10,000 or imprisonment for 5 years, or both, will apply if the animal has special protection status. In any other case, a fine of \$5,000 or imprisonment for 2 years, or both, will apply.

Clause 9 will amend subsection 26(1) of the Act to provide that a person will not, except in accordance with a permit or licence, take an animal that is wildlife, whether dead or alive. The clause will introduce a revised penalty, if the animal has special protection status, of \$10,000 or imprisonment for 5 years or both or, in any other case, a penalty of \$5000 or imprisonment for 2 years, or both. The clause will also repeal paragraph 26(2)(a) of the Act which will be unnecessary as a consequence of the proposed amendment of subsection 26(1).

Clause 10 will amend subsection 27(1) of the Act to provide that a person shall not, except in accordance with a permit or licence keep an animal other than an exempt animal. The clause will introduce a revised penalty, if the animal has special protection status, of \$10,000 or imprisonment for 5 years, or both, or, in any other case, a penalty of \$5000 or imprisonment for 2 years or both. The clause will also repeal subsection 27(2) and 27(4) of the Act.

Clause 11 will amend subsection 28(1) of the Act to provide that a person shall not, except in accordance with a permit or licence, sell an animal other than an exempt animal. A revised penalty, if the animal has special protection status, of \$10,000 or imprisonment for 5 years or both, will apply. In any other case, a fine of \$5000 or imprisonment for 2 years or both will apply. Clause 11 will also omit subsection 28(2) of the Act which will be unnecessary as a consequence of the proposed amendment of subsection 28(1).

Clause 12 will amend subsection 29(1) of the Act to provide that a person shall not, except in accordance with a permit or licence, import into or export from the Territory an animal other than an exempt animal. A revised penalty of \$10,000 or imprisonment for 5 years, or both, will apply if the animal has special protection status or, in any other case, a penalty of \$5,000 or imprisonment for 2 years, or both, will apply. Clause

12 will also omit subsection 29(2) of the Act which will be unnecessary as a consequence of the proposed amendment of subsection 29(1).

Clause 13 will amend section 30 of the Act to provide that a person shall not, except in accordance with a permit or licence, sell, import or export a live fish. A revised penalty of \$10,000 or imprisonment for 5 years, or both, will apply if the fish has special protection status or, in any other case, a fine of \$5,000 or imprisonment for 2 years or both will apply. The clause will also omit paragraphs 30(2) (a) and (b) of the Act which will be unnecessary as a consequence of the proposed amendment of subsection 30(1) and will make a minor drafting change to subsection 30(2)(c).

Clause 14 will repeal Division 2 of Part III of the Act. That Division contains separate provisions relating to licences and as the amendments that are proposed to be made to sections 25 to 30 will include provisions relating to licences, Division 2 of Part III will no longer be necessary.

Clause 15 will omit the heading to Division 3 of Part III of the Act.

Clause 16 will amend the Act by deleting section 35. Section 35 is an interpretation provision and the amendment to section 36 of the Act proposed by clause 17 will make the provision unnecessary.

Clause 17 will amend section 36 of the Act by deleting the words "held by him" wherever occurring from subsections 36(1) and (2) and by using gender neutral references in subsections 36(1), (2) and (3). The clause will increase the penalty in subsection 36(1) to \$2,000 and will also insert a new subsection 36(4) to provide that for the purposes of section 36 the term 'animal' will include 'live fish'.

Clause 18 will amend section 37 of the Act by using gender neutral terms and will increase the penalty to \$2000. The clause will also insert a new subsection 37(2) that will provide that for the purposes of section 37 the term 'animal' will include 'live fish'.

Clause 19 will amend section 38 of the Act by:

- (a) omitting from subsection (1) the words "him to export from the Territory an animal that is wildlife" and substituting the words "the export from the Territory of an animal";
- (b) omitting from paragraph (1)(a) the word "he" and substituting the words "the person"; and
- (c) increasing the penalty from \$1000 to \$2000.

Clause 20 will omit the heading to Division 4 of Part III of the Act.

Clause 21 will amend section 39 of the Act.

Paragraph 21(a) will omit subsection 39(1) and insert new subsections 39(1), (1A), (1B), (1C) and (1D).

New subsection 39(1) will provide that a person shall not, except in accordance with a permit, release an animal that is wildlife from captivity if the release places the animal in greater danger of injury or death than if it had been kept in captivity. A penalty of \$10,000 or imprisonment for 5 years, or both in respect of an animal that has special protection status or, in any other case, a fine of \$5000 or imprisonment for 2 years, or both, will apply.

New subsection 39(1A) will create an offence such that a person shall not, except in accordance with a permit, release an animal that is not wildlife from captivity if the release places an animal that is wildlife in danger of injury or death. A penalty of \$2,000 will apply.

New subsection 39(1B) will provide that a person shall not, except in accordance with a permit, release an animal from captivity. A penalty of a fine of \$1,000 will apply.

New subsection 39(1C) will provide that it is a defence to a prosecution under new subsection 39(1) if it is established that the defendant believed on reasonable grounds that the release of the animal did not place the animal in greater danger of injury or death than if it had been kept in captivity.

New subsection 39(1D) will provide that it is a defence to a prosecution under new subsection 39(1A) if it is established that the defendant believed on reasonable grounds that the release of the animal did not place an animal that is wildlife in danger of injury or death.

Paragraph 21(b) will amend subsection 39(2) of the Act to extend to new subsection 39(1B) the exemptions that now apply in relation to releasing wildlife from captivity.

Clause 22 will amend the Act by repealing section 41 which relates to special safeguards which apply to birds. These safeguards will be included in new section 78A inserted by clause 51.

Clause 23 will amend section 42 of the Act.

Paragraph 23(a) will omit subsection 42(1) and insert a new subsection.

New subsection 42(1) will provide that a person shall not, except in accordance with a permit or licence, pick a plant that has special protection status, is restricted plant wildlife or is wildlife growing on unleased land. A penalty of \$10,000 or imprisonment for 5 years, or both, will apply if the plant has special protection status or, in any other case, a penalty of \$5,000 or imprisonment for 2 years, or both, will apply.

Paragraph 23(b) will amend paragraph 42(2)(f) of the Act by removing a reference to the City Area and thereby providing protection to officers or employees of the ACT Administration employed outside the City Area. Proposed paragraph 23(c) will amend the paragraph to provide for gender neutral terms.

Clause 24 will amend subsections 43(1), 43(2), 43(3) and 43(4) of the Act to accord with current drafting practice including the removal of gender specific terms. Paragraph 24(d) will amend subsection 43(2) of the Act by increasing the penalty from \$500 to \$1000. Paragraph 24(g) will omit paragraph 43(4)(b) of the Act and substitute paragraphs 43(4)(b), (c) and (d) which will provide that the prohibition in subsection 43(2) in relation to damaging or destroying timber will not apply to:

- (a) a person who accidentally damages or destroys timber while acting in accordance with a permit or licence;
- (b) a conservation officer; or
- (c) a person who fells or removes timber for conservation purposes when authorised to do so by the Conservator.

Clause 25 will amend section 44 of the Act by deleting gender specific words from subsection 44(1) and by introducing a revised penalty of \$10,000 or imprisonment for 5 years, or both, if the plant has special protection status or, in any other case, a fine of \$5,000 or imprisonment for 2 years, or both.

Clause 26 will amend subsection 45(1) of the Act by inserting the words "or that has special protection status" so that the obligation imposed by section 45 to attach an identification tag to restricted plant wildlife exported from the Territory will also apply to plant wildlife that has special protection status exported from the Territory. Paragraph 26(b) will apply a penalty of \$5000 if the plant has special protection status or in any other case a penalty of \$2,500.

Clause 27 will amend the Act by inserting section 45A that will provide that for the purpose of Part V of the Act 'wildlife' will include live fish.

Clause 28 will amend section 47 of the Act by omitting from paragraph (2)(a) the word 'and' and omitting paragraph (2)(b).

Clause 29 will amend section 48 of the Act by:

- (a) omitting from paragraph 48(1)(a) the words after "person" which is a consequence of the amendment proposed by paragraph 28(b) to omit paragraph 47(2)(b) of the Act;
- (b) omitting from paragraph 48(1)(c) the words "concerning the use of the substance" which is also a consequence of omitting paragraph 47(2)(b) of the Act;

- (c) omitting from subsection 48(2) the words "refuse or" and inserting after the word "not" the words "without reasonable excuse"; and
- (d) substituting a penalty for contravention of subsection 48(2) of \$5000 if the notice relates to the protection and conservation of wildlife which has special protection status or, in any other case, \$2,500.

Clause 30 will amend section 49 of the Act by:

- (a) deleting subsection 49(1) which will be unnecessary following the inclusion of new section 45A;
- (b) substituting the term "a conservation officer" for the term "the Conservator" in subsections 49(4) and (5);
- (c) removing references to gender specific terms in subsection 49(5).

Clause 31 will amend section 50 of the Act by expanding the factors the Conservator is to consider when deciding whether to issue a direction under section 48 or whether under section 49 to direct the owner of wildlife to carry out treatment. The clause will:

- (a) delete subsection 50(1) which will be unnecessary following the inclusion of new section 45A;
- (b) omit the word 'and' from subparagraph 50(2)(c)(i);
- (c) substitute a new subparagraph 50(2)(c)(ii) so that the Conservator is to consider the significant ecosystems of the Territory, New South Wales and Australia; and
- (b) insert new subparagraph 50(2)(c)(iii) requiring the Conservator to have regard, in the case of a species of wildlife the members of which have special protection status, to the world wide survival of the wild populations of the species.

Clause 32 will amend section 53 of the Act by including gender neutral terms in subsection (1) and in paragraph (4)(b) and by increasing the penalty at the foot of subsection (3) from \$1,000 to \$2,000.

Clause 33 will amend section 54 of the Act by omitting from subsection (2) the words "or fail to comply with" as these words will be unnecessary to give effect to the section, and by increasing the penalty in subsection (2) from \$200 to \$500.

Clause 34 will amend section 55 of the Act by:

- (a) increasing the penalty at the foot of subsection (1) from \$200 to \$500;
- (b) increasing the penalty at the foot of subsection (2) from \$500 to \$1000; and
- (c) omitting from paragraph (3)(b) the word "he" and substituting the words "the fire".

Clause 35 will amend section 56 the Act by:

- (a) increasing the penalties in subsections (1) and (2) from \$200 to \$500;
- (b) omitting from subsection (2) the words "have in his possession" and substituting the word "possess";
- (c) omitting from paragraph (3)(a) the words "man-made" and substituting the word "constructed";
- (d) increasing the penalty at the foot of sections (3) from \$500 to \$1,000; and
- (f) correcting gender specific references in subsections (4) and (5).

Clause 36 will amend section 57 of the Act by increasing the penalty at the foot of subsection (1) from \$200 to \$500 and by correcting gender specific references in subsection (2) and (3).

Clause 37 will amend section 58 of the Act by:

- (a) correcting gender specific references in subsection (1), (2) and (3);
- (b) omitting from subsection (3) the words "refuse or fail to comply with" and substituting the word "contravene";
- (c) increasing the penalty at the foot of subsection (3) from \$100 to \$500; and
- (d) omitting from subsection (4) the words "refusing or failing to comply with" and substituting the word "contravening".

Clause 38 will amend section 59 of the Act by increasing the penalty from \$500 to \$1,000.

Clause 39 will amend section 61 of the Act by inserting two new paragraphs. New paragraph 61(1)(ka) will provide that an applicant for a permit in respect of wildlife that has special protection status will be obliged to state in the application that the wildlife has special protection status and the particular grounds under proposed new subsection 63A(1) on which the permit is being sought. New paragraph 61(1)(kb) will provide that where an application relating to wildlife which has special protection status is being sought under proposed new paragraph 63A(1)(a) for a scientific, educational, propagative or any other similar purpose the application shall:

- (a) state the applicant's place of employment and relevant qualifications;
- (b) describe any relevant studies that have been or are being undertaken by the applicant; and
- (c) supply any other relevant information about the purpose for which the application is made.

Clause 40 will insert new section 63A into the Act.

New section 63A will detail the grounds upon which the Conservator may grant a permit or licence in relation to

wildlife which has special protection status. The new section will provide that the Conservator shall not grant a permit or licence to do any act in relation to wildlife which has special protection status except on one of the following grounds:

- (a) that the act is required to be done for a scientific, educational, propagative or any other similar purpose;
- (b) that the act is required to be done for the purpose of protecting persons or property;
- (c) where the act relates to the killing or taking of animals - that the act will form part of the hunting of such animals during an established hunting season when such animals are traditionally killed or taken; or
- (d) where the act relates to the hunting or gathering of a species of wildlife or the seeds of such a species - that the inhabitants of a specified region have traditionally carried out such hunting or gathering activities for the purpose of providing food or clothing or for cultural purposes and the applicant is such an inhabitant who intends to carry out the relevant act for such purposes.

New subsection 63A(2) will provide that, in deciding whether to grant a permit or licence in respect of the killing or taking of animals that have special protection status, the Conservator shall have regard to the need to maintain such annual reproduction of the relevant species of wildlife as is required for the long term survival of the species.

New subsection 63A(3) will provide that, in deciding whether to grant a permit or licence where the act relates to the hunting or gathering of a species of wildlife or the seeds of such a species, the Conservator shall have regard to the need to preserve the relevant species of wildlife and to maintain optimum numbers of that species for its long term survival.

Clause 41 will amend section 65 of the Act by expanding the factors the Conservator is to consider when determining applications for a permit or licence. The clause will amend section 65 by:

- (a) omitting from subparagraph 65(a)(i) the word "and";
- (b) omitting from subparagraph 65(a)(ii) the word "major" and substituting the word "significant";
- (c) inserting a new subparagraph 65(a)(iii) to provide that where the application relates to wildlife which has special protection status the Conservator shall consider the world-wide survival of the wild populations of the species;
- (d) omitting from paragraph 65(m) the word "and"; and
- (e) inserting a new paragraph 65(o) that will provide that where the application relates to wildlife which has special protection status the Conservator will consider each ground on which the Conservator declared

the wildlife to have special protection status under proposed new section 16.

Clause 42 will amend section 66 of the Act by specifying an additional requirement to be included on a permit or licence. The clause will insert new paragraph 66(o) to provide that a permit or licence in respect of a species of wildlife which has special protection status shall specify the ground in proposed subsection 63(A)(1) on which the permit or licence is granted.

Clause 43(a) will amend section 70 of the Act by omitting a gender specific term and by revising the penalty by providing that if the permit or licence relates to an animal which has special protection status a penalty of \$1,000 will apply or, in any other case, a penalty of \$500 will apply.

Clause 44 will amend section 71 of the Act to provide that the holder of a permit who keeps more than 5 animals other than exempt animals, an animal that is restricted animal wildlife, or an animal which has special protection status, shall keep such records as are prescribed. The clause will also introduce a revised penalty of \$1000 if an animal which has special protection status is kept or, in any other case, \$500.

Clause 45 will amend section 72 of the Act to provide that the holder of a licence relating to animals who keeps an animal not being an exempt animal, a holder of a licence relating to live fish, or a person who sells or exports from the Territory plants that are wildlife, shall keep such records as are prescribed. The clause will also introduce a revised penalty of \$1000 if the animal, fish or plant has special protection status or, in any other case, \$500.

Clause 46 will amend section 73 of the Act by omitting the penalty of \$100 and introducing a revised penalty of \$1000 if the records relate to an animal which has special protection status or, in any other case, \$500.

Clause 47 will insert a new section 74A in Part VIII of the Act.

New subsection 74A(1) will provide that where the Conservator or a conservation officer makes a decision referred to in subsection 74(1) or 74(2), written notice of the decision shall be given by within 28 days to the person whose interests are affected by the decision.

New subsection 74A(2) will provide that the notice shall advise that the person may make an application seeking a review by the Administrative Appeals Tribunal of the decision to which the notice relates and that the notice shall also include a statement that a request for reasons for the decision may also be made.

New subsection 74A(3) will provide that a decision referred to in subsection 74A(1) shall not be invalid because of a failure to give a notice under subsection 74(2).

Paragraph 48(a) will amend section 76 of the Act by inserting a reference to new section 24 in the list of provisions that do not apply to the Conservator or a conservation officer acting in the performance of his or her duties. Proposed paragraph 46(b) will correct a gender specific term.

Clause 49 will amend section 77 of the Act by:

- (a) amending the definition of 'animal' in subsection (1) to mean an animal other than an exempt animal;
- (b) amending the definition of 'animal' to also mean a live fish;
- (c) amending gender specific terms in paragraphs 3(a) and 3(b) and subsection (4); and
- (d) omitting subsection (5) and substituting a new subsection (5) which will provide that a person shall not without a reasonable excuse -
 - (i) obstruct or hinder a conservation officer in the exercise of his or her powers under this section; or
 - (ii) except where paragraph (4)(c) applies - contravene a request made by a conservation officer under section 77.

The penalty for a breach of subsection (5) shall be a fine of \$2,000 or imprisonment for 12 months, or both.

Clause 50 will amend section 78 of the Act by correcting gender specific terms throughout. The clause will also omit subsection (3) and substitute a new subsection (3) that will specify that, subject to subsection (2), a person shall not, without reasonable excuse, contravene a requirement made by a conservation officer under subsection 78(1). A penalty of \$500 will apply.

Clause 51 will amend the Act by inserting a new section 78A to deal with the seizure and release of bird wildlife by a conservation officer.

New subsection 78A(1) will provide that where:

- (a) a person is found by a conservation officer to be in possession of a bird that is wildlife and is not a bird that is on the premises occupied by that person, or an exempt animal;
- (b) the conservation officer suspects on reasonable grounds that the bird is in the possession of the person in contravention of the Act;
- (c) the person does not produce, on request, a permit or licence indicating that the person is entitled to have the bird in his or her possession; and
- (d) the conservation officer believes on reasonable grounds that the bird is suffering pain or is in a distressed state or the keeping of the bird in captivity is likely to endanger the life of, cause distress or be harmful to the bird;

the conservation officer may, subject to subsection (2), seize the bird and, if the conservation officer believes on reasonable grounds that the welfare of the bird would be enhanced by releasing it, may release the bird from captivity.

New subsection (2) will provide that a conservation officer is not entitled to seize a bird under subsection (1) if, when requested to do so, the conservation officer fails to produce for inspection his or her identity card issued under subsection 11(2) of the Act.

Clause 52 will amend section 79 of the Act by substituting a definition of "animal" in subsection (1) as including a live fish and by correcting in subsection (2) a gender specific term.

Clause 53 will amend section 80 of the Act by inserting a new subsection (1A) that will define "animal" as including a live fish and by correcting in subsection (6) a gender specific term.

Clause 54 will insert new sections 80A and 80B into the Act.

New subsection 80A(1) will provide that where in proceedings for an offence where it is necessary to establish the state of mind of a body corporate, it is sufficient to show that the conduct was engaged in by a director, servant or agent of the body corporate in the scope of his or her actual or apparent authority, and the director, servant or agent had that state of mind.

New subsection 80A(2) will provide that any conduct engaged in by a director, servant or agent of the body corporate in the scope of his or her actual or apparent authority shall be taken to have been engaged in by the body corporate unless it establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

New subsection 80A(3) will provide that, where in proceedings for an offence it is necessary to establish the state of mind of a person, it is sufficient to show that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority, and that the servant or agent had that state of mind.

New subsection 80A(4) will provide that any conduct engaged in on behalf of a person by a servant or agent of the person within the scope of his or her actual or apparent authority shall be taken to have been engaged in also by the first mentioned person unless the first mentioned person establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

New subsection 80A(5) will provide that where a person is convicted of an offence, and the person would not have been convicted if new subsections 80A(3) and (4) had not been enacted, the person is not liable to be punished by imprisonment for that offence.

New subsection 80A(6) will provide that a reference in new subsections 80A(1) or (3) to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the intention, opinion, belief or purpose.

New subsection 80A(7) will provide that a reference to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, another Territory or State.

New subsection 80A(8) will provide that a reference to engaging in conduct includes a reference to failing or refusing to engage in conduct.

New subsection 80A(9) will clarify that a reference to an offence means an offence against the Act or the regulations.

New section 80B will provide that where a body corporate is convicted of an offence against the Act or regulations the Court may impose a fine not exceeding 5 times the maximum amount, but for section 80B, the Court could impose in respect of that offence.

Clause 55 will amend paragraph 84(1)(b) of the Act to increase from \$200 to \$500 the penalty which may be prescribed for offences against the regulations.

Clause 56 will amend the Act by repealing Part X. Part X is a transitional provision that related to the commencement of Part III of the Act and is no longer necessary.

Clause 57 will amend the Act by repealing Schedules 2 to 6 inclusive. The schedules relate to prescribed animal wildlife; restricted plant wildlife; protected fish and invertebrates; and exempt animals, being animals that are not wildlife and will now be the subject of declarations made by the Conservator under proposed new sections 16 and 17. Any such declarations will be subject to review by the Assembly.

Clause 58 will be a transitional provision that will provide that upon an application in accordance with subsection 61(1) of the Act by a person who has or had lawful possession of an animal, other than an exempt animal, the Conservator shall, notwithstanding Part VII, grant to the applicant a permit to keep any progeny of the animal born before the commencement of the Nature Conservation (Amendment) Act 1989.