



Australian Capital Territory

# **Nature Conservation Act 1980**

**A1980-20**

**Republication No 2E**

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Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

## **About this republication**

### **The republished law**

This is a republication of the *Nature Conservation Act 1980* effective 8 February 1995 to 21 June 1995.

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Australian Capital Territory

## **NATURE CONSERVATION ACT 1980**

*As at 8 February 1995*

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Australian Capital Territory

## **NATURE CONSERVATION ACT 1980**

An Act to make provision for the protection and conservation of native animals and native plants, and for the reservation of areas for those purposes

### **PART I—PRELIMINARY**

#### **Short title**

1. This Act may be cited as the *Nature Conservation Act 1980*.<sup>1</sup>

#### **Commencement**

2. This Act shall come into operation on such date as is fixed by the Minister of State for the Capital Territory by notice in the *Gazette*.<sup>1</sup>

#### **Repeal**

3. The Ordinances specified in Schedule 1 are repealed.

#### **Interpretation**

5. In this Act, unless the contrary intention appears—

“Action Plan” means an instrument prepared under section 23C;

“animal” means any member, alive or dead, of the animal kingdom (other than humans, invertebrates, fish or imported animal products) and includes—

- (a) eggs or parts of eggs;
- (b) the skin, feathers, horns, shell, or any part of the skin or shell, of an animal;
- (c) any other part of an animal; and

(d) a protected fish or a protected invertebrate;

“built-up area” has the same meaning as in the *Bushfire Act 1936*;

“Committee” means the Flora and Fauna Committee established under section 15A;

“conservation officer” means a conservation officer under section 8;

“Conservator” means the Conservator of Flora and Fauna under section 7;

“controlled organism” means an organism specified in a declaration under subsection 45AA (2);

“determined fee” means the fee determined under section 83A for the purposes of the provision in which the expression occurs;

“ecological community” means a group of ecologically related species with shared habitat characteristics that—

- (a) may inhabit a particular place;
- (b) may vary in composition within ecological limits; and
- (c) meet such additional criteria as may be prescribed;

“endangered” means—

- (a) in relation to a community—an ecological community that is in immediate danger of extinction unless the circumstances and factors threatening its distribution, composition and viability as an ecological unit cease; and
- (b) in relation to a species—
  - (i) its likely extinction unless the circumstances and factors threatening its abundance, survival or evolution cease; or
  - (ii) the reduction of its numbers or habitats to such a level that the species is in immediate danger of extinction;

“exempt animal” means an animal specified in a declaration under paragraph 17 (1) (b);

“fish” includes the eggs of fish;

“habitat” means an area—

- (a) in which an organism, or a group of organisms, lives; or
- (b) in which an organism, or a group of organisms, has lived and into which the organism or group has the potential to be reintroduced;

“imported animal product” means—

- (a) a product—
  - (i) made or derived from any part of an animal, including the eggs, skin, feathers, horns or shell, or any part of the eggs, skin or shell;
  - (ii) lawfully processed, and obtained, outside the Territory; and
  - (iii) imported into the Territory; or
- (b) a dead animal imported into the Territory;

“licence” means a licence granted under section 62;

“motor vehicle” has the same meaning as in the *Motor Traffic Act 1936*;

“native animal” means—

- (a) an animal of a kind indigenous to Australia;
- (b) an animal of a kind indigenous to the Australian coastal sea or the sea-bed and sub-soil beneath that sea;
- (c) an animal of a kind indigenous to the continental shelf of Australia or the superjacent waters;
- (d) a migratory animal of a kind that periodically or occasionally visits Australia, the Australian coastal sea or the sea over the continental shelf of Australia; or
- (e) an animal of a kind introduced into Australia, directly or indirectly, by Aboriginals before the year 1788;

other than a noxious animal;

“native plant” means—

- (a) a plant of a kind indigenous to Australia;

- (b) a plant of a kind indigenous to the Australian coastal sea or the sea-bed and sub-soil beneath that sea;
- (c) a plant of a kind indigenous to the continental shelf of Australia or the superjacent waters; or
- (d) a plant of a kind introduced into Australia, directly or indirectly, by Aboriginals before the year 1788;

other than a noxious weed;

“native timber” means timber from a tree that is a native plant, whether living or dead, including—

- (a) standing or fallen timber; and
- (b) any material from such a tree;

but not including a tree seedling;

“newspaper” means a daily newspaper published and circulating in the Territory;

“noxious animal” means an animal that has been declared under the *Rabbit Destruction Act 1919* to be a noxious animal;

“noxious weed” means a plant that has been declared under the *Noxious Weeds Act 1921* to be a noxious weed;

“Plan” has the same meaning as in the *Land (Planning and Environment) Act 1991*;

“plant” means—

- (a) any member, alive or dead, of the plant kingdom or the fungus kingdom;
- (b) any part of such a member; and
- (c) seeds;

“prohibited organism” means an organism of a kind specified in a declaration under subsection 45AA (1);

“protected fish” means a fish specified in a declaration under paragraph 17 (1) (a);

“protected invertebrate” means an invertebrate specified in a declaration under paragraph 17 (1) (a);

“protected native animal” means a native animal of a kind specified in a declaration under paragraph 17 (1) (d);

“protected native plant” means a native plant of a kind specified in a declaration under paragraph 17 (1) (c);

“reserved area” means an area of public land reserved under the Plan as a wilderness area, national park or nature reserve;

“seed” includes the fruit or spore of a plant;

“sell” includes—

- (a) exchange; and
- (b) expose for sale or exchange;

“special protection status” means the status declared by the Conservator under section 16 in relation to the members of a species;

“species” means a group of native animals (including fish or invertebrates that are indigenous to the Territory) or native plants that—

- (a) interbreed to produce fertile offspring; or
- (b) possess common characteristics derived from a common gene pool;

and includes—

- (c) a sub-species; and
- (d) a distinct population of organisms prescribed as being a species;

but does not include a prescribed species;

“statutory authority” means an authority established by or under a law of the Commonwealth or of the Territory;

“sub-species” means a geographically separate population of a species, being a population that is characterised by morphological or biological differences from other populations of that species;

“take”, in relation to a plant, includes—

- (a) gather, pluck, cut, pull up, dig up, remove or injure the plant; and

- (b) cause or permit the plant to be taken (within the extended meaning given by paragraph (a));

“threatening process”, in relation to a species or ecological community, means a process that threatens, or may threaten, the survival, abundance or evolution of the species or community;

“tree seedling” means a tree that is not more than 2 metres high;

“unleased land” does not include—

- (a) land held in fee simple; or
- (b) land that is occupied by a person in pursuance of a licence granted to him or her by the Territory or Commonwealth;

“vessel” includes hovercraft;

“vulnerable”, in relation to a species, means a species that within the next 25 years is likely to become endangered unless the circumstances and factors threatening its abundance, survival or evolution cease;

“wilderness area” means an area of public land reserved under the Plan as a wilderness area;

“working day” means a day other than a Saturday, Sunday or public holiday.

### **Application of Bushfire Act**

6. This Act shall have effect subject to the *Bushfire Act 1936*.

## **PART IA—ADMINISTRATION**

### *Division 1—The Conservator and the Service*

#### **Conservator of Flora and Fauna**

7. (1) There shall be a Conservator of Flora and Fauna.

(2) The Chief Executive shall create and maintain an office in the Government Service the duties of which include performing the functions of the Conservator of Flora and Fauna.

(3) The Conservator shall be the public servant for the time being performing the duties of the Government Service office referred to in subsection (2).

### **Conservation officers**

**8. (1)** There shall be 1 or more conservation officers.

**(2)** The Chief Executive shall create and maintain 1 or more offices in the Government Service the duties of which include performing the functions of a conservation officer.

**(3)** The following persons shall be conservation officers:

- (a) any public servant for the time being performing the duties of a Government Service office of conservation officer referred to in subsection (2);
- (b) the Conservator;
- (c) any other person appointed in writing by the Chief Executive for the purpose.

### **Identity cards**

**9. (1)** The Chief Executive shall issue to the Conservator an identity card that specifies the Conservator's name and office, and on which appears a recent photograph of the Conservator.

**(2)** The Chief Executive shall issue to a conservation officer an identity card that specifies the officer's name and office, and on which appears a recent photograph of the officer.

**(3)** Upon ceasing—

- (a) to occupy, or to act in, the office of the Conservator;
- (b) to occupy, or to act in, an office of a conservation officer; or
- (c) to be appointed as a conservation officer under paragraph 8 (3) (c);

a person shall not, without reasonable excuse, fail to return his or her identity card to the Chief Executive.

Penalty: \$100.

### **Exercise of powers**

**13.** The Conservator or a conservation officer, in exercising a power conferred on him or her under this Act, other than a power conferred by Part VII, may exercise the power with such assistance as is necessary.

**Delegation**

**14.** The Conservator may, by instrument, delegate to a conservation officer any of his or her powers under this Act.

**Australian Capital Territory Parks and Conservation Service**

**15. (1)** There is established by this Act a Service by the name of the Australian Capital Territory Parks and Conservation Service.

**(2)** The Australian Capital Territory Parks and Conservation Service shall consist of the conservation officers.

**(3)** It is the function of the Australian Capital Territory Parks and Conservation Service to assist the Conservator in the performance of his or her functions and the exercise of his or her powers under this Act.

***Division 2—Flora and Fauna Committee******Subdivision A—Establishment, functions and powers*****Establishment**

**15A.** There is established by this Act a committee by the name of the Flora and Fauna Committee.

**Functions**

**15B.** The functions of the Committee are—

- (a) to provide advice to the Minister in relation to nature conservation; and
- (b) to exercise such powers as are provided for under this Act.

**Directions to Committee**

**15C. (1)** The Minister may give the Committee general directions, in writing, in relation to nature conservation.

**(2)** The Minister shall give a copy of any direction under subsection (1) to the Conservator.

**(3)** The Conservator shall include in the annual report a copy of any direction given to the Committee by the Minister.

**Powers**

**15D.** The Committee has power to do all things necessary or convenient to be done in connection with the performance of its functions.

***Subdivision B—Constitution and meetings***

**Membership**

**15E. (1)** The Committee shall consist of 7 members appointed, in writing, by the Minister, at least 2 of whom shall not be public servants.

**(2)** The Minister shall not appoint a person as a member unless the Minister is satisfied that the person has appropriate expertise in bio-diversity or ecology.

**(3)** A member holds office as a part-time member.

**(4)** A member holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment.

**(5)** A member holds office on such terms and conditions (in respect of matters not provided for by this Part) as are determined by the Minister in writing.

**Appointment of Chairperson and Deputy Chairperson**

**15F. (1)** The Minister shall appoint from the members—

- (a) a Chairperson; and
- (b) a Deputy Chairperson.

**(2)** The Chairperson and the Deputy Chairperson shall not be public servants.

**Secretary to Committee**

**15G.** The secretary to the Committee shall be a public servant who is occupying or performing the duties of an office in the Department, nominated by the administrative head, in writing, for the purpose.

**Remuneration and allowances**

**15H. (1)** A member shall be paid such remuneration and allowances as are determined by the Minister.

**(2)** A determination under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

**Leave of absence**

**15J.** The Minister may, by writing, grant leave of absence to a member on specified terms and conditions as to remuneration or otherwise.

**Disclosure of interests**

**15K. (1)** A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Committee shall, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a Committee meeting.

**(2)** A disclosure shall be recorded in the minutes of the meeting and, unless the Minister otherwise determines, the member shall not—

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

**Resignation**

**15L.** A member may resign office, whether as Chairperson, Deputy Chairperson or member, by writing signed by him or her and delivered to the Minister.

**Termination of appointment**

**15M. (1)** The Minister may terminate the appointment of a member for misbehaviour or physical or mental incapacity.

**(2)** If a member—

- (a) without reasonable excuse, contravenes section 15K; or
- (b) is absent from duty, except on leave of absence granted by the Minister, from 3 consecutive meetings of the Committee;

the Minister shall terminate the appointment of the member.

**Acting members**

**15N. (1)** The Minister may appoint a person to act as a member of the Committee.

**(2)** The Minister shall not appoint a person to act as a member of the Committee unless the Minister is satisfied that the person has appropriate expertise in bio-diversity or ecology.

**(3)** Anything done by or in relation to a person purporting to act under subsection (1) is not invalid on the ground that—

- (a) the occasion for the person's appointment had not arisen;
- (b) there was a defect or irregularity in connection with the person's appointment;

- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

**Convening meetings**

**15P. (1)** The Chairperson, or, if he or she is unable to do so, the Deputy Chairperson, shall convene such Committee meetings—

- (a) as he or she considers necessary for the efficient performance of its functions; and
- (b) as the Minister directs by notice in writing given to the Chairperson or the Deputy Chairperson.

**(2)** Where the Chairperson or the Deputy Chairperson proposes to convene a meeting of the Committee, he or she shall, not later than 5 working days before the date of the proposed meeting, give each member a notice, in writing, specifying—

- (a) the date, time and place of the meeting; and
- (b) the matters to be considered at the meeting.

**Procedure at meetings**

**15Q. (1)** The Chairperson shall preside at all Committee meetings at which he or she is present.

**(2)** Where the Chairperson is not present at a meeting, the Deputy Chairperson shall preside.

**(3)** Where the Chairperson and the Deputy Chairperson are both absent from a meeting, the members present shall elect 1 of their number to preside.

**(4)** The member presiding at a meeting may give directions regarding the procedure to be followed in connection with the meeting.

**(5)** Questions arising at a meeting shall be decided by a majority of the votes of the members present and voting.

**(6)** The member presiding at a meeting has a deliberative vote and, in the event of an equality of votes, a casting vote.

**(7)** The Committee shall keep minutes of its proceedings.

**Quorum**

**15R.** At a meeting of the Committee, a majority of the members for the time being constitute a quorum.

**PART II—NATURE CONSERVATION STRATEGY ETC.**

**Division 1—Nature conservation strategy****Draft nature conservation strategy**

**15S. (1)** The Conservator shall, as soon as practicable after the commencement of the *Nature Conservation (Amendment) Act 1994*, prepare a draft nature conservation strategy in writing.

**(2)** A draft nature conservation strategy prepared pursuant to subsection (1) shall include proposals in relation to the protection, management and conservation of flora and fauna indigenous to the Territory.

**Variation**

**15T. (1)** The Conservator may prepare a draft variation of a nature conservation strategy in the same manner as a draft nature conservation strategy.

**(2)** This Division applies to a draft variation of a nature conservation strategy as if it were a draft nature conservation strategy.

**Public notification of draft nature conservation strategy or variations**

**15U. (1)** The Conservator shall cause to be published in the *Gazette*, and in a newspaper, a notice—

- (a)** stating that copies of a draft strategy are available for public inspection during a period of not less than 21 days specified in the notice at a place specified in the notice; and
- (b)** inviting interested persons to submit written comments about the draft strategy to the Conservator at an address specified in the notice and within that period.

**(2)** The Conservator shall make copies of the draft strategy available for public inspection during office hours during the period, and at the place, specified in the notice.

**(3)** In this section—

“draft strategy” includes a draft strategy that has been revised under subsection 15V (1).

**Revision, deferral or withdrawal of draft strategy or variations**

**15V. (1)** After the expiration of the period specified in the notice under subsection 15U (1), the Conservator may—

- (a)** confirm the draft strategy;

- (b) revise the draft strategy;
- (c) by notice published in the *Gazette* defer until a specified date, or until the occurrence of a specified event, the submission of the draft strategy to the Minister; or
- (d) by notice published in the *Gazette* withdraw the draft strategy.

(2) In confirming, revising, deferring or withdrawing a draft strategy under subsection (1), the Conservator shall consider written comments about the draft strategy received from any person.

(3) Where a draft strategy is deferred by notice under paragraph (1) (c), as soon as practicable after the date, or the event, specified in the notice, as the case may be, the Conservator shall cause to be published in the *Gazette* a notice stating that the draft strategy is revived.

#### **Submission etc. of draft strategy or variations to Minister**

**15W. (1)** Where the Conservator—

- (a) confirms a draft strategy (including a draft strategy that has been revised under subsection 15V (1)); or
- (b) publishes a notice under subsection 15V (3) in relation to a draft strategy;

the Conservator shall, after the expiration of any applicable period specified in a notice under subsection 15U (1), submit the draft strategy to the Minister for approval, together with a written report setting out the issues raised in any written comments concerning the draft strategy submitted pursuant to the invitation in that notice.

(2) Where a draft strategy is deferred by notice under subparagraph 15X (b) (v), as soon as practicable after the date, or the event, specified in the notice, as the case may be, the Conservator shall cause to be published in the *Gazette* a notice stating that the draft strategy is revived.

(3) Where the Conservator—

- (a) gives effect to a direction under paragraph 15X (b) (other than a direction under subparagraph 15X (b) (v) or (vi)); or
- (b) publishes a notice under subsection (2);

in relation to a draft strategy, the Conservator shall re-submit the draft strategy to the Minister for approval.

**Draft strategy or variations—powers of Minister**

**15X.** On receipt of a draft strategy submitted or re-submitted for approval, the Minister shall—

- (a) approve the draft strategy in the form in which it is submitted or re-submitted;
- (b) return the draft strategy to the Conservator and direct the Conservator to take any 1 or more of the following actions in relation to it:
  - (i) conduct further specified consultation;
  - (ii) consider any relevant environmental report, the report of any relevant inquiry under the *Land (Planning and Environment) Act 1991*, or any other relevant report;
  - (iii) consider any revision suggested by the Minister;
  - (iv) revise the draft strategy in a specified manner;
  - (v) defer, by notice published in the *Gazette*, the re-submission of the draft strategy to the Minister until a specified date or the occurrence of a specified event;
  - (vi) withdraw the draft strategy by notice published in the *Gazette*;  
or
- (c) reject the draft strategy.

**Notice of rejection of draft strategy**

**15Y.** Where the Minister rejects a draft strategy he or she shall cause to be published in the *Gazette*, and in a newspaper, a notice stating that the draft strategy has been rejected.

**Commencement of nature conservation strategy or variations**

**15Z. (1)** To the extent that they have not been disallowed or deemed to be disallowed under the *Subordinate Laws Act 1989*—

- (a) the provisions of an instrument prepared for the purposes of subsection 15S (1) (including any revision of the instrument) become the text of the nature conservation strategy for the Territory (in this section called the ‘strategy’); and
- (b) the provisions of an instrument prepared for the purposes of subsection 15T (1) (including any revision of the instrument) become the text of a variation of the strategy.

(2) As soon as practicable after the provisions of an instrument become the text of the strategy, or a variation of the strategy, the Minister shall cause to be published in the *Gazette* a notice specifying—

- (a) the date (not being earlier than the date of publication of that notice) on which the strategy or variation takes effect; and
- (b) the place or places where copies of the strategy or variation may be obtained;

and the strategy or variation shall take effect on that date.

*Division 2—Declarations of special protection status etc.*

**Special protection status**

**16. (1)** The Conservator may, by instrument, declare the members of a species of migratory animal to have special protection status if the protection of the species is the object, or part of the object, of an Act of the Commonwealth, or of an international agreement (however described) entered into by the Commonwealth.

(2) The Conservator shall, by instrument, declare the members of a species of native animal or native plant to have special protection status if—

- (a) he or she believes on reasonable grounds that the species is threatened with extinction; or
- (b) the Minister makes a declaration under section 21 that the species is endangered.

(3) In this section—

“migratory animal” means a migratory animal that periodically or occasionally visits Australia, the Australian coastal sea or the sea over the continental shelf of Australia.

**Declaration of protected and exempt flora and fauna**

**17. (1)** The Conservator may, by instrument, declare—

- (a) fish or invertebrates of a particular kind to be protected fish or protected invertebrates;
- (b) animals of a particular kind to be exempt animals;
- (c) native plants of a particular kind to be protected native plants; or
- (d) native animals of a particular kind to be protected native animals.

(2) In making a declaration under subsection (1), the Conservator shall take into consideration—

- (a) the need to protect native animals and native plants generally in the Territory;
- (b) the need to conserve the significant ecosystems of the Territory, New South Wales and Australia; and
- (c) in relation to a declaration under paragraph (1) (a), (c) or (d)—the specialised welfare and security requirements of the animal, plant, fish or invertebrate.

*Division 3—Declaration of species, community or process*

*Subdivision A—Criteria and guidelines for declarations*

**Criteria for recommending declaration**

**18. (1)** The Committee shall, within 6 months of its establishment, by instrument, specify criteria for assessing whether the Committee should recommend the making of a declaration under section 21.

(2) In specifying criteria for the purposes of subsection (1) the Committee shall have regard only to factors relevant to—

- (a) the conservation of a species or ecological community; or
- (b) the ecological significance of a threatening process;

in relation to the Territory and the surrounding region.

**Guidelines for recommending declaration**

**19.** The Committee shall, within 6 months of its establishment, by instrument specify guidelines for the procedures to be followed by the Committee in relation to making a decision on an application under subsection 22 (1).

**Public consultation on preparation of relevant criteria and guidelines**

**20. (1)** Before specifying criteria under section 18, the Committee shall cause a notice to be published in a newspaper—

- (a) outlining the proposed criteria; and
- (b) inviting written suggestions in relation to the inclusion of relevant criteria to be lodged with it within 28 days after the date of the invitation.

(2) Before specifying guidelines under section 19, the Committee shall cause a notice to be published in a newspaper—

- (a) outlining the proposed guidelines; and
- (b) inviting written suggestions in relation to the inclusion of relevant criteria to be lodged with it within 28 days after the date of the invitation.

(3) On receiving any such suggestions the Committee shall consider those suggestions.

### *Subdivision B—Making of declarations*

#### **Declaration of species, community or process**

21. (1) Where, having regard to the criteria specified under section 18, the Committee has reasonable grounds to believe that a species is vulnerable or endangered, the Committee shall advise the Minister of that opinion and recommend to the Minister that the species be declared to be vulnerable or endangered, as the case may be.

(2) Where, having regard to the criteria specified under section 18, the Committee has reasonable grounds to believe that an ecological community is endangered, the Committee shall advise the Minister of that opinion and recommend to the Minister that the community be declared to be an endangered community.

(3) Where, having regard to—

- (a) the criteria specified under section 18; and
- (b) the significance of a process within the Territory and the surrounding region;

the Committee has reasonable grounds to believe that the process is a threatening process, the Committee shall advise the Minister of that opinion and recommend to the Minister that the process be declared to be a threatening process.

(4) Where the Minister accepts a recommendation under this section, the Minister shall, by instrument, make the declaration sought.

#### **Request to Committee to recommend making of declaration**

22. (1) A person may make an application to the Committee requesting the Committee to recommend the making of a declaration under section 21.

- (2) An application shall be—
- (a) in writing;
  - (b) in a form approved by the Committee; and
  - (c) accompanied by a statement containing the reasons why the applicant considers that the declaration should be made.
- (3) On application, in accordance with this section, the Committee may, after considering the relevant criteria—
- (a) make the recommendation sought; or
  - (b) refuse to make that recommendation.
- (4) Where the Committee, in accordance with paragraph (3) (b), refuses to make a recommendation, the Chairperson shall give to the applicant a written notice including a statement of reasons for the decision.

#### *Division 4—Action plans*

##### **Draft Action Plan**

**23.** (1) The Conservator shall, as soon as practicable after the commencement of the *Nature Conservation (Amendment) Act 1994*, prepare, for public information, a draft Action Plan in relation to each species, ecological community or process the subject of a declaration under section 21.

- (2) A draft Action Plan prepared pursuant to subsection (1) shall include—
- (a) proposals to ensure, as far as is practicable, the identification, protection and survival of the species, or the ecological community; or
  - (b) proposals to minimise the effect of any process which threatens any species or ecological community.

##### **Variation**

**23A.** (1) The Conservator may prepare a draft variation of an Action Plan in the same manner as a draft Action Plan.

(2) Sections 23B and 23C apply to a draft variation of an Action Plan as if it were a draft Action Plan.

##### **Public notification of draft Action Plan**

**23B.** (1) The Conservator shall cause to be published in the *Gazette*, and in a newspaper a notice—

- (a) stating that copies of the draft Action Plan are available for inspection at a place specified in the notice; and
- (b) inviting interested persons to submit written comments about the draft Action Plan to the Conservator at a specified address and within a specified period, being not less than 21 days from the day on which the notice appears.

(2) The Conservator shall make copies of the draft Action Plan available for public inspection during office hours during the period, and at the place specified in the notice.

(3) The Conservator shall consider any comments lodged with him or her in accordance with an invitation under paragraph (1) (b).

### **Action Plan**

**23C.** After the expiration of the period specified in the notice under paragraph 23B (1) (a), the Conservator may, after considering any comments lodged with him or her in accordance with paragraph 23B (1) (b) and effecting any revisions, prepare an Action Plan.

### **Public notification of Action Plan**

**23D. (1)** The Conservator shall cause to be published in the *Gazette*, and in a newspaper, a notice stating that copies of the Action Plan are available for public inspection during a period of not less than 21 days specified in the notice at a place specified in the notice.

(2) The Conservator shall make copies of the Action Plan available for public inspection during office hours during the period, and at the place specified in the notice.

## ***Division 5—Tabling and disallowance***

### **Instruments to be disallowable instruments**

**23E.** A draft strategy approved by the Minister under section 15X, a draft variation approved under that section and an instrument made under section 16, 17, 18, 21 or 23C is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

**PART III—PROTECTION OF ANIMALS AND FISH****Nests of native animals**

**24. (1)** A person shall not, except in accordance with a licence, interfere with a nest of a native animal, 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.

Penalty:

- (a) if the animal has special protection status—100 penalty units or imprisonment for 12 months, or both;
- (b) in any other case—50 penalty units or imprisonment for 6 months, or both.

**(2)** A person shall not, except in accordance with a licence, interfere with a nest of a native animal, or with anything in the immediate environment of such a nest.

Penalty:

- (a) if the animal has special protection status—30 penalty units;
- (b) in any other case—20 penalty units.

**(3)** It is a defence to a prosecution for an offence under subsection (1) if it is established that the defendant believed on reasonable grounds that the alleged danger did not exist.

**(4)** It is a defence to a prosecution for an offence under subsection (1) or (2) if it is established that the defendant believed on reasonable grounds that the place, structure or object alleged to have been interfered with—

- (a) was not a nest; or
- (b) was not in the immediate environment of a nest;

as the case may be.

**(5)** In this section—

“interfere with” includes damage or destroy;

“nest”, in relation to a native animal, includes—

- (a) a particular place, structure or object that is being, 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.

### **Killing animals**

**25. (1)** A person shall not, except in accordance with a licence, kill a native animal.

Penalty:

- (a) if the animal has special protection status—100 penalty units or imprisonment for 12 months, or both;
- (b) in any other case—50 penalty units or imprisonment for 6 months, or both.

**(2)** Subsection (1) does not apply to or in relation to the killing of an animal in circumstances in which the animal constitutes a danger to a person.

### **Taking animals**

**26. (1)** A person shall not, except in accordance with a licence, take a native animal, whether dead or alive.

Penalty:

- (a) if the animal has special protection status—100 penalty units or imprisonment for 12 months, or both;
- (b) in any other case—50 penalty units or imprisonment for 6 months, or both.

**(2)** Subsection (1) does not apply to or in relation to—

- (b) the taking of an animal that is suffering from a disease, illness or injury for the purpose of treating the animal or delivering it to a conservation officer.

**26A.**<sup>2</sup> \* \* \* \* \*

### **Keeping animals**

**27. (1)** A person shall not, except in accordance with a licence, keep an animal other than an exempt animal.

Penalty:

- (a) if the animal has special protection status—100 penalty units or imprisonment for 12 months, or both;
- (b) in any other case—50 penalty units or imprisonment for 6 months, or both.

**(3)** Subsection (1) does not apply to or in relation to an animal kept by a person if—

- (a) the animal is suffering from a disease, illness or injury;
- (b) the animal is being kept by the person for the purpose of being given treatment for that disease, illness or injury or being delivered to a conservation officer; and
- (c) the period for which the animal has been kept by the person does not exceed 48 hours.

### **Selling animals**

**28. (1)** A person shall not, except in accordance with a licence, sell an animal other than an exempt animal.

Penalty:

- (a) if the animal has special protection status—100 penalty units or imprisonment for 12 months, or both;
- (b) in any other case—50 penalty units or imprisonment for 6 months, or both.

### **Import and export of animals**

**29. (1)** A person shall not, except in accordance with a licence, import into or export from the Territory an animal other than an exempt animal.

Penalty:

- (a) if the animal has special protection status—100 penalty units or imprisonment for 12 months, or both;
- (b) in any other case—50 penalty units or imprisonment for 6 months, or both.

### **Dealing in live fish**

**30. (1)** A person shall not, except in accordance with a licence—

- (a) sell a live fish; or
- (b) import a live fish into, or export a live fish from, the Territory.

Penalty:

- (a) if the fish has special protection status—100 penalty units or imprisonment for 12 months, or both;
- (b) in any other case—50 penalty units or imprisonment for 6 months, or both.

**(2)** Subsection (1) does not apply to or in relation to—

- (c) the sale of a live fish, or the importation into, or the exportation from, the Territory of a live fish, by a person who took the fish in pursuance of a professional fisherman's licence granted under the *Fishing Act 1967*.

#### **Release of animals from captivity**

**39.<sup>2</sup> (1)** A person shall not, except in accordance with a permit, release an animal that is wildlife from captivity if the release places it in greater danger of injury or death than if it had been kept in captivity.

Penalty:

- (a) if the animal has special protection status—100 penalty units or imprisonment for 12 months, or both;
- (b) in any other case—50 penalty units or imprisonment for 6 months, or both.

**(1A)** 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.

Penalty: 50 penalty units.

**(1B)** A person shall not, except in accordance with a permit, release an animal from captivity.

Penalty: 50 penalty units.

**(1C)** It is a defence to a prosecution for an offence under subsection (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.

**(1D)** It is a defence to a prosecution for an offence under subsection (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.

**(2)** Subsections (1) and (1B) do not apply to or in relation to a person who—

- (a) finds and takes an animal that is wildlife, being an animal that is suffering from a disease, illness or injury; and
- (b) within 48 hours of having taken the animal—
  - (i) treats the animal; and
  - (ii) releases it within 500 metres of the place where it was taken.

### **Escape of animals**

**40.** Where a native animal escapes from custody—

- (a) the interest held by any person in the animal is divested from that person; and
- (b) any licence held by a person in respect of the animal ceases to apply to the animal.

## **PART IV—PROTECTION OF PLANTS**

### **Taking plants**

**42. (1)** A person shall not, except in accordance with a licence, take a plant that—

- (a) has special protection status;
- (b) is a protected native plant; or
- (c) is a native plant growing on unleased land.

Penalty:

- (a) if the plant has special protection status—100 penalty units or imprisonment for 12 months, or both;

- (b) if the plant does not have special protection status but the court finds that the defendant intended to sell it—50 penalty units or imprisonment for 6 months, or both;
- (c) in any other case—50 penalty units.

(2) Subsection (1) does not apply where—

- (a) an occupier of land not in a built-up area—
  - (i) cultivates a protected native plant on the land; or
  - (ii) takes seeds from a protected native plant growing on the land for the purposes of cultivating such a plant on the land;
- (b) an occupier of land takes a protected native plant growing on the land which had been planted or caused to be planted by the occupier;
- (c) a person takes seeds for domestic use from a native plant (other than a plant having special protection status or a protected native plant) growing on unleased land;
- (d) an occupier of land in a built-up area takes a protected native plant growing on the land;
- (e) an occupier of land outside any built-up area takes a protected native plant in the course of preparing or using the land for primary production in accordance with the lease or licence under which the land is occupied; or
- (f) a conservation officer or public servant takes a native plant in the performance of his or her functions.

(4) Where, in a prosecution for an offence against subsection (1), the plant to which the offence relates is seaweed, it is a defence to the prosecution that the quantity of seaweed picked by the defendant was not reasonably sufficient to enable the seaweed to be used for commercial purposes.

(5) In this section—

“cultivates”, in relation to a native plant, means sowing its seeds, fertilising it, applying chemicals to it or trimming, lopping or digging it up—

- (a) for a purpose reasonably beneficial to the plant, or to a protected native plant growing in close proximity; or
- (b) for the purpose of its propagation;

“native plant” does not include native timber;

“protected native plant” does not include native timber.

### **Preservation of native timber**

**43. (1)** A person shall not, without reasonable excuse—

- (a) fell, or cause to be felled, standing native timber; or
- (b) damage, or cause to be damaged, standing native timber;

except in accordance with a licence.

Penalty: \$5,000.

**(2)** Subsection (1) does not apply in relation to felling or damage of native timber on leased land outside the built-up area where—

- (a) the timber was planted by or on behalf of an occupier and felled or damaged by or on behalf of that occupier or a subsequent occupier;
- (b) in the case of timber which is felled—in the opinion of the person responsible for the felling, based on reasonable grounds, the felling of the timber was necessary to avert an immediate danger of injury to a person or damage to property; or
- (c) the timber is felled or damaged with the intention of using it on the land for a purpose other than sale or trade.

**(3)** A person shall not, without reasonable excuse, remove or cause to be removed fallen native timber, except in accordance with a licence.

Penalty: \$5,000.

**(4)** A person shall not without reasonable excuse damage, or cause to be damaged, fallen native timber on unleased land, except—

- (a) in accordance with a licence; or
- (b) if the timber has a diameter of less than 10 centimetres.

**(4A)** Subsections (1), (3) and (4) do not apply in relation to the felling, removal or damage of native timber—

- (a) by a conservation officer, or a public servant, in the performance of his or her functions; or
- (b) with the authority of the Conservator.

**(5)** In addition to the penalty that may be imposed for an offence against this section involving the felling or removal of native timber, the court may

order the defendant to pay to the Territory an amount equal to the value of the timber felled or removed in contravention of this section.

(6) Where the court makes an order under subsection (5), the same proceedings may be taken upon the order as if it were a judgment of the Magistrates Court entered in civil proceedings in favour of the Territory.

(7) In this section—

“removal” means—

- (a) in relation to native timber on leased land—removal of the timber from the land subject to the lease; or
- (b) in relation to native timber on unleased land—removal from the immediate vicinity.

#### **Dealing in protected native plants**

44. (1) A person shall not, except in accordance with a licence—

- (a) sell a protected native plant; or
- (b) import into the Territory, or export from the Territory, a protected native plant for the purposes of sale or trade.

Penalty:

- (a) if the plant has special protection status—100 penalty units or imprisonment for 12 months, or both;
- (b) in any other case—50 penalty units or imprisonment for 6 months, or both.

(2) Nothing in subsection (1) applies to or in relation to the importation into the Territory of native timber.

#### **Plant tags**

45. (1) A person shall not sell or export from the Territory a protected native plant, or a plant that has special protection status, other than a seed or a dead plant, unless there is attached to the plant a tag of an approved kind on which the particulars referred to in subsection (2) are clearly and indelibly marked.

Penalty:

- (a) if the plant has special protection status—50 penalty units; and

(b) in any other case—25 penalty units.

(2) The particulars to be marked on a tag for the purpose of subsection (1) are—

- (a) the name of the person proposing to sell or export the plant; and
- (b) the botanical name and common name (if any) of the plant.

(3) For the purposes of subsection (1), a tag shall be taken to be a tag of an approved kind if it is made of metal, plastic, cloth or some other durable material.

## **PART IVA—PROHIBITED AND CONTROLLED ORGANISMS**

### **Declarations**

**45AA.** (1) The Conservator may, by instrument, declare organisms of a particular kind to be prohibited organisms.

(2) The Conservator may, by instrument, declare organisms of a particular kind to be controlled organisms.

(3) In making a declaration under this section, the Conservator shall consider—

- (a) the need to protect native animals and native plants in the Territory; and
- (b) the need to conserve the significant ecosystems of the Territory, New South Wales and Australia.

(4) A declaration under this section is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

### **Possession of prohibited organisms**

**45AB.** A person shall not possess a prohibited organism, except in accordance with a licence.

Penalty: \$5,000.

### **Controlled organisms**

**45AC.** A person shall not perform an action prescribed by the regulations in relation to a controlled organism, except in accordance with a licence.

Penalty: \$5,000.

## PART V—CONSERVATION DIRECTIONS

### Interpretation

**45A.** In this Part—

“native animal” includes any live fish.

### Entry onto land for purpose of carrying out examination

**46. (1)** Subject to subsection (2), a conservation officer may enter land and carry out on the land such investigations and examinations in relation to native animals or native plants on the land as the conservation officer considers necessary or desirable for the purpose of ensuring the protection and conservation of those animals or plants.

**(2)** A conservation officer shall not enter occupied land, or exercise a power conferred by subsection (1) in relation to occupied land, unless—

- (a)** he or she has received permission in writing to do so from the occupier of the land; or
- (b)** he or she has, not less than 24 hours before entering the land, given the occupier written notice of intention to enter the land.

**(3)** Where an occupier (not being the Territory or Commonwealth or a statutory authority) of land suffers loss or damage by reason of the exercise, in relation to the land, of a power conferred by this section, there is due to the person by the Territory such amount as is necessary to compensate the person for the loss or damage suffered by him or her.

### Conservation directions

**47. (1)** The Conservator may give the occupier of land directions for the protection or conservation of native animals, native plants and native timber on the land.

**(2)** Directions under subsection (1) shall—

- (a)** specify a period, expiring no earlier than 14 days after the date of the directions, within which the directions are to be complied with; and
- (b)** be in accordance with the criteria determined under section 50.

**(3)** A person to whom directions are given in accordance with this section shall not, without reasonable excuse, fail to comply with the directions within the time specified in the directions.

**Penalty:**

- (a) if the directions relate to the protection or conservation of native animals or plants having special protection status—\$10,000;
- (b) in any other case—\$5,000.

**Diseased native animals and plants****49.**

**(2)** Where the Conservator has reasonable cause to believe—

- (a) that a native animal or a native plant is suffering from a disease; and
- (b) that it is necessary or desirable for treatment of a particular kind to be carried out in connection with that disease,

the Conservator may, by notice in writing, direct the owner of the animal or plant, within such period as is specified in the notice, to carry out that treatment.

**(2A)** The Conservator shall only issue a notice under subsection (2) in accordance with the criteria determined under section 50.

**(3)** Where a notice is given to a person under subsection (2) and—

- (a) the person does not comply with the notice; or
- (b) the notice is complied with but the animal or plant does not, within a reasonable time, respond satisfactorily to the treatment;

the Conservator may, by notice in writing, require the person, within such period as is specified in the notice, to deliver up the animal or plant to the Conservator or to destroy it.

**(4)** If a person to whom a notice in respect of a native animal is given under subsection (3) fails to comply with the notice, a conservation officer may—

- (a) enter the land or premises where the animal is kept; and
- (b) seize the animal.

**(5)** A conservation officer may, in respect of an animal seized by the officer under subsection (4)—

- (a) carry out such treatment, and dispose of the animal in such manner, as he or she thinks fit; or

- (b) destroy the animal.

**Conservation criteria**

**50. (1)** The Conservator may, by instrument, determine criteria for the purposes of paragraph 47 (2) (b) and subsection 49 (2A).

**(2)** A determination under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

**PART VI—RESERVED AREAS**

***Division 2—Restriction on activities within reserved areas and wilderness zones***

**Access to reserved areas**

**53. (1)** The Conservator may—

- (a) restrict access to a reserved area, or part of a reserved area, to certain persons or persons included in a class of persons; or
- (b) prohibit access to a reserved area, or part of a reserved area,

where he or she has reasonable cause to believe that—

- (c) public safety would be endangered; or
- (d) the management of the reserved area, or that part of the reserved area, would be interfered with,

by public access to the reserved area, or that part of the reserved area.

**(2)** Notice of a restriction or prohibition under subsection (1) shall—

- (a) be published in a newspaper circulating in the Territory; and
- (b) be prominently displayed at all entrances to the reserved area or part of the reserved area.

**(3)** A person who, or a person included in a class of persons which, is, by virtue of subsection (1), prohibited from entering a reserved area or part of a reserved area shall not enter the reserved area or that part of the reserved area.

Penalty: 50 penalty units.

**(4)** It is a defence to a prosecution for an offence against subsection (3) that—

- (a) the presence of the defendant in the reserved area, or the part of the reserved area, as the case may be—
  - (i) was due to the existence of an emergency; or
  - (ii) was unavoidable by the taking of reasonable care; or
- (b) the defendant had no reasonable grounds for suspecting that entry into the reserved area, or part of the reserved area, was prohibited under subsection (1).

#### **Fees for entrance to reserved areas**

**53A. (1)** The determined fee may be charged for entry into a reserved area.

**(2)** If, at the request of a conservation officer, a person fails to pay the fee for entry into a reserved area, he or she shall not enter the area.

Penalty: \$2,000.

#### **Signs in reserved areas**

**54. (1)** The Conservator may authorize the erection, at or near the entrances to a reserved area or a part of a reserved area, of signs containing directions to be followed by, warnings for the guidance of, and requirements to be observed by, persons entering the reserved area or that part of the reserved area.

**(2)** A person in a reserved area shall not contravene a direction or requirement on a sign erected in pursuance of subsection (1).

Penalty: 10 penalty units.

**(3)** Unless the contrary is proved, evidence that a sign was erected at or near the entrance to a reserved area or a part of a reserved area is evidence that it was erected with the authority of the Conservator.

#### **Rubbish and fires in reserved areas**

**55. (1)** A person shall not, in a reserved area, cause any rubbish or litter to be placed elsewhere than in a receptacle provided for the purpose by the Conservator.

Penalty: 10 penalty units.

**(2)** A person shall not, in a reserved area, light, maintain or use a fire otherwise than in—

- (a) a portable barbecue or portable stove, being a barbecue or stove in which heat is provided by the combustion of liquefied petroleum gas;
- (b) a fireplace made available by the Conservator; or
- (c) a location approved by the Conservator.

Penalty: 50 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2)—
- (a) that the fire was lit, maintained or used by the defendant in circumstances that constituted an emergency; or
  - (b) that the defendant had no reasonable grounds for suspecting that the fire was within a reserved area.

#### **Activities in reserved areas**

**56. (1)** A person shall not, in a reserved area, without the consent in writing of the Conservator—

- (a) drive or park a motor vehicle except on a road or track or in a part of the reserved area that is designated to be an area in which the driving or parking of motor vehicles is permitted;
- (b) moor a vessel except in a part of the reserved area that is designated to be an area in which the mooring of vessels is permitted;
- (c) camp except in a part of the reserved area that is designated to be an area in which camping is permitted;
- (d) erect a building, booth, stall, post, sign or other structure;
- (e) supply goods or services; or
- (f) plant a plant.

Penalty: 30 penalty units.

**(2)** A person shall not, in a reserved area, without the consent in writing of the Conservator, use or possess—

- (a) a firearm of any kind;
- (b) a spear, spear gun, bow or arrow;
- (c) a trap, net, snare or other device designed, or capable of use, for the taking or capturing of animals; or

- (d) any substance that is capable of being used for the taking or capturing of animals.

Penalty: 50 penalty units.

(3) A person shall not, in a reserved area, without the consent in writing of the Conservator—

- (a) damage or destroy a natural or constructed structure or feature; or
- (b) damage or destroy a site, or remove an object, of historical, archaeological, palaeontological or geological interest.

Penalty: 50 penalty units.

(3A) For the purposes of paragraph (1) (a), driving or parking a motor vehicle is not to be taken to be permitted on or adjacent to a road to which access is barred by a gate or a barrier.

(4) The Conservator shall not give consent under subsection (1) in respect of any of the matters referred to in paragraph (1) (d) or (e) where the reserved area is, or forms part of, a wilderness area.

(5) Nothing in subsection (2) applies to or in relation to the use or possession of a firearm by a member of the Australian Federal Police while acting in his or her capacity as such a member.

### **Taking animals and plants into reserved areas**

57. (1) A person shall not—

- (a) without the consent in writing of the Conservator, take into, or knowingly permit to enter, a reserved area an animal other than a native animal; or
- (b) take a noxious weed into a reserved area.

Penalty: 5 penalty units.

(2) Subsection (1) does not apply to or in relation to the taking by a blind person of his or her guide dog into a reserved area.

(3) In a prosecution for an offence against subsection (1), evidence that a person had an animal in possession in a reserved area is evidence that the person took the animal into or knowingly permitted the animal to enter, the reserved area.

### **Powers of conservation officers in reserved areas**

**58. (1)** A conservation officer may, in a reserved area—

- (a) require any person whom he or she finds acting, or whom he or she reasonably suspects of having acted, in an offensive manner, or in such a manner as to create a public nuisance, to leave the reserved area; and
- (b) require any person whom he or she reasonably suspects of having done an act in respect of which the person is required to hold an authority under this Act to produce the authority or evidence of the authority.

(2) Where a conservation officer makes a requirement of a person under subsection (1), the conservation officer shall produce his or her identity card for inspection by that person and, if he or she fails to do so, that other person is not obliged to comply with the requirement.

(3) Subject to subsection (2), a person shall not, without reasonable excuse, contravene a requirement made of him or her by a conservation officer under subsection (1).

Penalty: 50 penalty units.

(4) It is a defence to a prosecution for an offence against this section of contravening a requirement to produce an authority or evidence of an authority for the doing of an act if the authority or evidence is, within 2 working days after the requirement was made, produced at the office of the Conservator for inspection by a person apparently employed at that office.

(5) In this section—

“authority” includes a licence.

### **Offences in wilderness zones**

**59.** A person shall not, in a wilderness area—

- (a) excavate, except in accordance with a licence;
- (b) establish a track or road; or
- (c) use a motor vehicle except on a track or road that—
  - (i) was formed for the use of vehicles having 4 or more wheels; and
  - (ii) was in existence at the time of the declaration of the wilderness area.

Penalty: 50 penalty units.

### **Compensation**

**60. (1)** In a prosecution for an offence against this Part involving damage to a reserved area, the court may, in addition to the penalty that may be imposed, order the defendant to pay to the Territory an amount equal to the amount incurred or to be incurred by the Territory in making good the damage.

**(2)** Where the court makes an order under subsection (1), the same proceedings may be taken upon the order as if it were a judgment of the Magistrates Court entered in civil proceedings in favour of the Territory.

### **Restoration of excavation sites by permit holders**

**60A. (1)** A person who excavates a site in a wilderness area in accordance with a licence shall, after completing the excavation, restore the site excavated and its surroundings as far as possible to their former state.

**(2)** If, in the opinion of the Conservator based on reasonable grounds, a person fails to comply with subsection (1), that person shall pay to the Territory an amount equal to any amount incurred by the Territory in restoring the site excavated and its surroundings to their former state.

## **PART VIA—MANAGEMENT AGREEMENTS**

### **Interpretation**

**60AA.** In this Part—

“activities” means—

- (a) in relation to an agency which supplies gas, electricity, water or sewerage services—construction, repair or maintenance carried out by the agency in association with the supply of those services;
- (b) the construction, repair and maintenance of navigation serving beacons and telecommunications towers; or
- (c) in relation to an agency responsible for the development of land—the agency’s development activities;

“agency” means—

- (a) a supplier of gas, electricity, water or sewerage services;

- (b) a person responsible for the construction, repair and maintenance of navigation serving beacons and telecommunications towers; or
- (c) a person responsible for a development of land;

“controlled land” means—

- (a) public land; or
- (b) Territory Land which is not subject to a lease within the meaning of subsection 159 (1) of the Land Act;

“development”, in relation to land, means—

- (a) the erection, alteration or demolition of a building on the land;
- (b) the carrying on of work on the land;
- (c) the use or change of use of the land;
- (d) the use or change of use of a building or works on the land; or
- (e) the subdivision or consolidation of the land;

“Land Act” means the *Land (Planning and Environment) Act 1991*;

“land management objectives” means—

- (a) in relation to public land—management objectives applicable under section 195 of the Land Act, as applied by any Plan of Management for that land under Subdivision D of Division 5 of Part V of the Land Act; and
- (b) in relation to any controlled land—
  - (i) any objectives, policies or purposes specified in the Territory Plan for that land; and
  - (ii) the objective of the conservation of the qualities of the natural environment on, and in the vicinity of, the land;

“management agreement” means an agreement under section 60AB between the Conservator and an agency;

“natural environment” means all biological, physical and visual elements of the earth and its atmosphere, whether natural or modified;

“public land” means land identified as such in the Territory Plan;

“Territory Land” has the same meaning as in the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth;

“Territory Plan” means the Territory Plan as in force from time to time under the Land Act.

### Management agreements

**60AB. (1)** The Conservator may propose a management agreement to an agency if—

- (a) the activities of the agency affect, or may affect, controlled land; and
- (b) in the opinion of the Conservator, those activities may conflict with the land management objectives for that land.

**(2)** A management agreement shall set out standards and conditions for avoiding or minimising any conflict with land management objectives for controlled land which might arise as a result of the agency’s activities.

**(3)** A management agreement may deal with matters including the following:

- (a) access to land;
- (b) fire management;
- (c) drainage;
- (d) management and maintenance of public or private facilities;
- (e) rehabilitation of land or public or private facilities;
- (f) indemnities;
- (g) emergency procedures;
- (h) internal stockpiling;
- (i) fencing;
- (j) feral animals and weed control.

**(4)** Notwithstanding subsections (2) and (3), a management agreement shall not conflict with—

- (a) an approval within the meaning of section 222 of the Land Act; or
- (b) an implementation plan approved under section 6AC of the *Buildings (Design and Siting) Act 1964*.

### **Formulation of agreements**

**60AC. (1)** The Conservator shall consult with the agency in formulating a management agreement, and shall consider any representations made on behalf of the agency about the proposed agreement.

**(2)** The Conservator shall submit a proposed management agreement with an agency to the agency together with a notice stating the date of submission and the consequences under this Part of—

- (a) a refusal to sign the proposed agreement; and
- (b) breach of a term of the agreement, if the agreement is entered into.

**(3)** If an agency decides to enter into a management agreement submitted to it under subsection (2), the agency shall return the agreement to the Conservator, signed on behalf of the agency, within 28 days after the date of submission.

### **Refusal to enter into management agreement**

**60AD. (1)** If an agency refuses to enter into a management agreement, the Territory may recover from the agency any cost reasonably incurred by the Territory in connection with the repair of any damage to controlled land caused by the agency's activities.

**(2)** An agency is to be taken to have refused to enter into a management agreement if—

- (a) the agency notifies the Conservator accordingly in writing; or
- (b) the agency does not return the agreement to the Conservator in accordance with subsection 60AC (3).

### **Activities inconsistent with management agreement**

**60AE.** If an agency enters into a management agreement, the Territory may recover from the agency any cost reasonably incurred by the Territory in connection with the repair of any damage to controlled land caused by activities of the agency inconsistent with the agreement.

## **PART VII—LICENCES**

### **Applications for permits and licences**

**61.<sup>2</sup> (1)** An application for the grant of a permit or licence—

- (a) shall be in writing and signed by the applicant;

- (b) shall be lodged with the Conservator;
- (c) shall state the full name and address of the applicant;
- (d) shall clearly indicate the nature of the activity in respect of which the permit or licence is sought;
- (e) shall specify the species of animals, fish or plants in respect of which the permit or licence is sought;
- (f) shall specify the number of animals, fish or plants in respect of which the permit or licence is sought;
- (g) in the case of an application relating to the felling or removal of timber—shall specify the quantity of timber in respect of which the permit or licence is sought;
- (h) except in the case of an application referred to in paragraph (j) or (k)—shall specify each place at which the activity in respect of which the permit or licence is sought is proposed to be carried on;
- (j) in the case of an application relating to the taking of an animal that is wildlife—
  - (i) shall describe the land from which the animal is proposed to be taken; and
  - (ii) shall specify the place at which it is proposed to keep the animal;
- (k) in the case of an application relating to the importation into, or exportation from, the Territory of animals or live fish—shall specify the place at which, following importation, or prior to exportation, it is proposed to keep the animals or fish;
- (ka) in the case of an application relating to wildlife which has special protection status—
  - (i) shall state that the wildlife to which the application relates has special protection status; and
  - (ii) shall specify on which of the grounds set out in subsection 63A (1) the permit is being sought;
- (kb) where an application relating to wildlife which has special protection status is being sought on the ground set out in paragraph 63A (1) (a)—

- (i) shall state the applicant's place of employment and relevant qualifications;
    - (ii) shall describe any relevant studies that have been or are being undertaken by the applicant; and
    - (iii) shall supply any other relevant information about the purpose for which the application is made;
  - (kc) in the case of an application for a permit to excavate in a wilderness area, shall specify—
    - (i) the objectives of the relevant archaeological investigation;
    - (ii) the archeological qualifications and experience of the applicant; and
    - (iii) each natural person or body (whether or not incorporated) sponsoring that archaeological investigation; and
  - (l) shall contain such other information as is prescribed.
- (2)** In addition to complying with the requirements of subsection (1), an application for a relevant authorization shall be accompanied by—
- (a) a certificate by the Minister that, in the opinion of the Minister, the carrying on of the activity in respect of which the application is made at each place specified in the application in pursuance of paragraph (1) (h), subparagraph (1) (j) (ii) or paragraph (1) (k), as the case may be, is not prohibited—
    - (i) if the place is situated on, or is constituted by, land held under a lease granted by or in the name of the Commonwealth—by the provisions of that lease or by the Act under which that lease was granted; or
    - (ii) if the place is situated on, or is constituted by, land in relation to which a licence to occupy has been granted by the Territory or Commonwealth—by the terms of that licence; or
  - (b) a copy of an order of the Supreme Court declaring that the carrying on of the activity in respect of which the application is made at each such place is not so prohibited.
- (3)** Jurisdiction to hear and determine an application for an order for the purposes of paragraph (2) (b) is vested in the Supreme Court.

- (4) In this section, “relevant authorization” means—
- (a) a permit or licence authorizing the sale of animals or live fish;
  - (b) a permit or licence authorizing the importation into, or exportation from, the Territory, for the purposes of sale or trade, of animals or live fish;
  - (c) a licence authorizing the taking of an animal that is wildlife; and
  - (d) a licence authorizing the felling or removal of timber where the applicant for the licence is the occupier of the land in respect of which the licence is sought.

### **Grant of permit**

**62.<sup>2</sup> (1)** The Conservator may grant to a person who has made an application in accordance with section 61 a permit of the kind applied for.

- (2) The Conservator shall not grant a permit authorizing—
- (a) the sale of more than 5 animals; or
  - (b) the importation into, or exportation from, the Territory, for the purposes of sale or trade, of more than 5 animals.
- (3) A permit authorizing—
- (a) the sale of an animal; or
  - (b) the importation into, or exportation from, the Territory of an animal for the purposes of sale or trade,

shall not be granted for a period exceeding 12 months.

- (4) The Conservator shall not grant a permit to a person authorizing—
- (a) the sale of live fish; or
  - (b) the importation into, or exportation from, the Territory of live fish for the purposes of sale or trade,

except in connection with a hobby carried on by the person otherwise than for the purpose of profit or gain.

(5) The Conservator shall not grant a permit authorizing a person to fell timber on, or remove timber from, land that is, or forms part of, a wilderness area.

(6) The Conservator shall not grant a permit authorizing the felling or removal of timber except in respect of land that is unleased land.

(7) The Conservator may grant a permit subject to such conditions as he or she thinks fit.

### **Permits to excavate or to pick plants in wilderness areas**

**62A.<sup>2</sup> (1)** The Conservator shall not grant a permit authorising excavation in a wilderness area unless that excavation is for the purposes of an archaeological investigation.

(2) The Conservator shall not grant a permit authorising excavation in a wilderness area for a period exceeding 12 months.

(3) Where a person applies for a permit to pick plants for the purposes of an archaeological investigation in a wilderness area, the Conservator shall not grant that permit unless he or she also grants a permit to that person authorising excavation for the purposes of that investigation.

### **Grant of licence**

**63.<sup>2</sup> (1)** The Conservator may, upon payment of the fee determined pursuant to section 83A for the purposes of this section, if any, grant to a person who has made an application in accordance with section 61 a licence of the kind applied for.

(2) The Conservator shall not grant a licence authorizing the felling of timber on, or the removal of timber from, land referred to in paragraph 43 (1) (c) unless the application for the licence is made by, or with the consent of, the Territory or Commonwealth, as the case may be.

(3) The Conservator shall not grant a licence authorizing a person to fell timber on, or remove timber from, land that is, or forms part of, a wilderness area.

(4) The Conservator may grant a licence subject to such conditions as he or she thinks fit.

### **Grant of permits and licences—wildlife having special protection status**

**63A.<sup>2</sup> (1)** The Conservator shall not grant a permit or licence authorising a person to do any act in relation to wildlife which has special protection status except on 1 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;
- (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 for the hunter or gatherer and his or her family, or for cultural purposes, and that the applicant is such an inhabitant who intends to carry out the relevant act for such purposes.

(2) In deciding whether to grant a permit or licence on the ground specified in paragraph (1) (c), 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.

(3) In deciding whether to grant a permit or licence on the ground specified in paragraph (1) (d), 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.

#### **Refusal of permit or licence**

**64.**<sup>2</sup> Where the Conservator refuses an application for a permit or licence, the Conservator shall notify the applicant in writing of the refusal.

#### **Grant of permits and licences—relevant considerations**

**65.**<sup>2</sup> (1) For the purpose of determining an application for a permit or licence, the Conservator shall have regard to—

- (a) the effect the carrying on of the activity in respect of which the permit or licence is sought is likely to have on—
  - (i) a species of wildlife already found in the Territory;
  - (ii) the significant ecosystems of the Territory; and
  - (iii) in the case of a permit or licence relating to a species of wildlife the members of which have special protection status—the world-wide survival of the wild populations of the species;

- (b) in the case of an application relating to animals that are wildlife or live fish—the degree of distress, and the rate of morbidity or mortality, that is likely to be suffered by the animals or fish;
- (c) in the case of an application for a licence to sell animals that are wildlife—the extent, if any, to which the applicant, for the purpose of carrying on the activity of selling animals of that kind, proposes to deal in animals raised in captivity;
- (d) in the case of an application for a permit or licence to sell an animal and in the case of an application for a permit or licence to import an animal into the Territory—the likelihood of the animal becoming a feral or noxious animal;
- (e) in the case of an application for a permit or licence to sell live fish and in the case of an application for a permit or licence to import live fish into the Territory—
  - (i) the likelihood of the fish becoming a threat to the continuance of a species of fish already found in waters of the Territory; and
  - (ii) the likelihood of the fish having any other harmful effect whatsoever;
- (f) in the case of an application for a permit or licence in pursuance of which the applicant proposes to keep animals or live fish—the place or places at which the animals or fish are proposed to be kept and the suitability of the facilities at that place or those places for the keeping of animals or fish, as the case requires;
- (g) in the case of an application by a person, being an individual, for a licence to sell animals or live fish—the qualifications and experience possessed by the applicant relating to the handling, keeping or breeding of animals or fish;
- (h) in the case of an application by a person, being a body corporate, for a licence to sell animals or live fish—the qualifications and experience possessed by the officers or employees of the applicant relating to the handling, keeping or breeding of animals or fish;
- (j) in the case of an application for a permit or licence to export an animal or live fish from the Territory—the degree to which exportation of animals or fish of the species to which the application relates is likely to threaten the continuance in the Territory of that, or another, species of animal or fish;

- (k) in the case of an application by a person, being an individual, for a permit or licence to pick plants that are wildlife—
  - (i) the purpose for which the plants are required; and
  - (ii) the qualifications possessed by the applicant relating to the science of botany;
- (l) in the case of an application by a person, being a body corporate, for a permit or licence to pick plants that are wildlife—
  - (i) the purpose for which the plants are required; and
  - (ii) the qualifications possessed by the officers or employees of the applicant relating to the science of botany;
- (m) in the case of an application for a permit or licence to fell or remove timber—the effect of the felling of timber on, or the removal of timber from, the land to which the application relates is likely to have on that land;
- (n) in the case of an application for a permit or licence to pick plants that are restricted plant wildlife—the effect the picking of the plants will have on the area in which the plants are growing;
- (o) in the case of an application for a permit or licence relating to wildlife having special protection status—each ground on which the Conservator declared the wildlife to have special protection status; and
- (p) in the case of an application for a permit to excavate in a wilderness area—
  - (i) the objectives of the relevant archaeological investigation, including any expected contribution to the understanding of aboriginal prehistory or Australian history in general;
  - (ii) the archaeological qualifications and experience of the applicant; and
  - (iii) the nature of each natural person or body (whether or not incorporated) sponsoring the archaeological investigation.

(2) Subparagraphs (1) (k) (ii) and (1) (l) (ii) do not apply in the case of an application for a permit to pick plants for the purposes of an archaeological investigation.

### **Contents of permits and licences**

- 66.**<sup>2</sup> A permit or licence shall be in writing and shall specify—
- (a) the name and address of the person to whom the permit or licence is granted;
  - (b) the period for which the permit or licence is granted;
  - (c) the activity in respect of which the permit or licence is granted;
  - (d) either the species of animals, fish or plants to which the permit or licence applies or the species of animals, fish or plants to which the permit or licence does not apply;
  - (e) the number of animals, fish or plants to which the permit or licence applies;
  - (f) the conditions, if any, to which the permit or licence is subject;
  - (g) in the case of a permit authorizing the killing of an animal that is wildlife—the land upon which, and the manner in which, the animal may be killed;
  - (h) in the case of a permit authorizing the keeping of an animal that is wildlife—the place at which the animal may be kept;
  - (j) in the case of a permit or licence authorizing the taking of an animal that is wildlife—
    - (i) the land from which the animal may be taken; and
    - (ii) the place at which the animal may be kept;
  - (k) in the case of a permit or licence authorizing the sale of an animal or live fish—the place at which the animal or fish, as the case may be, may be kept for the purposes of sale;
  - (l) in the case of a permit or licence authorizing the importation into, or exportation from, the Territory of an animal or live fish—the place at which the animal or fish, as the case may be, may, after importation, or prior to exportation, be kept;
  - (m) in the case of a permit or licence authorizing the picking of plants that are wildlife—the land to which the permit or licence applies;
  - (n) in the case of a permit or licence authorizing the felling or removal of timber—the quantity of timber and the land to which the permit or licence applies; and

- (o) in the case of a permit or licence relating to a species of wildlife the members of which have special protection status—the ground specified in subsection 63A (1) on which the permit or licence is granted.

### **Nature of rights conferred by licences**

- 67.** The grant of a licence does not authorise the licensee to enter upon—
- (a) land held in fee simple;
  - (b) land held under a lease granted by or in the name of the Commonwealth; or
  - (c) land that is occupied by a person in pursuance of a licence granted to the person by the Territory or Commonwealth.

### **Cancellation**

- 69.** The Conservator may cancel a licence where—
- (a) the licensee is convicted of an offence against this Act;
  - (b) the licensee fails to comply with a licence condition; or
  - (c) since the granting of the licence, a change has occurred in relation to a matter that was taken into account in determining the application for the licence and the Conservator is of the opinion that the change is such as to necessitate the cessation of the activity in respect of which the licence was granted.

### **Production of licences**

**70.** A licensee shall, within 2 working days of being so requested by a conservation officer, produce the licence at the office of the Conservator for inspection by a person apparently employed at that office.

Penalty:

- (a) if the licence relates to an animal with special protection status—10 penalty units;
- (b) in any other case—5 penalty units.

### **Records to be kept by licence holders**

**72. (1)** A holder of a licence relating to animals who keeps an animal, not being an exempt animal shall keep such records as are prescribed.

(2) A holder of a licence relating to live fish who keeps live fish shall keep such records as are prescribed.

(3) A holder of a licence relating to native plants who sells or exports from the Territory such plants shall keep such records as are prescribed.

Penalty:

- (a) if the animal or fish kept, or plant sold or exported, as the case requires, has special protection status—20 penalty units;
- (b) in any other case—10 penalty units.

### **Production of records**

73. A person who is, by virtue of section 72, required to keep records shall, within 2 working days of being so requested by a conservation officer, produce at the office of the Conservator for inspection by a person apparently employed at that office such records as the first-mentioned person is so required to keep.

Penalty: 50 penalty units.

## **PART VIII—REVIEW BY THE ADMINISTRATIVE APPEALS TRIBUNAL**

### **Review of decisions of Conservator and conservation officers**

74.<sup>2</sup> (1) Application may be made to the Administrative Appeals Tribunal for a review of a decision of the Conservator—

- (a) granting, refusing to grant or granting subject to a condition a permit under subsection 62 (1);
- (b) granting, refusing to grant or granting subject to a condition a licence under subsection 63 (1);
- (c) refusing to grant his or her consent under subsection 39 (1), subsection 56 (1), (2) or (3) or subsection 57 (1);
- (d) giving a direction under section 48 or 49;
- (e) restricting or prohibiting access to a reserved area or part of a reserved area under section 53; or
- (f) cancelling a permit or licence under section 69.

(2) Application may be made to the Administrative Appeals Tribunal for a review of a decision of a conservation officer refusing to issue a certificate of compliance under subsection 36 (2) or 38 (1).

**Notification of decisions**

**74A. (1)** Where the Conservator or a conservation officer makes a decision referred to in section 74, that person shall cause notice in writing of the decision to be given to the person whose interests are affected by the decision.

**(2)** A notice under subsection (1) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

**PART VIIIA—ON-THE-SPOT FINES<sup>2</sup>**

**74AA-74AK.<sup>2</sup>** \* \* \* \* \*

**PART IX—MISCELLANEOUS****Royalty**

**75. (1)** A licensee shall pay to the Territory royalty at the prescribed rate in relation to the sale or disposal of—

- (a) native animals;
- (b) native plants; or
- (c) native timber;

taken or removed in accordance with the licence.

**(3)** A rate of royalty prescribed for the purposes of this section may be expressed—

- (a) as a flat rate in respect of each animal or plant; or
- (b) as a proportion of the amount received by the licensee for the sale or disposal.

**(4)** Different rates of royalty may be prescribed in relation to native timber depending on—

- (a) the type of timber; and
- (b) whether the land from which the timber was taken is—
  - (i) held under lease from the Commonwealth; or
  - (ii) occupied by a person in pursuance of a licence granted to him or her by the Territory or Commonwealth.

- (5) Royalty is not payable in respect of animals, plants or timber—
- (a) that is included in a prescribed class;
  - (b) that is taken in a prescribed part of the Territory;
  - (c) that is taken during a prescribed period; or
  - (d) that is taken by a person included in a prescribed class of persons.

**Certain provisions not to apply to conservation officers**

**76.** Nothing in section 24, 25, 26, 27, 39, 42, 43, 45AB, 45AC, 55, 56 or 57 applies to or in relation to the Conservator or a conservation officer acting in the performance of his or her duties as Conservator or a conservation officer, as the case may be.

**Act not to apply to certain authorised persons**

**76A.** This Act does not apply to or in relation to a person authorized by the Australian Capital Territory Electricity and Water Authority for the purposes of section 33 of the *Electricity Act 1971* in the exercise of his or her powers under that section as a person so authorized.

**Power of entry and search**

**77. (1)** In this section—

“animal” means—

- (a) an animal other than an exempt animal; or
- (b) a live fish;

“plant” means a native plant.

(2) For the purposes of this Act, a conservation officer may, at such times, and at such intervals, as are reasonable, enter land or premises on which any animal or plant is kept in accordance with a licence and—

- (a) search the land or premises;
- (aa) inspect the animal or plant; and
- (b) inspect the accounts, books, documents and other records relating to the animal or plant.

(3) A conservation officer may—

- (a) where he or she has reasonable grounds for suspecting that an animal or plant is on land or premises in contravention of this Act—at any

reasonable time, enter the land or premises and carry out a search of the land or premises; and

- (b) where he or she has reasonable grounds for suspecting that an animal or plant is contained in a vehicle or vessel in contravention of this Act—
  - (i) stop and search the vehicle or vessel; or
  - (ii) stop the vehicle or vessel and require it to be taken to another place in the Territory where a search may conveniently be carried out.

(4) Where a conservation officer, in pursuance of subsection (2) or (3), enters land or premises, stops a vehicle or vessel or requires a person to take the action referred to in subparagraph (3) (b) (ii), the conservation officer shall, if requested by the occupier or person in charge of the land or premises, or the person in charge of the vehicle or vessel, produce his or her identity card for inspection by that person, and if he or she fails to do so—

- (a) where the conservation officer has entered land or premises—he or she is not authorized to remain on the land or premises;
- (b) where the conservation officer has stopped a vehicle or vessel—he or she is not authorized to search the vehicle or vessel; and
- (c) where the conservation officer has required a person to take the action referred to in subparagraph (3) (b) (ii)—that person is not obliged to comply with the requirement.

(5) A person shall not, without reasonable excuse—

- (a) obstruct or hinder a conservation officer in the exercise of his or her powers under this section; or
- (b) except where paragraph (4) (c) applies—contravene a requirement made by a conservation officer under this section.

Penalty for contravention of subsection (5): 50 penalty units or imprisonment for 6 months, or both.

### **Further powers of conservation officers**

**78. (1)** A conservation officer—

- (a) may require any person whom he or she finds committing, or whom he or she reasonably suspects of having committed, an offence against this Act to state the person's full name and usual place of residence; and

- (b) if the person is in a reserved area—may require the person to leave the reserved area.

(2) Where a conservation officer makes a requirement of a person under subsection (1), the conservation officer shall produce his or her identity card for inspection by that person and, if he or she fails to do so, that other person is not obliged to comply with the requirement.

(3) Subject to subsection (2), a person shall not, without reasonable excuse, contravene a requirement made by a conservation officer under subsection (1).

Penalty for contravention of subsection (3): 50 penalty units.

### **Seizure and release of bird wildlife**

**78A. (1)** Where—

- (a) a person is found by a conservation officer to be in possession of a bird that is a native animal, not being—
  - (i) a bird that is on premises occupied by the person; or
  - (ii) an exempt animal;
- (b) the conservation officer suspects on reasonable grounds that the bird is in the possession of the person in contravention of this Act;
- (c) the person does not, upon being requested to do so by the conservation officer, produce for inspection by the conservation officer a licence in accordance with which the person is entitled to have the bird in his or her possession; and
- (d) the conservation officer believes on reasonable grounds that—
  - (i) the bird is suffering pain or is in a state of distress; or
  - (ii) the keeping of the bird in captivity, or in captivity of the kind in which it is being kept by the person, is likely to endanger the life of, or cause distress or otherwise 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 can be best provided for by releasing the bird from captivity, he or she may release it.

(2) A conservation officer is not entitled to seize a bird under subsection (1) if, on the request of the person in whose possession the bird is found, the

conservation officer fails to produce his or her identity card for inspection by that person.

### **Seizure and forfeiture of animals and plants**

**79. (1)** In this section—

“animal” includes a live fish;

“plant” means a native plant.

**(2)** A conservation officer may seize any animal, plant, substance or thing in connection with which he or she believes, on reasonable grounds, an offence against this Act has been committed.

**(3)** Where—

- (a) an animal, plant, substance or thing is seized under subsection (2); and
- (b) a prosecution for an offence against this Act relating to the animal, plant, substance or thing is not instituted within 6 months of the seizure,

the animal, plant, substance or thing shall, upon the expiration of that period, be returned to the person from whom it was seized.

**(4)** Where, in proceedings for an offence against this Act—

- (a) the defendant is a person from whom an animal, plant, substance or thing has been seized under subsection (2); and
- (b) the court does not find the offence proved,

the animal, plant, substance or thing, as the case may be, shall be returned to the defendant.

**(5)** Where, in proceedings for an offence against this Act, the court finds the offence proved, the court may declare that any animal or plant the subject of the offence, or any substance or thing used in or in connection with the commission of the offence, be forfeited to the Territory.

**(6)** Where an animal, plant, substance or other thing is forfeited to the Territory by virtue of a declaration under subsection (5), it shall be destroyed or otherwise dealt with in such manner as the Minister directs.

**(7)** This section has effect subject to section 80.

### **Release of animals—court orders**

**80. (1A)** In this section, “animal” includes a live fish.

**(1)** Where the Conservator is of the opinion that an animal seized under subsection 79 (2) is likely to die or suffer pain or be subjected to distress unless it is released from captivity, the Conservator may apply to the Magistrates Court for an order that the animal be released from captivity.

**(2)** An application under subsection (1) shall clearly state the reasons for seeking the order.

**(2A)** An application under subsection (1) shall only be made before a prosecution is initiated for an offence against this Act in relation to the relevant animal or during such a prosecution.

**(3)** The court may, before determining an application under subsection (1), require notice of the application to be given to such persons as the court thinks fit.

**(4)** On determining an application under subsection (1), the court—

- (a) may make an order that the animal be released from captivity; or
- (b) dismiss the application.

**(5)** Where the court makes an order for the release of an animal, it may give such directions relating to observations to be made, and records to be kept, in respect of the animal as the court thinks fit and the animal shall not be released until those directions have been complied with.

**(6)** Where an animal is released from captivity in accordance with this section and—

- (a) a prosecution for an offence against this Act relating to the animal is not instituted; or
- (b) where such a prosecution is instituted—the court does not find the offence proved,

there is due to the person from whom the animal was seized by the Territory such amount as is necessary to compensate the person for the loss suffered by the person as a result of the release of the animal.

### **Conduct of directors, servants and agents**

**80A. (1)** Where, in proceedings for an offence, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show—

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had that state of mind.

**(2)** Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority shall be taken, for the purposes of a prosecution for an offence, to have been engaged in also by the body corporate unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

**(3)** Where, in proceedings for an offence, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show—

- (a) 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
- (b) that the servant or agent had that state of mind.

**(4)** Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her actual or apparent authority shall be taken, for the purposes of a prosecution for an offence, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

**(5)** Where—

- (a) a person other than a body corporate is convicted of an offence; and
- (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

**(6)** A reference in subsection (1) or (3) to the state of mind of a person includes a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

(7) A reference in this section 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 a State.

(8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

(9) In this section, “offence” means an offence against this Act or the regulations.

### **Corporations—penalties**

**80B.** Where a body corporate is convicted of an offence against this Act or the regulations, the penalty that the court may impose is a fine not exceeding 5 times the maximum amount that, but for this section, the Court could impose as a pecuniary penalty for that offence.

### **Evidence**

**81. (1)** In any proceedings for an offence against this Act, a certificate signed by the Conservator stating—

- (a) that the person specified in the certificate was, on the date or during the period specified in the certificate, the holder of a licence of the kind specified in the certificate; or
- (b) that a licence of the kind specified in the certificate granted to the person specified in the certificate was granted subject to the conditions specified in the certificate,

is evidence of the matters so stated.

(2) For the purposes of subsection (1), a document that purports to have been signed by the Conservator shall be taken to have been so signed unless the contrary is proved.

### **Annual report**

**83.** The Conservator shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report of his or her operations, and of other matters and things arising or carried out under this Act, during the year ended on that date.

### **Power of Minister to determine fees**

**83A.** The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Act.

### **Regulations**

**84. (1)** The Executive may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular—

- (a) providing for the imposition of fees to be charged in respect of access to reserved areas; and
- (b) prescribing penalties for offences against the regulations—
  - (a) if the offender is a natural person—not exceeding 10 penalty units; or
  - (b) if the offender is a body corporate—not exceeding 50 penalty units.

**(2)** In prescribing fees to be charged for access to a reserved area, the regulations may—

- (a) prescribe fees in respect of persons or vehicles, or persons and vehicles, entering a reserved area or a part of a reserved area; and
  - (b) prescribe different fees in respect of access to different reserved areas or different parts of a reserved area.
-

**SCHEDULE 1**

Section 3

*Animals and Birds Protection Ordinance 1918*  
*Animals and Birds Protection Ordinance 1928*  
*Seaweed Protection Ordinance 1974*  
*Seaweed Protection Ordinance (No. 2) 1974*  
*Timber Protection Ordinance 1919*  
*Timber Protection Ordinance 1923*  
*Timber Protection Ordinance 1927*  
*Timber Protection Ordinance 1936*  
*Timber Protection Ordinance 1940*  
*Timber Protection Ordinance 1967*  
*Wild Flowers and Native Plants Protection Ordinance 1936*

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**SCHEDULE 2<sup>2</sup>**

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## NOTES

1. The *Nature Conservation Act 1980* as shown in this reprint comprises Act No. 20, 1980 amended as indicated in the Tables below.

The *Nature Conservation Act 1980* was amended by the *Commonwealth Functions (Statutes Review) Act 1981* of the Commonwealth. The amendments are incorporated in this reprint.

Citation of Laws—The *Self-Government (Citation of Laws) Act 1989* of the Territory (No. 21, 1989) altered the citation of most Ordinances so that after Self-Government day they are to be cited as Acts. That Act also affects references in ACT laws to Commonwealth Acts.

Table 1

Table of Ordinances

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Nature Conservation Ordinance 1980</i>	20, 1980	15 July 1980	5 June 1982	
<i>Nature Conservation (Amendment) Ordinance 1982</i>	22, 1982	4 June 1982	5 June 1982 (see <i>Gazette</i> 1982, No. S110)	—
<i>Nature Conservation (Amendment) Ordinance (No. 2) 1982</i>	62, 1982	18 Aug 1982	1 Dec 1982 (see <i>Gazette</i> 1982, No. S252, p. 2)	—
<i>Nature Conservation (Amendment) Ordinance 1983</i>	43, 1983	29 Sept 1983	1 Oct 1983	—
<i>Nature Conservation (Amendment) Ordinance 1984</i>	72, 1984	5 Dec 1984	5 Dec 1984	—
<i>Magistrates Court Ordinance 1985</i>	67, 1985	19 Dec 1985	1 Feb 1986 (see s. 2 and <i>Gazette</i> 1986, No. 63, p. 265)	—
<i>Nature Conservation (Amendment) Ordinance 1986</i>	65, 1986	23 Oct 1986	23 Oct 1986	—
<i>Nature Conservation (Amendment) Ordinance 1987</i>	1, 1987	30 Jan 1987	30 Jan 1987	—
<i>Electricity and Water (Consequential Amendments) Ordinance 1988</i>	31, 1988	30 June 1988	1 July 1988	—
<i>Interim Territory Planning Ordinance 1988</i>	88, 1988	21 Dec 1988	Ss. 1 and 2: 21 Dec 1988 Remainder: 31 Jan 1989 (see <i>Gazette</i> 1989, No. S38)	S. 19
<i>Self-Government (Consequential Amendments) Ordinance 1989</i>	38, 1989	10 May 1989	Ss. 1 and 2: 10 May 1989 Remainder: 11 May 1989 (see s. 2 (2) and <i>Gazette</i> 1989, No. S164)	—

## NOTES—continued

## Table of Ordinances—continued

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
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## Self-Government day 11 May 1989

Table 2

## Table of Acts

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Nature Conservation (Amendment) Act 1989</i>	4, 1989	10 July 1989	10 July 1989	S. 58
<i>Nature Conservation (Amendment) Act 1990</i>	43, 1990	7 Nov 1990	7 Nov 1990	—
<i>Interim Planning (Consequential Amendments) Act 1990</i>	60, 1990	24 Dec 1990	S. 3: 12 Mar 1991 (see C'wealth <i>Gazette</i> 1991, No. S62) (a) Remainder: 24 Dec 1990	—
<i>Land (Planning and Environment) (Consequential Provisions) Act 1991</i>	118, 1991	15 Jan 1992	Ss. 1 and 2: 15 Jan 1992 Ss. 3-8, 17-27 and 32-44: 2 Apr 1992 (see <i>Gazette</i> 1992, No. 13, p. 478) Remainder: 15 July 1992	Ss. 25-27 and 42
<i>Acts Revision (Position of Crown) Act 1993</i>	44, 1993	27 Aug 1993	27 Aug 1993 (see s. 2)	—
<i>Bushfire (Amendment) Act 1993</i>	74, 1993	22 Oct 1993	22 Oct 1993	—
<i>Nature Conservation (Amendment) Act 1994</i>	56, 1994	5 Oct 1994	Ss. 1 and 2: 5 Oct 1994 Remainder: 11 Oct 1994 (see <i>Gazette</i> 1994, No. S 222)	—
<i>Administrative Appeals (Consequential Amendments) Act 1994</i>	60, 1994	11 Oct 1994	Ss. 1 and 2: 11 Oct 1994 Remainder: 14 Nov 1994 (see s. 2 (2) and <i>Gazette</i> 1994, No. S250)	—

**NOTES**—continued**Table of Acts**—continued

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Statute Law Revision (Penalties) Act 1994</i>	81, 1994	29 Nov 1994	Ss. 1 and 2: 29 Nov 1994 Remainder: 29 Nov 1994 (see <i>Gazette</i> 1994, No. S269, p. 2)	—
<i>Statutory Offices (Miscellaneous Provisions) Act 1994</i>	97, 1994	15 Dec 1994	Ss. 1 and 2: 15 Dec 1994 Remainder: 15 Dec 1994 (see <i>Gazette</i> 1994, No. S293)	Part III (ss. 4-9)
<i>Nature Conservation (Amendment) Act (No. 2) 1994</i>	110, 1994	22 Dec 1994	Ss. 1 and 2: 22 Dec 1994 Ss. 3-6, 8, 10-19, 21, 22, 25, 26, 28 and 29: 8 Feb 1995 (see <i>Gazette</i> 1995, No. S41) Remainder (Ss. 7, 9, 20, 23, 24 and 27): (see Note 2)	S. 29

**NOTES—continued**

- (a) The *Nature Conservation Act 1980* was amended by section 3 only of the *Interim Planning (Consequential Amendments) Act 1990*, subsection 2 (2) of which provides as follows:

“(2) Section 3 commences on the day specified as the end of the transition period under the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth in the Proclamation of the Governor-General under section 57 of that Act.”

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
Title .....	am. Act No. 110, 1994
S. 4 .....	rep. Act No. 44, 1993
S. 5 .....	am. C'wealth Act No. 74, 1981; No. 38, 1989; Act No. 4, 1989; No. 118, 1991; Nos. 56, 60, 97 and 110, 1994
S. 6 .....	am. Act No. 74, 1993
Heading to Part 1A .....	ad. Act No. 56, 1994
Heading to Div. 1 of Part 1A .....	ad. Act No. 56, 1994
Ss. 7-9 .....	am. Act No. 56, 1994 rs. No. 97, 1994
S. 10 .....	am. C'wealth Act No. 74, 1981; Act No. 56, 1994 rep. No. 97, 1994
S. 11 .....	am. Act No. 56, 1994 rep. No. 97, 1994
S. 12 .....	am. Act No. 56, 1994; No. 81, 1994 rep. No. 97, 1994
S. 13 .....	am. No. 22, 1982; Act No. 56, 1994
S. 14 .....	am. Act No. 56, 1994 rs. No. 97, 1994
S. 15 .....	am. Act No. 118, 1991; Nos. 56 and 97, 1994
Div. 2 of Part 1A (ss. 15A-15R) .....	ad. Act No. 56, 1994
Part II (ss. 16-24) .....	rep. C'wealth Act No. 74, 1981
Part II (ss. 15S-15Z) .....	ad. Act No. 56, 1994
Ss. 15S-15Z .....	ad. Act No. 56, 1994
Heading to Div. 2 of Part II .....	ad. Act No. 56, 1994
S. 16 .....	rep. C'wealth Act No. 74, 1981 ad. Act No. 4, 1989 am. Nos. 56 and 110, 1994
S. 17 .....	rep. C'wealth Act No. 74, 1981 ad. Act No. 4, 1989 am. No. 110, 1994
Div. 3 of Part II (ss. 18-22) .....	ad. Act No. 56, 1994
S. 18 .....	rep. C'wealth Act No. 74, 1981 ad. Act No. 4, 1989 rs. No. 56, 1994
Ss. 19-22 .....	ad. Act No. 56, 1994
Div. 4 of Part II .....	ad. Act No. 56, 1994

## NOTES—continued

## Table of Amendments—continued

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision	How affected
(ss. 23, 23A-23D)	
S. 23 .....	ad. Act No. 56, 1994
Ss. 23A-23D .....	ad. Act No. 56, 1994
Div. 5 of Part II (s. 23E) .....	ad. Act No. 56, 1994
S. 23E .....	ad. Act No. 56, 1994
Ss. 19-23 .....	rep. C'wealth Act No. 74, 1981
S. 24 .....	rep. C'wealth Act No. 74, 1981
Heading to Part III .....	am. Act No. 4, 1989
Heading to Div. 1 of Part III .....	rep. Act No. 4, 1989
S. 24 .....	ad. Act No. 4, 1989 am. Nos. 81 and 110, 1994
Ss. 25, 26 .....	am. Act No. 4, 1989; Nos. 81 and 110, 1994
S. 27 .....	am. No. 22, 1982; Act No. 4, 1989; Nos. 81 and 110, 1994
Ss. 28-30 .....	am. Act No. 4, 1989; Nos. 81 and 110, 1994
Div. 2 of Part III (ss. 31-34) .....	rep. Act No. 4, 1989
Ss. 31-34 .....	rep. Act No. 4, 1989
Heading to Div. 3 of Part III .....	rep. Act No. 4, 1989
S. 35 .....	rep. Act No. 4, 1989
Ss. 36, 37 .....	am. Act No. 4, 1989; No. 81, 1994 rep. No. 110, 1994
S. 38 .....	am. Act No. 4, 1989 rep. No. 110, 1994
S. 39 .....	am. Act No. 4, 1989; No. 81, 1994
S. 40 .....	am. Act No. 110, 1994
S. 41 .....	am. No. 22, 1982 rep. Act No. 4, 1989
S. 42 .....	am. No. 38, 1989; Act No. 4, 1989; Nos. 81 and 110, 1994
S. 43 .....	am. No. 72, 1984; No. 67, 1985; No. 38, 1989; Act No. 4, 1989; No. 74, 1993; Nos. 81 and 110, 1994
Ss. 44, 45 .....	am. Act No. 4, 1989; Nos. 81 and 110, 1994
Part IVA (ss. 45AA-45AC) .....	ad. Act No. 110, 1994
Ss. 45AA-45AC .....	ad. Act No. 110, 1994
Heading to Part V .....	am. Act No. 110, 1994
S. 45A .....	ad. Act No. 4, 1989 am. No. 110, 1994
S. 46 .....	am. No. 38, 1989; Act No. 4, 1989; Nos. 56 and 110, 1994
S. 47 .....	am. Act No. 4, 1989 rs. No. 110, 1994
S. 48 .....	am. No. 22, 1982; Act No. 4, 1989; No. 81, 1994 rep. No. 110, 1994
S. 49 .....	am. No. 22, 1982; Act No. 4, 1989; No. 110, 1994

**NOTES—continued****Table of Amendments—continued**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision	How affected
S. 50 .....	am. Act No. 4, 1989 rs. No. 110, 1994
Heading to Part VI .....	am. Act No. 118, 1991
Heading to Div. 1 of Part VI	ad. No. 65, 1986
Div. 1 of Part VI (ss. 51, 52, 52B-52J)	rep. Act No. 118, 1991
S. 51 .....	am. No. 1, 1987; No. 38, 1989 rep. Act No. 118, 1991
S. 52 .....	am. No. 22, 1982; No. 1, 1987; No. 38, 1989 rep. Act No. 118, 1991
S. 52A .....	ad. No. 65, 1986 rep. No. 38, 1989
Ss. 52B .....	ad. No. 65, 1986 rep. Act No. 118, 1991
S. 52C .....	ad. No. 65, 1986 am. No. 88, 1988; Act No. 60, 1990 rep. Act No. 118, 1991
S. 52D .....	ad. No. 65, 1986 rep. Act No. 118, 1991
S. 52E .....	ad. No. 65, 1986 rs. No. 1, 1987 rep. Act No. 118, 1991
Ss. 52F-52H .....	ad. No. 65, 1986 rs. No. 1, 1987 am. No. 38, 1989 rep. Act No. 118, 1991
S. 52I .....	ad. No. 1, 1987 rep. Act No. 118, 1991
S. 52J .....	ad. No. 65, 1986 rep. Act No. 118, 1991
Heading to Div. 2 of Part VI	ad. No. 65, 1986
S. 53 .....	am. No. 22, 1982; Act No. 4, 1989; No. 81, 1994
S. 53A .....	ad. Act No. 110, 1994
Ss. 54, 55 .....	am. Act No. 4, 1989; No. 81, 1994
S. 56 .....	am. Act No. 4, 1989; No. 118, 1991; Nos. 81 and 110, 1994
S. 57 .....	am. Act No. 4, 1989; Nos. 81 and 110, 1994
S. 58 .....	am. Act No. 4, 1989; Nos. 81, 97 and 110, 1994
S. 59 .....	am. Act No. 4, 1989; No. 43, 1990; No. 118, 1991; Nos. 81 and 110, 1994
S. 60 .....	am. No. 67, 1985; No. 38, 1989; Act No. 118, 1991
S. 60A .....	ad. Act No. 43, 1990 am. No. 118, 1991; No. 110, 1994
Part VIA (ss. 60AA-60AE) ..	ad. Act No. 110, 1994

**NOTES—continued****Table of Amendments—continued**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision	How affected
Ss. 60AA-60AE .....	ad. Act No. 110, 1994
Heading to Part VII .....	am. Act No. 110, 1994
S. 61 .....	am. No. 38, 1989; Act No. 4, 1989; No. 43, 1990; No. 118, 1991
S. 62 .....	am. Act No. 43, 1990; No. 118, 1991; No. 56, 1994
S. 62A .....	ad. Act No. 43, 1990 am. No. 118, 1991; No. 56, 1994
S. 63 .....	am. No. 43, 1983; No. 38, 1989; Act No. 118, 1991; No. 56, 1994
S. 63A .....	ad. Act No. 4, 1989 am. No. 56, 1994
S. 65 .....	am. Act No. 4, 1989; No. 43, 1990; No. 118, 1991
S. 66 .....	am. Act No. 4, 1989
S. 67 .....	am. No. 38, 1989; Act No. 110, 1994
S. 68 .....	rep. Act No. 110, 1994
S. 69 .....	am. Act No. 110, 1994
Ss. 70-73 .....	am. Act No. 4, 1989; Nos. 81 and 110, 1994
S. 74 .....	am. No. 22, 1982; Acts Nos. 56 and 60, 1994
S. 74A .....	ad. Act No. 4, 1989 am. Nos. 60 and 110, 1994
S. 75 .....	am. No. 38, 1989; Acts Nos. 56 and 110, 1994
S. 76 .....	am. Act No. 4, 1989; No. 110, 1994
S. 76A .....	ad. No. 62, 1982 am. No. 31, 1988; Act No. 56, 1994
S. 77 .....	am. No. 22, 1982; Act No. 4, 1989; Nos. 81, 97 and 110, 1994
S. 78 .....	am. Act No. 4, 1989; No. 81, 1994
S. 78A .....	ad. Act No. 4, 1989 am. Nos. 97 and 110, 1994
S. 79 .....	am. No. 22, 1982; No. 38, 1989; Act No. 4, 1989; No. 110, 1994
S. 80 .....	am. No. 67, 1985; No. 38, 1989; Act No. 110, 1994
Ss. 80A, 80B .....	ad. Act No. 4, 1989
S. 81 .....	am. Act No. 110, 1994
S. 82 .....	rep. Act No. 110, 1994
S. 83 .....	am. Act No. 56, 1994
S. 83A .....	ad. No. 43, 1983
S. 84 .....	am. No. 38, 1989; Act No. 4, 1989; No. 81, 1994
Part X (s. 85) .....	rep. Act No. 4, 1989
S. 85 .....	rep. Act No. 4, 1989
Schedule 2 .....	am. No. 22, 1982 rep. Act No. 4, 1989
Schedules 3, 4 .....	rep. Act No. 4, 1989
Schedules 5, 6 .....	rs. No. 22, 1982 rep. Act No. 4, 1989

**NOTES—continued**

**EXTRACTS FROM NATURE CONSERVATION (AMENDMENT) ACT  
(No. 2) 1994—continued**

2. Sections 26A, 39, 61-66 (inclusive), 74, Part VIIIA (sections 74AA-74AK) and Schedule 2 to the *Nature Conservation Act 1980* are amended by sections 7, 9, 20, 23, 24, 27 and Schedule 1 to the *Nature Conservation (Amendment) Act (No. 2) 1994*, subsection 2 (2) and (3) of which provide as follows:

“(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

“(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.”

As at 8 February 1995 no date had been fixed for the commencement of sections 7, 9, 20, 23, 24 and 27 and Schedule 1 and the amendments are not incorporated in this reprint. They are set out below under the heading “EXTRACTS FROM NATURE CONSERVATION (AMENDMENT) ACT (No. 2) 1994”.

**EXTRACTS FROM NATURE CONSERVATION (AMENDMENT) ACT  
(No. 2) 1994**

**Insertion**

7. After section 26 of the Principal Act the following section is inserted:

**Drum nets**

“26A. (1) A person shall not place a drum net in public waters, except in accordance with a licence.

Penalty: \$5,000.

“(2) In this section—

‘drum net’ means an enclosed trap, with 1 or more entrances, capable of being used to take live fish or crustaceans;

‘public waters’ means waters in the Territory which are not the property of a private person.”.

**Release of animals and fish from captivity**

9. Section 39 of the Principal Act is amended—

- (a) by omitting from subsection (1) “permit” and substituting “licence”;
- (b) by omitting from subsection (1) all the words from and including “an animal” to and including “captivity” (last occurring) and substituting:

“a native animal from captivity if the release—

- (a) places the animal in greater danger of injury or death than if it had been kept in captivity; or
- (b) threatens the survival, abundance or evolution of any species of native animals.”;

- (c) by omitting from subsection (1A) “permit” and substituting “licence”;

- (d) by omitting from subsection (1A) all the words from and including “wildlife” (first occurring) to and including “death” and substituting:

“a native animal from captivity if the release—

- (a) places any native animal in danger of injury or death; or
- (b) threatens the survival, abundance or evolution of any species of native animals.”;

**NOTES—continued****EXTRACTS FROM NATURE CONSERVATION (AMENDMENT) ACT  
(No. 2) 1994—continued**

- (e) by omitting from subsection (1B) “permit” and substituting “licence”;
- (f) by inserting after subsection (1B) the following subsection:  
“(1BA) A person shall not release a live fish into waters in the Territory, except—  
(a) in accordance with a licence; or  
(b) if the fish was initially taken from the part of the waters into which it is released.  
Penalty: \$1,000.”;
- (g) by omitting from subsection (1C) all the words after “release” and substituting:  
“of the animal—  
(a) did not place the animal in greater danger of injury or death than if it had been kept in captivity; and  
(b) did not threaten the survival, abundance or evolution of any species of native animals.”;
- (h) by omitting from subsection (1D) all the words after “release” and substituting:  
“of the animal—  
(a) did not place any native animal in danger of injury or death; and  
(b) did not threaten the survival, abundance or evolution of any species of native animals.”;
- (i) by omitting from subsection (2) “and (1B)” and substituting“, (1B) and (1BA)”;
- (j) by omitting from paragraph (2) (a) “an animal that is wildlife, being an animal” and substituting “a native animal”.

**Substitution**

**20.** Sections 61 to 66 (inclusive) of the Principal Act are repealed and the following sections substituted:

**Application**

“61. (1) An application for the grant of a licence—

- (a) shall be in accordance with a form approved by the Conservator;
- (b) shall be accompanied by any documents reasonably required by the Conservator;
- (c) shall be accompanied by the determined fee; and
- (d) shall be lodged with the Conservator.

“(2) On written notice from the Conservator, an applicant for a licence shall give the Conservator such further information about the application, or such documentation, as is reasonably required.

**Grant of licence**

“62. (1) On application under section 61, the Conservator shall, in accordance with section 64—

- (a) grant a licence; or
- (b) refuse to grant a licence.

“(2) The Conservator may grant a licence, in accordance with section 64—

- (a) subject to any condition, including a condition referred to in section 63; and
- (b) for such duration as he or she thinks fit.

**NOTES**—continued

**EXTRACTS FROM NATURE CONSERVATION (AMENDMENT) ACT  
(No. 2) 1994**—continued

**Conditions**

“63. (1) The conditions subject to which a licence may be granted include the following:

- (a) conditions requiring compliance with a management plan approved by the Conservator under subsection (3) for the activities to be undertaken pursuant to the licence;
- (b) different conditions in relation to species having special protection status, protected fish, protected invertebrates, protected native animals, protected native plants, exempt animals, controlled organisms and prohibited organisms.

“(2) A licence granted for the keeping of animals for public display shall be subject to the condition of compliance with a management plan approved by the Conservator under subsection (3).

“(3) For the purposes of this section, the Conservator may, in accordance with section 64, approve a management plan by written notice to the licensee.

“(4) Subject to this section, the Conservator may, by written notice to a licensee, vary a condition of a licence in accordance with section 64.

“(5) The variation of a licence condition under subsection (4) takes effect from the date of the notice under that subsection, or from a later date specified in the notice.

**Licensing criteria**

“64. (1) The Conservator shall not grant a licence, or impose or vary a licence condition, except in accordance with the criteria determined under subsection (2).

“(2) The Minister may, by instrument, determine or vary criteria for—

- (a) the grant or refusal of a licence;
- (b) the imposition of conditions; and
- (c) determining the duration of a licence.

“(3) For the purposes of subsection (2), the Minister may determine different criteria in relation to—

- (a) species having special protection status;
- (b) protected native animals and protected native plants;
- (c) other native animals and native plants;
- (d) prohibited organisms and controlled organisms; and
- (e) any other animals, plants, fish and invertebrates.

“(4) A determination under subsection (2) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

**Duration**

“65. A licence remains in force for the period specified in the licence, unless sooner surrendered or cancelled.

**Surrender**

“66. (1) A licensee may surrender the licence by written notice to the Conservator.

“(2) The surrender of a licence takes effect from the date of the notice of surrender, or from a later date specified in the notice.”

**NOTES**—continued**EXTRACTS FROM NATURE CONSERVATION (AMENDMENT) ACT  
(No. 2) 1994**—continued**Substitution**

23. Section 74 of the Principal Act is repealed and the following section substituted:

**Review of Conservator's decisions**

"74. Application may be made to the Administrative Appeals Tribunal for the review of a decision of the Conservator—

- (a) giving a direction under section 47;
- (b) restricting or prohibiting access to a reserved area or part of a reserved area under section 53;
- (c) refusing to grant consent under subsection 56 (1), (2) or (3) or 57 (1);
- (d) granting a licence under paragraph 62 (1) (a);
- (e) refusing to grant a licence under paragraph 62 (1) (b);
- (f) granting a licence subject to any condition under paragraph 62 (2) (a);
- (g) granting a licence for a particular duration under paragraph 62 (2) (b);
- (h) varying a licence condition under subsection 63 (4); or
- (i) cancelling a licence under section 69."

**Insertion**

24. After Part VIII of the Principal Act the following Part is inserted:

**"PART VIIIA—ON-THE-SPOT FINES****Interpretation**

"74AA. In this Part—

'final infringement notice' means a notice under section 74AC;

'infringement notice' means a notice under section 74AB;

'on-the-spot fine', in relation to a Schedule 2 offence, means—

- (a) in the case of a natural person—the fine for that offence ascertained by reference to Schedule 2; or
- (b) in the case of a body corporate—5 times the amount of that fine;

'relevant amount' means—

- (a) in relation to an infringement notice—the on-the-spot fine for the alleged Schedule 2 offence to which the notice relates; or
- (b) in relation to a final infringement notice—the on-the-spot fine for the alleged Schedule 2 offence to which the notice relates, in addition to the determined fee;

'relevant period for payment' means—

- (a) in relation to an infringement notice—28 days after the date of the notice;
- (b) in relation to a final infringement notice—14 days after the date of the notice; or
- (c) such extended period as the Conservator allows under paragraph 74AF (4) (b) or section 74AG;

'Schedule 2 offence' means an offence against a provision of this Act specified in column 1 of Schedule 2.

**NOTES**—continued

**EXTRACTS FROM NATURE CONSERVATION (AMENDMENT) ACT  
(No. 2) 1994**—continued

**Infringement notices**

“74AB. (1) A conservation officer may serve an infringement notice on a person if the officer believes on reasonable grounds that the person has committed a Schedule 2 offence.

“(2) An infringement notice shall be in a form approved by the Conservator, and shall—

- (a) identify the conservation officer who issues the notice;
- (b) state the full name, or surname and initials, and address of the person on whom it is served;
- (c) specify the nature of the alleged offence and the amount of the on-the-spot fine;
- (d) specify the day, time and place of the alleged commission of the offence;
- (e) include a statement to the effect that if the person on whom the notice is served does not wish the offence to be prosecuted in court, the person may pay the on-the-spot fine to the Conservator within—
  - (i) 28 days after the date of the notice;
  - (ii) if the determined fee is paid in addition—14 days after the date of a final infringement notice; or
  - (iii) such extended period as is allowed under this Part;
- (f) specify the place at which, and the manner in which, the fine may be paid;
- (g) include a statement of the possible consequences if the offence were to be prosecuted in court, including the maximum penalty applicable;
- (h) include a statement about the procedures for obtaining an extension of time under this Part;
- (j) include a statement about the procedures for the withdrawal of the notice under this Part; and
- (k) be dated and signed by the conservation officer who serves the notice.

**Final infringement notices**

“74AC. (1) A conservation officer may serve a final infringement notice on a person where, after the service on the person of an infringement notice—

- (a) within 28 days after the date of the infringement notice, or within such extended period as the Conservator allows under section 74AG—
  - (i) the person fails to pay the on-the-spot fine; and
  - (ii) the person fails to apply for the withdrawal of the infringement notice under section 74AE; or
- (b) if the person applies for the withdrawal of the infringement notice under section 74AE—
  - (i) the application is rejected; and
  - (ii) the person fails to pay the on-the-spot fine within the extended period allowed under paragraph 74AF (4) (b).

“(2) A final infringement notice shall be in a form approved by the Conservator, and shall—

- (a) identify the conservation officer who serves the notice;
- (b) state the full name, or surname and initials, and address of the person on whom it is served;
- (c) specify the nature of the alleged offence and the amount of the on-the-spot fine;

**NOTES**—continued**EXTRACTS FROM NATURE CONSERVATION (AMENDMENT) ACT  
(No. 2) 1994**—continued

- (d) specify the day, time and place of the alleged commission of the offence;
- (e) specify the date of the relevant infringement notice, and include a statement to the effect that the person has not paid the on-the-spot fine for the alleged offence to which the notice relates;
- (f) include a statement to the effect that if the person on whom the notice is served does not wish the offence to be prosecuted in court, the person may pay the on-the-spot fine, in addition to the determined fee, to the Conservator within—
  - (i) 14 days after the date of the notice; or
  - (ii) such extended period as is allowed under this Part;
- (g) specify the place at which, and the manner in which, the fine and the fee may be paid;
- (h) include a statement of the possible consequences if the offence were to be prosecuted in court, including the maximum penalty applicable;
- (j) include a statement about the procedures for obtaining an extension of time under this Part;
- (k) include a statement about the procedures for the withdrawal of the notice under this Part; and
- (m) be dated and signed by the conservation officer who serves the notice.

**Discharge of liability for Schedule 2 offences**

“74AD. (1) This section applies where an infringement notice or a final infringement notice has been served on a person in respect of a Schedule 2 offence and, before the expiration of the relevant period for payment—

- (a) the relevant amount is paid in accordance with the notice; or
- (b) the relevant notice is withdrawn.

“(2) Where this section applies—

- (a) any liability of the person in respect of the offence is discharged;
- (b) no further proceedings shall be taken in respect of the offence; and
- (c) the person shall not be regarded as having been convicted of the offence.

“(3) For the purposes of this section, where a cheque is tendered in payment of the relevant amount, such payment shall not be taken to have been made unless and until the cheque is honoured on presentation.

**Application for withdrawal of infringement notices**

“74AE. (1) A person on whom an infringement notice or a final infringement notice is served in relation to the alleged commission of a Schedule 2 offence may, by notice in writing to the Conservator within the relevant period, apply for the withdrawal of the notice.

“(2) A person shall not make more than 1 application under this section in relation to any particular alleged commission of a Schedule 2 offence.

**Withdrawal of infringement notices**

“74AF. (1) On receipt of an application under section 74AE, the Conservator may withdraw the relevant infringement notice or final infringement notice if satisfied on reasonable grounds that any of the following grounds is made out:

- (a) the applicant did not commit the offence;

**NOTES—continued**

**EXTRACTS FROM NATURE CONSERVATION (AMENDMENT) ACT  
(No. 2) 1994—continued**

- (b) the applicant had a reasonable excuse for committing the act constituting the offence;
- (c) it would be unreasonable in the circumstances to prosecute the applicant for the commission of the offence.

“(2) If the Conservator withdraws an infringement notice or final infringement notice, he or she shall give the person on whom the notice was served written notice of the decision.

“(3) A notice under subsection (2) shall—

- (a) specify the infringement notice or final infringement notice that is withdrawn; and
- (b) include a statement of the effect of subsections 74AD (1) and (2).

“(4) If the Conservator does not withdraw an infringement notice or final infringement notice under subsection (1), the Conservator shall—

- (a) give the person written notice of the decision; and
- (b) extend the period within which the relevant amount is to be paid, by a period of—
  - (i) in the case of a decision not to withdraw an infringement notice—28 days commencing on the date of the notice under paragraph (a); or
  - (ii) in the case of a decision not to withdraw a final infringement notice—14 days commencing on the date of the notice under paragraph (a).

“(5) If the Conservator does not give notice to a person under subsection (2) or (4) within 60 days after the receipt of an application for withdrawal of an infringement notice or a final infringement notice under section 74AE, the notice is to be taken to have been withdrawn.

“(6) Where an infringement notice or final infringement notice served on a person is withdrawn under this section, the Conservator shall refund any amount paid under section 74AB or 74AC in payment of the relevant on-the-spot fine.

**Extension of time for pensioners**

“74AG. (1) A pensioner on whom an infringement notice or a final infringement notice is served may, within the relevant period, apply for an extension of the relevant period.

“(2) On application under subsection (1), the Conservator may, by written notice to the applicant, extend the relevant period by a period expiring no later than 90 days after the date of the notice.

“(3) The Conservator may grant an application under this section subject to the condition that the applicant pay the relevant amount by specified instalments within the extended period.

“(4) Where a condition is imposed under subsection (3) that a person pay a relevant amount by specified instalments, if he or she fails to pay an instalment of the relevant amount by the date specified in the notice under subsection (2), this Part applies to that person as if—

- (a) the extended period for payment had expired; and
- (b) he or she had failed to pay the relevant amount within that period.

“(5) A person shall not make more than 1 application under this section in relation to any particular alleged commission of a Schedule 2 offence.

“(6) In this section—

‘pensioner’ means a person who holds, or who is entitled to hold, a Pensioner Concession Card issued by the Commonwealth, or, if that card is superseded, any later replacement for that card.

**NOTES**—continued**EXTRACTS FROM NATURE CONSERVATION (AMENDMENT) ACT  
(No. 2) 1994**—continued**Prosecution of Schedule 2 offences**

“74AH. (1) The Conservator shall not institute a prosecution for an offence in respect of which an infringement notice has been served on a person—

- (a) until the expiration of the period of 14 days after the date of service of a final infringement notice in relation to that offence;
- (b) if that period is extended under section 74AG—until the extended period has expired; or
- (c) if the person applies for the withdrawal of the final infringement notice under section 74AE—unless and until the application is rejected and the extended period granted under paragraph 74AF (4) (b) has expired.

“(2) Nothing in section 74AB or 74AC shall be construed as—

- (a) affecting the liability of a person to be prosecuted for a Schedule 2 offence in relation to which an infringement notice has not been served;
- (b) subject to subsection (1), prejudicing or affecting the institution or prosecution of proceedings for a Schedule 2 offence; or
- (c) limiting the amount of the fine that may be imposed by the Court in respect of a Schedule 2 offence.

“(3) Where a prosecution is instituted for an offence in respect of which an infringement notice has been served, the Conservator shall refund any amount paid under section 74AB or 74AC in payment of the on-the-spot fine.

**Non-antecedent value of infringement notice offences**

“74AI. (1) For the purposes of section 429A of the *Crimes Act 1900*, in sentencing an accused for any offence, a court shall not have regard to—

- (a) the alleged commission of any infringement notice offence;
- (b) the circumstances surrounding any infringement notice offence; or
- (c) the investigation of any infringement notice offence, or any related action under this Part.

“(2) In subsection (1)—

‘infringement notice offence’, in relation to an accused, means an alleged offence—

- (a) in relation to which an infringement notice has been served on the accused; and
- (b) which has not been found proved by a court.

**Service of notices**

“74AJ. (1) For the purposes of this Part, a notice may be served on the person to whom it is directed—

- (a) by delivering the notice personally;
- (b) by sending the notice by post addressed to the person at the person’s last-known place of residence or business; or
- (c) by leaving the notice at the person’s last-known place of residence or business with some other person who is apparently—
  - (i) over the age of 16 years; and
  - (ii) an occupant of the place, or employed at that place.

**NOTES**—continued

**EXTRACTS FROM NATURE CONSERVATION (AMENDMENT) ACT  
(No. 2) 1994**—continued

“(2) Nothing in this section prevents the service on a person of more than 1 infringement notice or final infringement notice in respect of the same alleged offence, but it is sufficient for the application of section 74AD to such a person for the person to pay the relevant amount in accordance with any of the notices so served.

“(3) Where an infringement notice is served on a child and the person serving the notice believes, on reasonable grounds, that the child is residing with a person who stands *in loco parentis* to that child, the person serving the notice shall serve a copy of the notice on that person.

**Evidence**

“74AK. (1) For the purposes of this Part, a document that purports to have been signed by the Conservator shall be taken to have been so signed unless the contrary is proved.

“(2) In a prosecution for a Schedule 2 offence, a certificate signed by the Conservator stating any of the following matters is evidence of the matters so stated:

- (a) that a notice was served under this Part on a specified person on a specified date;
- (b) where an infringement notice or a final infringement notice has been served on a person under this Part, that—
  - (i) further time for payment was, or was not, allowed under paragraph 74AF (4) (b) or section 74AG;
  - (ii) the notice was not withdrawn; or
  - (iii) the relevant amount was not paid in accordance with the notice within the relevant period for payment.”.

**Addition**

**27.** The Principal Act is amended by adding at the end the Schedule in Schedule 1 to this Act.

**NOTES**—continued**EXTRACTS FROM NATURE CONSERVATION (AMENDMENT) ACT  
(No. 2) 1994**—continued**SCHEDULE 1**

Section 27

**SCHEDULE 2**

Section 74AA

**ON-THE-SPOT FINES**

<b>Offence provision</b>	<b>On-the-spot fine</b>
Subsection 25 (1)—	
Penalty paragraph (a).....	\$500
Penalty paragraph (b).....	\$250
Subsection 26 (1)—	
Penalty paragraph (a).....	\$500
Penalty paragraph (b).....	\$250
Subsection 27 (1)—	
Penalty paragraph (a).....	\$500
Penalty paragraph (b).....	\$250
Subsection 28 (1)—	
Penalty paragraph (a).....	\$500
Penalty paragraph (b).....	\$250
Subsection 29 (1)—	
Penalty paragraph (a).....	\$500
Penalty paragraph (b).....	\$250
Subsection 30 (1)—	
Penalty paragraph (a).....	\$500
Penalty paragraph (b).....	\$250
Subsection 39 (1)—	
Penalty paragraph (a).....	\$500
Penalty paragraph (b).....	\$250
Subsection 39 (1A).....	\$100
Subsection 39 (1B).....	\$75
Subsection 39 (1BA) .....	\$75
Subsection 42 (1)—	
Penalty paragraph (a).....	\$500
Penalty paragraph (b).....	\$250
Penalty paragraph (c).....	\$150
Subsection 43 (2) .....	\$75
Subsection 44 (1)—	
Penalty paragraph (a).....	\$500
Penalty paragraph (b).....	\$250

**NOTES**—continued

**EXTRACTS FROM NATURE CONSERVATION (AMENDMENT) ACT  
(No. 2) 1994**—continued

Subsection 45 (1)—	
Penalty paragraph (a).....	\$250
Penalty paragraph (b).....	\$150
Subsection 53 (3) .....	\$100
Subsection 54 (2) .....	\$75
Subsection 55 (1) .....	\$75
Subsection 55 (2) .....	\$75
Subsection 56 (1) .....	\$75
Paragraph 56 (2) (b), (c) or (d) .....	\$150
Subsection 56 (3) .....	\$150
Subsection 57 (1) .....	\$75
Section 59 .....	\$100
Section 70—	
Penalty paragraph (a).....	\$500
Penalty paragraph (b).....	\$250
Section 71—	
Penalty paragraph (a).....	\$500
Penalty paragraph (b).....	\$250
Subsection 72 (3)—	
Penalty paragraph (a).....	\$500
Penalty paragraph (b).....	\$250
Section 73—	
Penalty paragraph (a).....	\$500
Penalty paragraph (b).....	\$250

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