

2014

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for the Environment)

Nature Conservation Bill 2014

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2014

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for the Environment)

Nature Conservation Bill 2014

A Bill for

An Act to make provision for the protection, conservation, enhancement and management of nature in the ACT, for the management of reserves, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Chapter 1 Preliminary**

2 **Part 1.1 Introduction**

3 **1 Name of Act**

4 This Act is the *Nature Conservation Act 2014*.

5 **2 Commencement**

6 This Act commences on a day fixed by the Minister by written
7 notice.

8 *Note 1* The naming and commencement provisions automatically commence on
9 the notification day (see [Legislation Act](#), s 75 (1)).

10 *Note 2* A single day or time may be fixed, or different days or times may be
11 fixed, for the commencement of different provisions (see [Legislation](#)
12 [Act](#), s 77 (1)).

13 *Note 3* If a provision has not commenced within 6 months beginning on the
14 notification day, it automatically commences on the first day after that
15 period (see [Legislation Act](#), s 79).

16 **3 Dictionary**

17 The dictionary at the end of this Act is part of this Act.

18 *Note 1* The dictionary at the end of this Act defines certain terms used in this
19 Act, and includes references (*signpost definitions*) to other terms
20 defined elsewhere.

21 For example, the signpost definition '*motor vehicle*—see the [Road](#)
22 [Transport \(General\) Act 1999](#), dictionary.' means that the term 'motor
23 vehicle' is defined in that dictionary and the definition applies to this
24 Act.

25 *Note 2* A definition in the dictionary (including a signpost definition) applies to
26 the entire Act unless the definition, or another provision of the Act,
27 provides otherwise or the contrary intention otherwise appears (see
28 [Legislation Act](#), s 155 and s 156 (1)).

1 **4** **Notes**

2 A note included in this Act is explanatory and is not part of this Act.

3 *Note* See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of
4 notes.

5 **5** **Offences against Act—application of Criminal Code etc**

6 Other legislation applies in relation to offences against this Act.

7 *Note 1* *Criminal Code*

8 The [Criminal Code](#), ch 2 applies to all offences against this
9 Act (see Code, pt 2.1).

10 The chapter sets out the general principles of criminal responsibility
11 (including burdens of proof and general defences), and defines terms
12 used for offences to which the Code applies (eg *conduct*, *intention*,
13 *recklessness* and *strict liability*).

14 *Note 2* *Penalty units*

15 The [Legislation Act](#), s 133 deals with the meaning of offence penalties
16 that are expressed in penalty units.

17 **6** **Objects of Act**

18 (1) The main object of this Act is to protect, conserve and enhance the
19 biodiversity of the ACT.

20 (2) This is to be achieved particularly by—

21 (a) protecting, conserving, enhancing, restoring and improving
22 nature conservation, including—

23 (i) native species of animals and plants and their habitats;
24 and

25 (ii) ecological communities; and

26 (iii) biological diversity at the community, species and genetic
27 levels; and

Section 6

- 1 (iv) ecosystems, and ecosystem processes and functions; and
- 2 **Examples—processes and functions**
- 3 1 decomposition and production of plant matter
- 4 2 energy and nutrient exchanges
- 5 *Note* An example is part of the Act, is not exhaustive and may
- 6 extend, but does not limit, the meaning of the provision in
- 7 which it appears (see [Legislation Act](#), s 126 and s 132).
- 8 (v) ecological connectivity; and
- 9 **Example—connectivity**
- 10 the movement of organisms from one place to another
- 11 (vi) landforms of natural significance, including geological
- 12 and geomorphological features and processes; and
- 13 (vii) landscapes of natural significance; and
- 14 (b) promoting and supporting the management, maintenance and
- 15 enhancement of biodiversity of local, regional and national
- 16 significance; and
- 17 (c) promoting the involvement of, and cooperation between,
- 18 Aboriginal and Torres Strait Islander people, landholders, other
- 19 community members and governments in conserving,
- 20 protecting, enhancing, restoring and improving biodiversity;
- 21 and
- 22 (d) encouraging public appreciation, understanding and enjoyment
- 23 of biodiversity; and
- 24 (e) recognising and promoting Aboriginal and Torres Strait
- 25 Islander peoples' role in, and knowledge of, the conservation
- 26 and ecologically sustainable use of biodiversity; and
- 27 (f) recognising the significant stewardship role that landholders
- 28 have in managing the natural assets on their land; and

- 1 (g) ensuring that members of the public have—
- 2 (i) access to reliable and relevant information in appropriate
- 3 forms to facilitate a good understanding of nature
- 4 conservation issues; and
- 5 (ii) opportunities to participate in policy development and
- 6 nature conservation planning; and
- 7 (h) promoting the principles of ecologically sustainable
- 8 development mentioned in the *Environment Protection*
- 9 *Act 1997*, section 2 (2).
- 10 (3) In exercising a function under this Act, the Minister must have
- 11 regard to the objects of this Act.

1 **Part 1.2 Relationship to other laws**

2 **7 Application of Act to Emergencies Act 2004**

3 (1) This Act does not apply to the exercise or purported exercise by a
4 relevant person of a function under the *Emergencies Act 2004* for
5 the purpose of—

6 (a) protecting life or property; or

7 (b) controlling, extinguishing or preventing the spread of a fire.

8 (2) In this section:

9 *relevant person* means—

10 (a) a member of the ambulance service; or

11 (b) a member of fire and rescue; or

12 (c) a member of the rural fire service; or

13 (d) a member of the SES; or

14 (e) any other person under the control of—

15 (i) the chief officer (ambulance service); or

16 (ii) the chief officer (fire and rescue); or

17 (iii) the chief officer (rural fire service); or

18 (iv) the chief officer (SES); or

19 (f) a police officer.

20 **8 Relationship to environment laws**

21 (1) This Act must be construed and administered in a way that is
22 consistent with an environment law unless the contrary intention
23 appears from this Act or that law.

24 (2) This Act is taken to be consistent with an environment law to the
25 extent that it is capable of operating concurrently with that law.

- 1 (3) In this section:
- 2 *environment law* means—
- 3 (a) the *Environment Protection Act 1997*; and
- 4 (b) the *Fisheries Act 2000*; and
- 5 (c) the *Water Resources Act 2007*; and
- 6 (d) any other law of the Territory that has as 1 of its objects or
- 7 purposes the protection of the environment.

1 **Part 1.3** **Important concepts**

2 **9** **What is *nature*?**

3 In this Act:

4 *nature* means all aspects of nature including—

5 (a) ecosystems and their constituent parts; and

6 (b) all natural and physical resources; and

7 (c) natural dynamic processes; and

8 (d) the characteristics of places, however large or small, that
9 contribute to their—

10 (i) biological diversity and integrity; or

11 (ii) intrinsic or scientific value.

12 **10** **What is *conservation*?**

13 In this Act:

14 *conservation* means the protection and maintenance of nature while
15 allowing for its ecologically sustainable use.

16 **11** **What is an *animal*?**

17 In this Act:

18 *animal*—

19 (a) means a member, alive or dead, of the animal kingdom; and

- 1 (b) includes—
2 (i) a part of an animal; and

3 **Examples**
4 skin, feathers, horns, shell, egg yolk

5 *Note* An example is part of the Act, is not exhaustive and may
6 extend, but does not limit, the meaning of the provision in
7 which it appears (see [Legislation Act](#), s 126 and s 132).

- 8 (ii) animal reproductive material; but

- 9 (c) does not include—

- 10 (i) a human; or

- 11 (ii) a fish unless the fish—

- 12 (A) has special protection status; or

13 *Note* **Special protection status**—see s 107.

- 14 (B) is a protected native species; or

15 *Note* **Protected native species**—see s 108.

- 16 (iii) an invertebrate unless the invertebrate—

- 17 (A) has special protection status; or

- 18 (B) is a protected native species.

19 **12 What is a *native animal*?**

20 In this Act:

21 ***native animal***—

- 22 (a) means an animal of a native species; but

- 23 (b) does not include a pest animal.

24 *Note* **Pest animal**—see the [Pest Plants and Animals Act 2005](#),
25 dictionary.

1 **13** **What is a *plant*?**

2 In this Act:

3 *plant*—

4 (a) means a member, alive or dead, of the—

5 (i) plant kingdom; or

6 (ii) fungus kingdom; and

7 (b) includes—

8 (i) a part of a plant; and

9 (ii) plant reproductive material.

10 **14** **What is a *native plant*?**

11 In this Act:

12 *native plant*—

13 (a) means a plant of a native species; but

14 (b) does not include a pest plant.

15 *Note* *Pest plant*—see the *Pest Plants and Animals Act 2005*, dictionary.

16 **15** **What is a *species*?**

17 (1) In this Act:

18 *species*—

19 (a) means a group of biological entities that—

20 (i) interbreed to produce fertile offspring; or

21 (ii) possess common characteristics derived from a common
22 gene pool; and

23 (b) includes—

24 (i) a subspecies; and

1 (ii) a distinct population of biological entities prescribed by
2 regulation to be a species.

3 (2) In this section:

4 *subspecies* means a geographically separate population of a species,
5 being a population that is characterised by morphological or
6 biological differences from other populations of that species.

7 **16 What is a *native species*?**

8 (1) In this Act:

9 *native species*—

10 (a) means a species—

11 (i) that is indigenous to—

12 (A) Australia or an external Territory; or

13 (B) the coastal sea of Australia or an external Territory;
14 or

15 (C) the seabed of the coastal sea of Australia or an
16 external Territory; or

17 (D) the continental shelf; or

18 (E) the exclusive economic zone; or

19 (ii) members of which periodically or occasionally visit—

20 (A) Australia or an external Territory; or

21 (B) the coastal sea of Australia or an external Territory;
22 or

23 (C) the exclusive economic zone; or

Section 17

- 1 (iii) that was present in Australia or an external Territory
2 before 1400; and
- 3 (b) includes a species prescribed by regulation to be a native
4 species; but
- 5 (c) does not include a species prescribed by regulation to not be a
6 native species.
- 7 (2) In this section:
- 8 *coastal sea*, of Australia or an external Territory—see the *Acts*
9 *Interpretation Act 1901* (Cwlth), section 15B (4) (Application of
10 Acts in coastal sea).
- 11 *continental shelf*—see the *Seas and Submerged Lands Act 1973*
12 (Cwlth), section 3.
- 13 *exclusive economic zone*—see the *Seas and Submerged Lands*
14 *Act 1973* (Cwlth), section 3.
- 15 *seabed* includes—
- 16 (a) the surface of a coral formation; and
- 17 (b) subsoil of seabed (including coral beneath the surface of a
18 coral formation).
- 19 **17 What is an *ecological community*?**
- 20 In this Act:
- 21 *ecological community* means the extent in nature in the ACT of an
22 assemblage of native species that—
- 23 (a) inhabits a particular area in nature; and
- 24 (b) satisfies the criteria prescribed by regulation (if any).

- 1 **18** **What is a *member* of a species or ecological community?**
- 2 In this Act:
- 3 *member* includes—
- 4 (a) for a species of animal—
- 5 (i) any part of an animal of the species; and
- 6 (ii) any animal reproductive material of an animal of the
- 7 species, or any part of that reproductive material; and
- 8 (iii) the whole or any part of the dead body of an animal of the
- 9 species; and
- 10 (b) for a species of plant—
- 11 (i) any part of a plant of the species; and
- 12 (ii) any plant reproductive material of a plant of the species,
- 13 or any part of that reproductive material; and
- 14 (iii) the whole or any part of a plant of the species that has
- 15 died; and
- 16 (c) for an ecological community—
- 17 (i) any part of an animal or plant of the community; and
- 18 (ii) any animal reproductive material of an animal, or plant
- 19 reproductive material of a plant, of the community, or any
- 20 part of that animal reproductive material or plant
- 21 reproductive material; and
- 22 (iii) the whole or any part of an animal or plant of the
- 23 community that has died.

- 1 **19** **What is *biodiversity*?**
- 2 In this Act:
- 3 ***biodiversity***—
- 4 (a) means the variability among living organisms from all sources
- 5 (including terrestrial, marine and other aquatic ecosystems and
- 6 the ecological complexes of which they are part); and
- 7 (b) includes diversity—
- 8 (i) within species and between species; and
- 9 (ii) of ecosystems.

1 **Chapter 2 Administration**

2 **Part 2.1 Conservator of flora and fauna**

3 **20 Conservator—appointment**

- 4 (1) The director-general must appoint a public servant as the
5 Conservator of Flora and Fauna (the *conservator*).

6 *Note 1* For the making of appointments (including acting appointments), see
7 the [Legislation Act](#), pt 19.3.

8 *Note 2* In particular, a person may be appointed for a particular provision of a
9 law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by
10 naming a person or nominating the occupant of a position (see
11 [Legislation Act](#), s 207).

- 12 (2) However, the director-general may appoint a person as the
13 conservator only if satisfied that the person has suitable
14 qualifications and experience to exercise the functions of the
15 conservator.

- 16 (3) An appointment is a notifiable instrument.

17 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

18 **21 Conservator—functions**

- 19 (1) The conservator's main functions are—
20 (a) to develop and oversee policies, programs and plans for the
21 effective management of nature conservation in the ACT; and
22 (b) to monitor the state of nature conservation in the ACT; and
23 (c) to provide information to the commissioner for sustainability
24 and the environment for inclusion in a state of the environment
25 report.

26 *Note* *State of the environment report*—see s (5).

- 1 (2) The conservator has any other function given to the conservator
2 under this Act or another territory law.
- 3 (3) In exercising a function, the conservator must ensure that it is
4 exercised in a way that is consistent with implementing—
- 5 (a) the objects of this Act; and
6 *Note* The objects of this Act are set out in s 6.
- 7 (b) any conservator guidelines; and
8 *Note* **Conservator guidelines**—see s 23.
- 9 (c) the nature conservation strategy for the ACT.
10 *Note* **Nature conservation strategy**, for the ACT—see s 46.
- 11 (4) In exercising a function, the conservator may have regard to any
12 other relevant matter, including the following:
- 13 (a) the findings of a biodiversity research and monitoring program;
14 *Note* **Biodiversity research and monitoring program**—see s 24.
- 15 (b) an action plan for a species, ecological community or process;
16 *Note* **Action plan**—see s 97.
- 17 (c) a reserve management plan for a reserve;
18 *Note* **Reserve management plan**, for a reserve—see s 173.
- 19 (d) any response of the government to—
20 (i) a state of the environment report under the *Commissioner*
21 *for Sustainability and the Environment Act 1993*,
22 section 19 (3) (State of the environment report); or

- 1 (ii) a special report under the *Commissioner for Sustainability*
2 *and the Environment Act 1993*, section 21 (2) (Special
3 reports);

4 **Example**

5 kangaroo management plan

6 *Note* An example is part of the Act, is not exhaustive and may extend,
7 but does not limit, the meaning of the provision in which it
8 appears (see [Legislation Act](#), s 126 and s 132).

- 9 (e) any other government policy or plan relating to nature
10 conservation.

- 11 (5) In this section:

12 *state of the environment report* means a state of the environment
13 report under the *Commissioner for Sustainability and the*
14 *Environment Act 1993*.

15 **22 Conservator—delegation**

16 The conservator may delegate to a conservation officer the
17 conservator's functions under this Act or another territory law.

18 *Note* For the making of delegations and the exercise of delegated functions,
19 see the [Legislation Act](#), pt 19.4.

20 **23 Conservator—guidelines**

- 21 (1) The conservator may make guidelines about how the conservator is
22 to exercise the conservator's functions under this Act (the
23 *conservator guidelines*).

24 *Note* The power to make guidelines includes the power to amend or repeal
25 the guidelines. The power to amend or repeal the guidelines is
26 exercisable in the same way, and subject to the same conditions, as the
27 power to make the guidelines (see [Legislation Act](#), s 46).

- 28 (2) In preparing the conservator guidelines, the conservator must
29 consult the scientific committee.

1 (3) A conservator guideline is a notifiable instrument.

2 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

3 **24 Meaning of *biodiversity research and monitoring***
4 ***program*—pt 2.1**

5 In this part:

6 *biodiversity research and monitoring program* means a program
7 designed to monitor the—

8 (a) state of nature conservation generally in the ACT; and

9 (b) effective management of nature conservation in the ACT.

10 **25 Biodiversity research and monitoring program—**
11 **conservator to prepare**

12 (1) The conservator must, every 2 years, prepare a biodiversity research
13 and monitoring program for the next 2 years.

14 (2) In preparing the biodiversity research and monitoring program, the
15 conservator must—

16 (a) consult the scientific committee about—

17 (i) priorities for the program; and

18 (ii) appropriate methods for monitoring; and

19 (b) consider the potential for engaging community organisations in
20 monitoring activities; and

21 **Example**

22 using volunteers with Frogwatch to assist in surveying frog numbers

23 *Note* An example is part of the Act, is not exhaustive and may extend,
24 but does not limit, the meaning of the provision in which it
25 appears (see [Legislation Act](#), s 126 and s 132).

26 (c) consider arrangements for sharing and transferring monitoring
27 data with other entities.

1 (3) The biodiversity research and monitoring program is a notifiable
2 instrument.

3 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

4 **26 Biodiversity research and monitoring program—**
5 **conservator to implement**

6 (1) The conservator—

7 (a) must take reasonable steps to implement the biodiversity
8 research and monitoring program; and

9 (b) may commission another entity to implement all or part of the
10 program.

11 (2) The conservator must at the end of each biodiversity research and
12 monitoring program—

13 (a) prepare a report on the implementation of the program
14 (a *biodiversity research and monitoring program report*); and

15 (b) make the report publicly accessible.

16 **Example—publicly accessible**

17 published on the directorate website

18 *Note* An example is part of the Act, is not exhaustive and may extend, but
19 does not limit, the meaning of the provision in which it appears (see
20 [Legislation Act](#), s 126 and s 132).

21 (3) However, if the conservator considers that a plant or animal could
22 be threatened by the disclosure of a particular detail in a finding, the
23 conservator—

24 (a) need not include the particular detail; but

25 (b) must instead include a general statement of the finding.

1 **Part 2.2 ACT parks and conservation**
2 **service**

3 **27 ACT parks and conservation service—establishment**

- 4 (1) The ACT Parks and Conservation Service is established.

5 *Note* **Establish** includes continue in existence (see [Legislation Act](#), dict, pt 1).

- 6 (2) The ACT parks and conservation service is made up of the
7 conservation officers.

8 *Note* The conservator is a conservation officer. Other conservation officers
9 are appointed by the director-general under s 28.

- 10 (3) The ACT parks and conservation service must assist—

11 (a) the conservator in the exercise of the conservator's functions;
12 and

13 (b) for unleased land, or public land, that is a reserve—the
14 custodian for the land in the exercise of the custodian's
15 functions.

16 *Note* **Custodian**, for an area of land—see the [Planning and](#)
17 [Development Act 2007](#), s 333.

- 18 (4) The ACT parks and conservation service has any other function
19 given to the service under this Act or another territory law.

1 **Part 2.3 Conservation officers**

2 **28 Conservation officers—appointment**

- 3 (1) The director-general may appoint a person as a conservation officer.

4 *Note 1* For the making of appointments (including acting appointments), see
5 the [Legislation Act](#), pt 19.3.

6 *Note 2* In particular, a person may be appointed for a particular provision of a
7 law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by
8 naming a person or nominating the occupant of a position (see
9 [Legislation Act](#), s 207).

- 10 (2) The conservator is a conservation officer.

11 **29 Conservation officers—identity cards**

- 12 (1) The director-general must give a conservation officer an identity
13 card stating the person's name and that the person is a conservation
14 officer.

- 15 (2) The identity card must show—

- 16 (a) a recent photograph of the conservation officer; and
17 (b) the card's date of issue and expiry; and
18 (c) anything else prescribed by regulation.

- 19 (3) A person commits an offence if the person—

- 20 (a) stops being a conservation officer; and
21 (b) does not return the person's identity card to the
22 director-general as soon as practicable (but not later than
23 7 days) after the day the person stops being a conservation
24 officer.

25 Maximum penalty: 1 penalty unit.

1 (4) Subsection (3) does not apply to a person if the person's identity
2 card has been—

3 (a) lost or stolen; or

4 (b) destroyed by someone else.

5 *Note* The defendant has an evidential burden in relation to the matters
6 mentioned in s (4) (see [Criminal Code](#), s 58).

7 (5) An offence against this section is a strict liability offence.

8 **30 Conservation officers—power not to be exercised before**
9 **identity card shown**

10 A conservation officer may exercise a power under a territory law in
11 relation to a person only if the conservation officer first shows the
12 person the conservation officer's identity card.

1 **Part 2.4** **Scientific committee**

2 **31** **Scientific committee—establishment**

3 The scientific committee is established.

4 **32** **Scientific committee—functions**

5 The scientific committee has the following functions:

- 6 (a) to advise the Minister about nature conservation;
- 7 (b) to advise the conservator about nature conservation;
- 8 (c) to exercise any other function given to the committee under
9 this Act or another territory law.

10 *Note* A provision of a law that gives an entity (including a person) a function
11 also gives the entity powers necessary and convenient to exercise the
12 function (see [Legislation Act](#), s 196 and dict, pt 1, def *entity*).

13 **33** **Scientific committee—Minister’s directions**

- 14 (1) The Minister may direct the scientific committee, in writing, to
15 provide advice about a stated nature conservation matter.
- 16 (2) The Minister must give a copy of each Minister’s direction to the
17 conservator.
- 18 (3) A report prepared by the conservator under the *Annual Reports*
19 *(Government Agencies) Act 2004* for a financial year must include—
- 20 (a) a copy of each Minister’s direction given during the year; and
- 21 (b) a statement by the conservator about action taken during
22 the year to give effect to any Minister’s direction (whether
23 given before or during the year).

24 **34** **Scientific committee—membership**

25 The scientific committee is made up of 7 members appointed by the
26 Minister under section 35.

- 1 **35 Scientific committee—appointment of members**
- 2 (1) The Minister must appoint 7 members to the scientific committee.
- 3 *Note 1* For the making of appointments (including acting appointments), see
4 the [Legislation Act](#), pt 19.3.
- 5 *Note 2* In particular, a person may be appointed for a particular provision of a
6 law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by
7 naming a person or nominating the occupant of a position (see
8 [Legislation Act](#), s 207).
- 9 *Note 3* Certain Ministerial appointments require consultation with an Assembly
10 committee and are disallowable (see [Legislation Act](#), div 19.3.3).
- 11 (2) The Minister must ensure that at least 4 members of the committee
12 are not public servants.
- 13 (3) The Minister must not appoint a person to the committee unless
14 satisfied that the person has appropriate scientific expertise in
15 biology, ecology, conservation science, or conservation
16 management.
- 17 (4) A member holds office as a part-time member.
- 18 (5) The appointment of a member is for not longer than 3 years.
- 19 *Note* A person may be reappointed to a position if the person is eligible to be
20 appointed to the position (see [Legislation Act](#), s 208 and dict, pt 1,
21 def *appoint*).
- 22 (6) The conditions of appointment of a member under this section are
23 the conditions stated in the appointment, subject to any
24 determination under the [Remuneration Tribunal Act 1995](#).
- 25 (7) An appointment is a disallowable instrument.
- 26 *Note* A disallowable instrument must be notified, and presented to the
27 Legislative Assembly, under the [Legislation Act](#).

1 **36 Scientific committee—chair and deputy chair**

- 2 (1) The Minister must appoint a chair and deputy chair of the scientific
3 committee from the members appointed under section 35.
- 4 (2) However, the chair and deputy chair must not be public servants.

5 **37 Scientific committee—secretary**

6 The director-general must nominate a public servant who is not a
7 member appointed under section 35 to be the secretary of the
8 scientific committee.

9 **38 Scientific committee—ending appointments**

10 The Minister may end the appointment of a member—

- 11 (a) for misbehaviour; or
- 12 (b) if the member, without reasonable excuse, contravenes
13 section 39; or
- 14 (c) if the member is absent from 3 consecutive meetings of the
15 scientific committee, other than on approved leave; or
- 16 (d) for physical or mental incapacity, if the incapacity substantially
17 affects the exercise of the member’s functions.

18 *Note* A person’s appointment also ends if the person resigns (see [Legislation](#)
19 Act, s 210).

20 **39 Scientific committee—disclosure of interests**

- 21 (1) If a member of the scientific committee has a material interest in an
22 issue being considered, or about to be considered, by the committee,
23 the member must disclose the nature of the interest at a committee
24 meeting as soon as practicable after the relevant facts come to the
25 member’s knowledge.

26 *Note* **Material interest** is defined in s (4). The definition of *indirect interest*
27 in s (4) applies to the definition of *material interest*.

- 1 (2) The disclosure must be recorded in the committee's minutes and,
2 unless the committee otherwise decides, the member must not—
- 3 (a) be present when the committee considers the issue; or
4 (b) take part in a decision of the committee on the issue.
- 5 (3) Any other committee member who also has a material interest in the
6 issue must not be present when the committee is considering its
7 decision under subsection (2).
- 8 (4) In this section:
- 9 *associate*, of a person, means—
- 10 (a) the person's business partner; or
11 (b) a close friend of the person; or
12 (c) a family member of the person.
- 13 *executive officer*, of a corporation, means a person (however
14 described) who is concerned with, or takes part in, the corporation's
15 management, whether or not the person is a director of the
16 corporation.
- 17 *indirect interest*—without limiting the kinds of indirect interests a
18 person may have, a person has an *indirect interest* in an issue if any
19 of the following has an interest in the issue:
- 20 (a) an associate of the person;
21 (b) a corporation if the corporation has not more than
22 100 members and the person, or an associate of the person, is a
23 member of the corporation;
24 (c) a subsidiary of a corporation mentioned in paragraph (b);
25 (d) a corporation if the person, or an associate of the person, is an
26 executive officer of the corporation;

- 1 (e) the trustee of a trust if the person, or an associate of the person,
2 is a beneficiary of the trust;
- 3 (f) a member of a firm or partnership if the person, or an associate
4 of the person, is a member of the firm or partnership;
- 5 (g) someone else carrying on a business if the person, or an
6 associate of the person, has a direct or indirect right to
7 participate in the profits of the business.

8 ***material interest***—a committee member has a ***material interest*** in
9 an issue if the member has—

- 10 (a) a direct or indirect financial interest in the issue; or
- 11 (b) a direct or indirect interest of any other kind if the interest
12 could conflict with the proper exercise of the member's
13 functions in relation to the committee's consideration of the
14 issue.

15 **40 Scientific committee—meetings**

- 16 (1) Meetings of the scientific committee are to be held when and where
17 it decides.
- 18 (2) However, the chair must call a meeting—
- 19 (a) as often as needed for the committee to efficiently carry out its
20 functions; and
- 21 (b) if asked by the Minister.
- 22 (3) The chair must give the other members of the committee at least
23 5 working days written notice of a meeting.

24 **41 Scientific committee—presiding member at meetings**

- 25 (1) The chair presides at all meetings at which the chair is present.
- 26 (2) If the chair is absent, the deputy chair presides.

- 1 (3) If the chair and the deputy chair are absent, the member chosen by
2 the members present presides.

3 **42 Scientific committee—quorum at meetings**

4 Business may be carried on at a meeting of the scientific committee
5 only if at least $\frac{1}{2}$ of the appointed members are present.

6 **43 Scientific committee—voting at meetings**

7 (1) At a meeting of the scientific committee, each member has a vote on
8 each question to be decided.

9 (2) A question is decided by a majority of the votes of the members
10 present and voting but, if the votes are equal, the member presiding
11 has the deciding vote.

12 **44 Scientific committee—conduct of meetings**

13 (1) The scientific committee may conduct its proceedings (including its
14 meetings) as it considers appropriate.

15 (2) The scientific committee must keep minutes of its meetings.

1 **Part 2.5** **Advisory committees**

2 **45** **Advisory committees**

3 (1) The Minister may set up advisory committees that the Minister
4 considers necessary.

5 (2) An advisory committee may decide how to exercise its functions.

6 (3) However, an advisory committee is subject to the direction of the
7 Minister in the exercise of its functions.

1 **Chapter 3 Nature conservation strategy**
2 **for the ACT**

3 **46 What is the *nature conservation strategy* for the ACT?**

4 In this Act:

5 *nature conservation strategy*, for the ACT, means a strategy for the
6 ACT, notified under section 53 (Draft strategy—Minister’s approval
7 and notification).

8 *Note* The power to prepare a draft nature conservation strategy includes the
9 power to amend or repeal the draft strategy. The power to amend or
10 repeal the draft strategy is exercisable in the same way, and subject to
11 the same conditions, as the power to make the draft strategy
12 (see [Legislation Act](#), s 46).

13 **47 What is a *draft nature conservation strategy*?—ch 3**

14 In this chapter:

15 *draft nature conservation strategy*, for the ACT—

16 (a) means a statement of—

17 (i) proposals about the protection, management and
18 conservation of—

19 (A) native species indigenous to the ACT; and

20 (B) significant ecosystems of the ACT; and

21 (ii) strategies to address actual and potential impacts of
22 climate change; and

23 (b) includes anything required to be included by a conservator
24 guideline.

25 *Note* *Conservator guidelines*—see s 23.

- 1 **48** **Draft nature conservation strategy—conservator to**
2 **prepare**
- 3 (1) The conservator must prepare a draft nature conservation strategy
4 for the ACT.
- 5 *Note* Power to make a statutory instrument includes power to make different
6 provision in relation to different matters or different classes of matters,
7 and to make an instrument that applies differently by reference to stated
8 exceptions or factors (see [Legislation Act](#), s 48).
- 9 (2) In preparing the draft nature conservation strategy, the conservator
10 must consider—
- 11 (a) landscape scale approaches across tenures; and
12 (b) restoration of habitats; and
13 (c) landscape connectivity; and
14 (d) threats to biodiversity; and
15 (e) the impacts of climate change; and
16 (f) biodiversity research and monitoring program reports.
- 17 **49** **Draft nature conservation strategy—consultation with**
18 **entities**
- 19 In preparing a draft nature conservation strategy for the ACT, the
20 conservator must consult—
- 21 (a) the scientific committee; and
22 (b) the commissioner for sustainability and the environment.

- 1 **50 Draft nature conservation strategy—public consultation**
- 2 (1) If the conservator prepares a draft nature conservation strategy, the
- 3 conservator must also prepare a notice about the draft nature
- 4 conservation strategy (a *public consultation notice*).
- 5 (2) A public consultation notice must—
- 6 (a) state that—
- 7 (i) anyone may give a written submission to the conservator
- 8 about the draft nature conservation strategy; and
- 9 (ii) submissions may be given to the conservator only during
- 10 the period starting on the day the public consultation
- 11 notice is notified under the [Legislation Act](#) and ending on
- 12 a stated day, being a day at least 6 weeks after the day it is
- 13 notified (the *public consultation period*); and
- 14 (b) include the draft nature conservation strategy.
- 15 (3) A public consultation notice is a notifiable instrument.
- 16 *Note* A notifiable instrument must be notified under the [Legislation Act](#).
- 17 (4) If the conservator notifies a public consultation notice for a draft
- 18 nature conservation strategy—
- 19 (a) anyone may give a written submission to the conservator about
- 20 the draft strategy; and
- 21 (b) the submission may be given to the conservator only during the
- 22 public consultation period for the draft strategy; and
- 23 (c) the person making the submission may, in writing, withdraw
- 24 the submission at any time.
- 25 (5) The conservator may make arrangements for people with particular
- 26 communication needs to ensure they have adequate opportunity to
- 27 comment on the draft plan.

- 1 **51 Draft strategy—revision and submission to Minister**
- 2 (1) If the public consultation period for a draft nature conservation
- 3 strategy has ended, the conservator must—
- 4 (a) consider any submissions received during the public
- 5 consultation period; and
- 6 (b) make any revisions to the draft strategy that the conservator
- 7 considers appropriate.
- 8 (2) The conservator must then submit the draft strategy to the Minister
- 9 for approval.
- 10 (3) The draft strategy must be accompanied by a report setting out the
- 11 issues raised in any submissions given to the conservator during the
- 12 public consultation period for the draft strategy.

- 13 **52 Draft strategy—Minister to approve, return or reject**
- 14 If the conservator submits a draft nature conservation strategy to the
- 15 Minister for approval, the Minister must—
- 16 (a) approve the draft strategy; or
- 17 (b) return the draft strategy to the conservator and direct the
- 18 conservator to take 1 or more of the following actions in
- 19 relation to it:
- 20 (i) carry out stated further consultation;
- 21 (ii) consider a relevant report;

22 **Example**

23 a report of the commissioner for sustainability and the environment

24 under the *Commissioner for Sustainability and the Environment*

25 *Act 1993*

26 *Note* An example is part of the Act, is not exhaustive and may

27 extend, but does not limit, the meaning of the provision in

28 which it appears (see *Legislation Act*, s 126 and s 132).

1 (iii) revise the draft strategy in a stated way; or

2 (c) reject the draft strategy.

3 **53 Draft strategy—Minister’s approval and notification**

4 (1) A draft nature conservation strategy approved by the Minister under
5 section 52 (a) or section 56 (3) is a nature conservation strategy.

6 (2) A nature conservation strategy is a disallowable instrument.

7 *Note 1* A disallowable instrument must be notified, and presented to the
8 Legislative Assembly, under the [Legislation Act](#).

9 *Note 2* The power to make a nature conservation strategy includes the power to
10 amend or repeal the strategy. The power to amend or repeal the strategy
11 is exercisable in the same way, and subject to the same conditions, as
12 the power to make the strategy (see [Legislation Act](#), s 46).

13 *Note 3* Minor amendments may be made to the strategy under s 56.

14 **54 Draft strategy—Minister’s direction to revise etc**

15 (1) This section applies if the Minister gives the conservator a direction
16 under section 52 (b).

17 (2) The conservator must—

18 (a) give effect to the direction; and

19 (b) resubmit the draft strategy to the Minister for approval.

20 (3) The Minister must decide, under section 52, what to do with the
21 resubmitted draft strategy.

22 **55 Draft strategy—Minister’s rejection**

23 (1) If the Minister rejects a draft nature conservation strategy under
24 section 52 (c), the Minister must prepare a notice stating that the
25 draft strategy is rejected (a *rejection notice*).

26 (2) A rejection notice is a notifiable instrument.

27 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

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- 1 **56** **Nature conservation strategy—minor amendments**
- 2 (1) This section applies if—
- 3 (a) a nature conservation strategy for the ACT is in force (the
- 4 *existing strategy*); and
- 5 (b) the conservator considers that minor amendments to the
- 6 existing strategy are appropriate.
- 7 (2) The conservator—
- 8 (a) may prepare a new draft nature conservation strategy,
- 9 incorporating the minor amendments into the existing strategy;
- 10 and
- 11 (b) need not comply with the requirements in this part; and
- 12 (c) may submit the new draft nature conservation strategy to the
- 13 Minister for approval.
- 14 (3) If the conservator submits a new draft nature conservation strategy
- 15 to the Minister for approval, the Minister must—
- 16 (a) approve the strategy; or
- 17 (b) reject the strategy.
- 18 *Note* The new draft nature conservation strategy approved by the Minister is
- 19 a nature conservation strategy and is a disallowable instrument
- 20 (see s 53).
- 21 (4) In this section:
- 22 *minor amendment*, of a nature conservation strategy for the ACT,
- 23 means an amendment that will improve the effectiveness or
- 24 technical efficiency of the strategy without changing the substance
- 25 of the strategy.
- 26 **Examples**
- 27 1 minor correction to improve effectiveness
- 28 2 omission of something redundant

1 3 technical adjustment to improve efficiency

2 *Note* An example is part of the Act, is not exhaustive and may extend, but
3 does not limit, the meaning of the provision in which it appears (see
4 [Legislation Act](#), s 126 and s 132).

5 **57 Nature conservation strategy—conservator to implement**

6 If a nature conservation strategy is in force for the ACT, the
7 conservator must take reasonable steps to implement the strategy.

8 **58 Nature conservation strategy—monitoring and review**

9 (1) The conservator must monitor the effectiveness of the nature
10 conservation strategy for the ACT.

11 (2) The conservator must report to the Minister about the nature
12 conservation strategy for the ACT at least once every 5 years.

13 (3) The conservator must review the nature conservation strategy every
14 10 years after the plan commences.

15 (4) However, the Minister may extend the time for conducting the
16 review.

17 (5) In reviewing the nature conservation strategy, the conservator—

18 (a) must consider biodiversity research and monitoring program
19 reports; and

20 (b) may—

21 (i) consult the scientific committee; and

22 (ii) make recommendations to the Minister about the strategy.

1 **Chapter 4** **Threatened native species and**
2 **ecological communities**

3 **Part 4.1** **Threatened native species**

4 **59** **What is a *threatened native species*?**

5 In this Act:

6 *threatened native species* means a native species listed on the
7 threatened native species list.

8 *Note* *Native species*—see s 16.

9 **60** **What is a *threatened native species list*?**

10 In this Act:

11 *threatened native species list* means a list of species notified under
12 section 89 (Final version of list and notification).

13 **61** **Threatened native species list—categories**

14 The Minister must make a threatened native species list—

15 (a) containing the species eligible to be included on the list; and

16 (b) divided into the following categories:

17 (i) extinct;

18 (ii) extinct in the wild;

19 (iii) critically endangered;

20 (iv) endangered;

21 (v) vulnerable;

22 (vi) conservation dependent;

23 (vii) provisional.

- 1 **62 Threatened native species list—eligibility for categories**
- 2 (1) A native species is eligible to be included in the extinct category on
- 3 the threatened native species list if there is no reasonable doubt that
- 4 the last member of the species has died.
- 5 (2) A native species is eligible to be included in the extinct in the wild
- 6 category on the threatened native species list if—
- 7 (a) it is known only to survive in cultivation, in captivity or as a
- 8 naturalised population well outside its past range; or
- 9 (b) it has not been recorded in its known or expected habitat, at
- 10 appropriate seasons, anywhere in its past range, despite
- 11 exhaustive surveys over a time frame appropriate to its life
- 12 cycle and form.
- 13 (3) A native species is eligible to be included in the critically
- 14 endangered category on the threatened native species list if it is
- 15 facing an extremely high risk of extinction in the wild in the
- 16 immediate future.
- 17 (4) A native species is eligible to be included in the endangered
- 18 category on the threatened native species list if—
- 19 (a) it is not critically endangered; but
- 20 (b) it is facing a very high risk of extinction in the wild in the near
- 21 future.
- 22 (5) A native species is eligible to be included in the vulnerable category
- 23 on the threatened native species list if—
- 24 (a) it is not critically endangered or endangered; but
- 25 (b) it is facing a high risk of extinction in the wild in the
- 26 medium-term future.

- 1 (6) A native species is eligible to be included in the conservation
2 dependent category on the threatened native species list if the
3 species is the subject of a native species conservation plan and the
4 ending of the plan may result in the species becoming vulnerable,
5 endangered or critically endangered.
- 6 (7) A native species is eligible to be included in the provisional
7 category on the threatened native species list if—
- 8 (a) there is a strong decline in the number of members of the
9 species in the ACT and surrounding region; or
- 10 (b) the species—
- 11 (i) occurs or is likely to occur in the ACT; and
- 12 (ii) is listed as a threatened native species under a law of
13 another jurisdiction corresponding, or substantially
14 corresponding, to this Act; or
- 15 (c) the species was listed in the extinct category of the threatened
16 native species list but has been definitely located in nature
17 since it was last listed as extinct.
- 18 *Note* See also s 95 about rediscovery of species that were extinct.
- 19 (8) A native species is no longer eligible to be included in the
20 provisional category on the threatened native species list if it has
21 been in the category for 18 months.

22 **63 Threatened native species list—eligibility criteria**

- 23 (1) The Minister must develop criteria to be used in deciding whether a
24 species is eligible to be included in a category on the threatened
25 native species list (the *threatened native species list criteria*).

26 *Note* The power to make an instrument includes the power to amend or repeal
27 the instrument (see [Legislation Act](#), s 46).

- 28 (2) The threatened native species list criteria may only include scientific
29 matters.

- 1 (3) In developing the threatened native species list criteria, the Minister
2 must have regard to—
- 3 (a) the conservation of the species; and
4 (b) the ecological significance of the species; and
5 (c) any relevant national standards.
- 6 (4) In developing the threatened native species list criteria, the Minister
7 must consult—
- 8 (a) the conservator; and
9 (b) the scientific committee.
- 10 (5) The threatened native species list criteria are a disallowable
11 instrument.

12 *Note* A disallowable instrument must be notified, and presented to the
13 Legislative Assembly, under the [Legislation Act](#).

14 **64 Threatened native species list—criteria to review**

- 15 (1) This section applies if the conservator, or the scientific committee,
16 considers that the threatened native species list criteria should be
17 reviewed because—
- 18 (a) the criteria are not adequately identifying species eligible to be
19 included in a category on the threatened native species list; or
20 (b) there are changes to national or international standards relating
21 to the criteria.
- 22 (2) The conservator or the scientific committee must recommend to the
23 Minister that the Minister review the threatened native species list
24 criteria.

- 1 (3) The Minister must consider the recommendation and may—
2 (a) review the threatened native species list criteria under
3 section 63; or
4 (b) refuse to review the threatened native species list criteria.
5 (4) A decision to refuse to review the threatened native species list
6 criteria, including a statement of reasons for the decision, is a
7 notifiable instrument.
8 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

1 **Part 4.2** **Threatened ecological**
2 **communities**

3 **65** **What is a *threatened ecological community*?**

4 In this Act:

5 *threatened ecological community* means an ecological community
6 listed in the threatened ecological communities list.

7 *Note* *Ecological community*—see s 17.

8 **66** **What is a *threatened ecological communities list*?**

9 In this Act:

10 *threatened ecological communities list* means a list of ecological
11 communities notified under section 89 (Final version of list and
12 notification).

13 **67** **Threatened ecological communities list—categories**

14 The Minister must make a threatened ecological communities list—

- 15 (a) containing the ecological communities eligible to be included
16 in the list; and
- 17 (b) divided into the following categories:
- 18 (i) critically endangered;
- 19 (ii) endangered;
- 20 (iii) vulnerable;
- 21 (iv) provisional.

- 1 **68** **Threatened ecological communities list—eligibility for**
2 **categories**
- 3 (1) An ecological community is eligible to be included in the critically
4 endangered category in the threatened ecological communities list if
5 it is facing an extremely high risk of extinction in the wild in the
6 immediate future.
- 7 (2) An ecological community is eligible to be included in the
8 endangered category in the threatened ecological communities list
9 if—
- 10 (a) it is not critically endangered; but
- 11 (b) it is facing a very high risk of extinction in the wild in the near
12 future.
- 13 (3) An ecological community is eligible to be included in the vulnerable
14 category in the threatened ecological communities list if—
- 15 (a) it is not critically endangered or endangered; but
- 16 (b) it is facing a high risk of extinction in the wild in the
17 medium-term future.
- 18 (4) An ecological community is eligible to be included in the
19 provisional category in the threatened ecological communities list
20 if—
- 21 (a) there is a strong decline in the size of the ecological
22 community in the ACT and the surrounding region; or
- 23 (b) the ecological community—
- 24 (i) exists or is likely to exist in the ACT; and
- 25 (ii) is listed as a threatened ecological community under a law
26 of another jurisdiction corresponding, or substantially
27 corresponding, to this Act.

- 1 (5) An ecological community is no longer eligible to be included in the
2 provisional category in the threatened ecological communities list if
3 it has been in the category for 18 months.

4 **69 Threatened ecological communities list—eligibility**
5 **criteria**

- 6 (1) The Minister must develop criteria to be used in deciding whether
7 an ecological community is eligible to be included in a category in
8 the threatened ecological communities list (the *threatened*
9 *ecological communities list criteria*).
- 10 (2) The threatened ecological communities list criteria may only include
11 scientific matters.
- 12 (3) In developing the threatened ecological communities list criteria, the
13 Minister must have regard to—
- 14 (a) the conservation of the ecological community; and
15 (b) the ecological significance of the ecological community; and
16 (c) any relevant national standards.
- 17 (4) In developing the threatened ecological communities list criteria, the
18 Minister must consult—
- 19 (a) the conservator; and
20 (b) the scientific committee.
- 21 (5) The threatened ecological communities list criteria are a
22 disallowable instrument.

23 *Note* A disallowable instrument must be notified, and presented to the
24 Legislative Assembly, under the [Legislation Act](#).

- 1 **70 Threatened ecological communities list criteria—review**
- 2 (1) This section applies if the conservator, or the scientific committee,
3 considers that the threatened ecological communities list criteria
4 should be reviewed because—
- 5 (a) the criteria are not adequately identifying ecological
6 communities eligible to be included in a category on the
7 threatened ecological communities list; or
- 8 (b) there are changes to national or international standards relating
9 to the criteria.
- 10 (2) The conservator or the scientific committee must recommend to the
11 Minister that the Minister review the threatened ecological
12 communities list criteria.
- 13 (3) The Minister must consider the recommendation and may—
- 14 (a) review the threatened ecological communities list criteria
15 under section 69; or
- 16 (b) refuse to review the threatened ecological communities list
17 criteria.
- 18 (4) A decision to refuse to review the threatened ecological
19 communities list criteria, including a statement of reasons for the
20 decision, is a notifiable instrument.
- 21 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

1 **Part 4.3** **Key threatening processes**

2 **71** **What is a *threatening process*?**

3 In this Act:

4 *threatening process* means a process that threatens, or may threaten,
5 the survival, abundance or evolutionary development of a native
6 species or ecological community.

7 Note *Ecological community*—see s 17.

8 *Native species*—see s 16.

9 **72** **What is a *key threatening process*?**

10 In this Act:

11 *key threatening process* means a threatening process listed in the
12 key threatening processes list.

13 **73** **What is a *key threatening processes list*?**

14 In this Act:

15 *key threatening processes list* means a list of threatening processes
16 notified under section 89 (Final version of list and notification).

17 **74** **Key threatening processes list**

18 The Minister must make a key threatening processes list containing
19 the threatening processes eligible to be included in the list.

1 **75 Key threatening processes list—eligibility**

2 A threatening process is eligible to be included in the key
3 threatening processes list if—

4 (a) it could cause—

5 (i) a native species to become eligible for listing in the
6 threatened native species list in a category other than
7 conservation dependent; or

8 (ii) an ecological community to become eligible for listing in
9 the threatened ecological communities list; or

10 (b) it could cause—

11 (i) a threatened native species to become eligible to be listed
12 in the threatened native species list in another category
13 representing a higher degree of endangerment; or

14 (ii) a threatened ecological community to become eligible to
15 be listed in the threatened ecological communities list in
16 another category representing a higher degree of
17 endangerment; or

18 (c) it adversely affects 2 or more threatened native species (other
19 than conservation dependent species) or 2 or more threatened
20 ecological communities.

21 **76 Key threatening processes list—eligibility criteria**

22 (1) The Minister must develop criteria to be used in deciding whether a
23 threatening process is eligible to be included on the key threatening
24 processes list (the *key threatening processes list criteria*).

25 (2) The key threatening processes list criteria may only include
26 scientific matters.

- 1 (3) In developing the key threatening processes list criteria, the Minister
2 must have regard to—
- 3 (a) the conservation of threatened native species and threatened
4 ecological communities; and
- 5 (b) the ecological significance of threatened native species and
6 threatened ecological communities; and
- 7 (c) any relevant national standards.
- 8 (4) In developing the key threatening processes list criteria, the Minister
9 must consult—
- 10 (a) the conservator; and
- 11 (b) the scientific committee.
- 12 (5) The key threatening processes list criteria are a disallowable
13 instrument.
- 14 *Note* A disallowable instrument must be notified, and presented to the
15 Legislative Assembly, under the [Legislation Act](#).

16 **77 Key threatening processes list criteria—review**

- 17 (1) This section applies if the conservator, or the scientific committee,
18 considers that the key threatening processes list criteria should be
19 reviewed because—
- 20 (a) the criteria are not adequately identifying processes eligible to
21 be included on the key threatening processes list; or
- 22 (b) there are changes to national or international standards relating
23 to the criteria.
- 24 (2) The conservator or the scientific committee must recommend to the
25 Minister that the Minister review the key threatening processes list
26 criteria.

- 1 (3) The Minister must consider the recommendation and may—
2 (a) review the key threatening processes list criteria under
3 section 76; or
4 (b) refuse to review the key threatening processes list criteria.
5 (4) A decision to refuse to review the key threatening processes list
6 criteria, including a statement of reasons for the decision, is a
7 notifiable instrument.
8 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

1 **Part 4.4** **Including, transferring and**
2 **omitting items in list**

3 **78** **Definitions—pt 4.4**

4 In this part:

5 *item* means—

- 6 (a) for the threatened native species list—a native species; or
7 (b) for the threatened ecological communities list—an ecological
8 community; or
9 (c) for the key threatening processes list—a threatening process.

10 *list* means—

- 11 (a) the threatened native species list; or
12 (b) the threatened ecological communities list; or
13 (c) the key threatening processes list.

14 *nomination* means a nomination mentioned in—

- 15 (a) section 79; or
16 (b) section 81.

17 *transfer*, an item within a list, means transfer the item from
18 1 category in the list to another category in the list.

19 **79** **Nominations—public may nominate item at any time**

- 20 (1) A person may, at any time, nominate an item to be—
21 (a) included in a list; or
22 (b) transferred within a list; or
23 (c) omitted from a list.

- 1 (2) A nomination must—
2 (a) comply with any requirements prescribed by regulation for the
3 nomination; and
4 (b) be given to the scientific committee.
5 *Note* If a form is approved under s 363 for a nomination, the form must be
6 used.
7 (3) A person who gives the scientific committee a nomination may, in
8 writing, withdraw the nomination at any time.

9 **80 Nominations—scientific committee may reject**
10 **nomination**

- 11 (1) The scientific committee may reject a nomination if the scientific
12 committee considers that—
13 (a) the nomination is vexatious, frivolous or not made in good
14 faith; or
15 (b) a requirement prescribed by regulation for the nomination has
16 not been complied with.
17 (2) If the scientific committee rejects a nomination, the scientific
18 committee must take reasonable steps to tell the person who made
19 the nomination about the rejection and the reason for it.

20 **81 Nominations—scientific committee may nominate items**
21 **itself**

- 22 The scientific committee may, at any time, nominate an item to be—
23 (a) included in a list; or
24 (b) transferred within a list; or
25 (c) omitted from a list.

- 1 **82 Nominations—public consultation**
- 2 (1) This section applies if the scientific committee—
- 3 (a) receives a nomination under section 79 that is not rejected
- 4 under section 80; or
- 5 (b) nominates an item itself under section 81.
- 6 (2) The scientific committee may prepare a notice about the nomination
- 7 (a *public consultation notice*).
- 8 (3) A public consultation notice must—
- 9 (a) state that—
- 10 (i) anyone may give a written submission to the scientific
- 11 committee about the nomination; and
- 12 (ii) submissions may be given to the scientific committee
- 13 only during the period starting on the day the public
- 14 consultation notice is notified under the [Legislation](#)
- 15 Act and ending on a stated day, being a day at least
- 16 6 weeks after the day it is notified (the *public*
- 17 *consultation period*); and
- 18 (b) include the nomination.
- 19 *Note* The public consultation notice need not contain the precise location of
- 20 the species (see s 357).
- 21 (4) A public consultation notice is a notifiable instrument.
- 22 *Note* A notifiable instrument must be notified under the [Legislation Act](#).
- 23 (5) If the scientific committee notifies a public consultation notice for a
- 24 nomination—
- 25 (a) anyone may give a written submission to the scientific
- 26 committee about the nomination; and
- 27 (b) the submission may be given to the scientific committee only
- 28 during the public consultation period for the nomination; and

- 1 (c) the person making the submission may, in writing, withdraw
2 the submission at any time.
- 3 (6) The scientific committee may make arrangements for people with
4 particular communication needs to ensure they have adequate
5 opportunity to comment on the nomination.

6 **83 Nominations—scientific committee to carry out *listing***
7 ***assessment***

- 8 (1) This section applies if—
- 9 (a) the scientific committee does not notify a public consultation
10 notice for a nomination under section 82 within 4 weeks after
11 receiving the nomination or nominating the item itself; or
- 12 (b) the public consultation period for a nomination has ended.
- 13 (2) The scientific committee must assess the nominated item (a ***listing***
14 ***assessment***).
- 15 (3) A listing assessment for a nominated item must assess—
- 16 (a) whether the item is eligible for inclusion in, or transfer within,
17 a list; and
- 18 (b) if eligible for inclusion or transfer—the category (if any) of the
19 list the item is eligible to be included in or transferred to.
- 20 *Note* Eligibility for the threatened native species list is dealt with in s 62.
21 Eligibility for the threatened ecological communities list is dealt with in
22 s 68.
23 Eligibility for the key threatening processes list is dealt with in s 75.
- 24 (4) In carrying out a listing assessment for a nominated item, the
25 scientific committee must consider—
- 26 (a) if public consultation about the item has been carried out under
27 section 82—any submissions received during the public
28 consultation period for the item; and

- 1 (b) the eligibility of the item for the list under—
- 2 (i) for a species—the threatened native species list criteria;
- 3 or
- 4 (ii) for an ecological community—the threatened ecological
- 5 communities list criteria; or
- 6 (iii) for a threatening process—the key threatening processes
- 7 list criteria; and
- 8 *Note* **Threatened native species list criteria**—see s 63.
- 9 **Threatened ecological communities list criteria**—see s 69.
- 10 **Key threatening processes list criteria**—see s 76.
- 11 (c) the effect that including, transferring or omitting the item could
- 12 have on the survival of the species or ecological community
- 13 concerned.

14 **84 Scientific committee to prepare listing advice**

- 15 (1) This section applies if the scientific committee—
- 16 (a) has carried out a listing assessment of a nominated item; and
- 17 (b) considers that the item is eligible to be—
- 18 (i) included in a list; or
- 19 (ii) transferred within a list; or
- 20 (iii) omitted from a list.
- 21 (2) The scientific committee must prepare an advice about the item
- 22 (a **listing advice**) for the Minister.
- 23 *Note* The listing advice need not contain the precise location of a species or
- 24 community (see s 357).
- 25 (3) A listing advice must set out—
- 26 (a) the grounds on which the item is eligible to be included in,
- 27 transferred within, or omitted from, the list; and

1 (b) the main factors that make it eligible.

2 *Note* Eligibility for the threatened native species list is dealt with in s 62.
3 Eligibility for the threatened ecological communities list is dealt with in
4 s 68.
5 Eligibility for the key threatening processes list is dealt with in s 75.

6 (4) The scientific committee must give the listing advice to the Minister
7 not later than 1 year after the end of the 4-week period, or public
8 consultation period, mentioned in section 83 (1).

9 **85 Minister to decide whether to include, transfer or omit**
10 **item**

11 (1) Not later than 3 months after the Minister receives a listing advice
12 for an item, the Minister must decide whether to—

13 (a) include, or refuse to include, an item in a list under section 86;
14 or

15 (b) transfer, or refuse to transfer, an item within a list under
16 section 87; or

17 (c) omit, or refuse to omit, an item from a list under section 88.

18 (2) If the decision is to include, transfer or omit an item, the Minister
19 must—

20 (a) revise the list; and

21 (b) prepare a final version of the list.

22 *Note* The final version of the list and the listing advice for the item are
23 notifiable instruments (see s 89 (2) (d)).

24 (3) The Minister must take reasonable steps to tell the following people
25 about the decision:

26 (a) if the item was nominated by a person under section 79—the
27 person who made the nomination;

28 (b) if a person made a submission to the scientific committee
29 under section 82—the person who made the submission.

- 1 **86 Minister’s decision—include item**
- 2 (1) The Minister may include an item in a list, or category in a list, only
- 3 if satisfied that the item is eligible to be included in the list or
- 4 category.
- 5 *Note* Eligibility for the threatened native species list is dealt with in s 62.
- 6 Eligibility for the threatened ecological communities list is dealt with in
- 7 s 68.
- 8 Eligibility for the key threatening processes list is dealt with in s 75.
- 9 (2) In deciding whether to include an item, the Minister may only
- 10 consider—
- 11 (a) the listing advice for the item; and
- 12 (b) the eligibility of the item for the list under—
- 13 (i) for a species—the threatened native species list criteria;
- 14 or
- 15 (ii) for an ecological community—the threatened ecological
- 16 communities list criteria; or
- 17 (iii) for a threatening process—the key threatening processes
- 18 list criteria; and
- 19 *Note* ***Threatened native species list criteria***—see s 63.
- 20 ***Threatened ecological communities list criteria***—see s 69.
- 21 ***Key threatening processes list criteria***—see s 76.
- 22 (c) if the item is a species or ecological community—the effect
- 23 that including the item may have on the survival of the item.

1 **87 Minister’s decision—transfer item**

2 (1) The Minister may transfer an item from 1 category in a list to
3 another category in a list (the *new category*) only if satisfied that the
4 item is eligible to be included in the new category.

5 *Note 1* Eligibility for the threatened native species list is dealt with in s 62.
6 Eligibility for the threatened ecological communities list is dealt with in
7 s 68.

8 *Note 2* There are no categories in the key threatening processes list.

9 (2) In deciding whether to include an item, the Minister may only
10 consider—

11 (a) the listing advice for the item; and

12 (b) the eligibility of the item for the new category under—

13 (i) for a species—the threatened native species list criteria;
14 or

15 (ii) for an ecological community—the threatened ecological
16 communities list criteria; and

17 *Note* *Threatened native species list criteria*—see s 63.
18 *Threatened ecological communities list criteria*—see s 69.

19 (c) the effect that transferring the item may have on the survival of
20 the item.

21 **88 Minister’s decision—omit item**

22 (1) The Minister may omit an item from a list only if satisfied that—

23 (a) the item is no longer eligible to be included in the list; or

- 1 (b) for a native species or ecological community—the inclusion of
2 the item in the list is not contributing, or will not contribute, to
3 the survival of the item.

4 *Note* Eligibility for the threatened native species list is dealt with in s 62.
5 Eligibility for the threatened ecological communities list is dealt with in
6 s 68.
7 Eligibility for the key threatening processes list is dealt with in s 75.

- 8 (2) In deciding whether to omit an item from a list, the Minister may
9 only consider—

10 (a) the listing advice for the item; and

11 (b) the eligibility of the item for the list under—

12 (i) for a species—the threatened native species list criteria;
13 or

14 (ii) for an ecological community—the threatened ecological
15 communities list criteria; or

16 (iii) for a threatening process—the key threatening processes
17 list criteria; and

18 *Note* ***Threatened native species list criteria***—see s 63.
19 ***Threatened ecological communities list criteria***—see s 69.
20 ***Key threatening processes list criteria***—see s 76.

- 21 (c) if the item is a species or ecological community—the effect
22 that the inclusion of the item in the list is having, or may have,
23 on the survival of the item.

24 **89 Final version of list and notification**

- 25 (1) The final version of—

26 (a) a list of species prepared under section 85 or section 92 is a
27 threatened native species list; and

28 (b) a list of ecological communities prepared under section 85 or
29 section 92 is a threatened ecological communities list; and

- 1 (c) a list of processes prepared under section 85 or section 92 is a
2 key threatening processes list.
- 3 (2) Each of the following is a notifiable instrument:
- 4 (a) a threatened native species list;
- 5 (b) a threatened ecological communities list;
- 6 (c) a key threatening processes list;
- 7 (d) a listing advice provided to the Minister under section 84 (4)
8 (Scientific committee to prepare listing advice) for an item that
9 the Minister decides to include, transfer or omit under
10 section 85 (1) (Minister to decide whether to include, transfer
11 or omit item).

12 *Note 1* A notifiable instrument must be notified under the [Legislation Act](#).

13 *Note 2* The power to make a list includes the power to amend or repeal the list.
14 The power to amend or repeal the list is exercisable in the same way,
15 and subject to the same conditions, as the power to make the list (see
16 [Legislation Act](#), s 46).

17 **90 Scientific committee to prepare conservation advice**

- 18 (1) This section applies if a species or community is included in, or
19 transferred within, a list.
- 20 (2) The scientific committee must prepare an advice about the species
21 or community (a *conservation advice*) that sets out what (if
22 anything) may be done to—
- 23 (a) stop the decline of the species or community; and
- 24 (b) support the recovery of the species or community.
- 25 (3) The scientific committee must prepare the conservation advice not
26 later than 3 months after the inclusion or transfer is notified under
27 section 89 (2).

1 (4) A conservation advice is a notifiable instrument.

2 *Note 1* A notifiable instrument must be notified under the [Legislation Act](#).

3 *Note 2* The power to make an instrument includes the power to amend or repeal
4 the instrument (see [Legislation Act](#), s 46).

5 **91 What is a *minor amendment*?—pt 4.4**

6 In this part:

7 *minor amendment*, of a list, means an amendment to—

8 (a) include a species in the threatened native species list in the
9 circumstances mentioned in section 93 (Minor amendment—
10 including similar species); or

11 (b) omit a species from the threatened native species list in the
12 circumstances mentioned in section 94 (Minor amendment—
13 omitting similar species); or

14 (c) transfer a species from the extinct category to the provisional
15 category of the threatened native species list in the
16 circumstances mentioned in section 95 (Minor amendment—
17 rediscovery of extinct species); or

18 (d) update the name of a threatened native species or threatened
19 ecological community; or

20 (e) correct an inaccuracy.

21 **92 Minister may make minor amendments**

22 (1) This section applies if the Minister considers that a minor
23 amendment to a list is appropriate.

24 (2) The Minister—

25 (a) may prepare a new list, incorporating the minor amendments
26 into the existing list; and

1 (b) need not comply with the requirements in section 82
2 (Nominations—public consultation) to section 90 (Scientific
3 committee to prepare conservation advice); and

4 (c) may prepare a final version of the new list, as amended.

5 *Note* The final version of the new list is a threatened native species list,
6 threatened ecological communities list, or key threatening processes list
7 and is a notifiable instrument (see s 89).

8 **93 Minor amendment—including similar species**

9 (1) A minor amendment of the threatened native species list may be
10 appropriate if the amendment is to include a native species in a
11 certain category of the list (the *ineligible species*) because—

12 (a) it so closely resembles in appearance, at any stage of its
13 biological development, a species that is included in the
14 category (the *eligible species*) that it is difficult to differentiate
15 between the 2 species; and

16 (b) this difficulty poses an additional threat to the eligible species;
17 and

18 (c) it would substantially promote the objects of this Act if the
19 ineligible species were included in the category.

20 (2) In deciding whether a minor amendment is appropriate, the Minister
21 must consider—

22 (a) the listing advice for the eligible species; and

23 *Note* **Listing advice**—see s 84.

24 (b) the conservation advice for the eligible species.

25 *Note* **Conservation advice**—see s 90.

26 (3) If an ineligible species is included in a category of the threatened
27 native species list under subsection (1) and the eligible species is—

28 (a) transferred to another category of the list, the ineligible species
29 is also transferred to the other category; and

1 (b) omitted from the list, the ineligible species is also omitted from
2 the list.

3 (4) In this section:

4 *certain category*, of the threatened native species list, means—

5 (a) critically endangered; or

6 (b) endangered; or

7 (c) vulnerable.

8 *Note* Eligibility for critically endangered category, endangered category and
9 vulnerable category (see s 62 (3) to (5)).

10 **94 Minor amendment—omitting similar species**

11 (1) A minor amendment of the threatened native species list may be
12 appropriate if the amendment is to omit an ineligible species
13 included under section 93 because its inclusion is not having a
14 significant beneficial effect on the survival of the eligible species.

15 (2) In deciding whether a minor amendment is appropriate, the Minister
16 must consider—

17 (a) the listing advice for the eligible species; and

18 *Note Listing advice*—see s 84.

19 (b) the conservation advice for the eligible species.

20 *Note Conservation advice*—see s 90.

21 **95 Minor amendment—rediscovery of extinct species**

22 (1) A minor amendment of the threatened native species list may be
23 appropriate if the amendment is to transfer a species from the extinct
24 category to the provisional category because the species has been
25 definitely located in nature.

26 (2) In deciding whether a minor amendment is appropriate, the Minister
27 need not obtain and consider advice from the scientific committee.

1 **Part 4.5** **Action plans**

2 **96** **Definitions—Act**

3 In this Act:

4 *regular migratory species* means a listed migratory species that
5 regularly occurs in the ACT.

6 *Note* *Listed migratory species*—see the *Environment Protection and*
7 *Biodiversity Conservation Act 1999* (Cwlth), s 528.

8 *relevant ecological community* means the following:

- 9 (a) a critically endangered ecological community;
10 (b) an endangered ecological community;
11 (c) a vulnerable ecological community.

12 *relevant species* means the following:

- 13 (a) a critically endangered species;
14 (b) an endangered species;
15 (c) a vulnerable species;
16 (d) a regular migratory species.

17 **97** **What is an *action plan*?—pt 4.5**

18 In this part:

19 *action plan*, for a relevant species, relevant ecological community
20 or key threatening process, means a plan for the species, ecological
21 community or process, notified under section 103 (Draft action
22 plan—final version and notification).

23 *Note* *Key threatening process*—see s 72.

1 **98 What is a *draft action plan*?—pt 4.5**

2 In this part:

3 *draft action plan*, for a relevant species, relevant ecological
4 community or key threatening process—

5 (a) means a draft plan that—

6 (i) for a relevant species—

7 (A) sets out proposals to ensure, as far as practicable, the
8 identification, protection and survival of the species;
9 and

10 (B) if there is a known critical habitat for the species—
11 identifies the critical habitat; and

12 (C) for regular migratory species—may include maps of
13 potential habitats of the species; and

14 (D) may propose management strategies to ensure the
15 persistence of the species; and

16 (E) may state requirements for monitoring the species
17 and its habitats; and

18 (ii) for a relevant ecological community—

19 (A) sets out proposals to ensure, as far as practicable,
20 the identification, protection and survival of the
21 community; and

22 (B) if there is a known critical habitat for the
23 community—identifies the critical habitat; and

1 (iii) for a key threatening process—sets out proposals to
2 minimise any effect of the process that threatens a
3 relevant species or relevant ecological community; and

4 *Note* Power to make a statutory instrument includes power to make
5 different provision in relation to different matters or different
6 classes of matters, and to make an instrument that applies
7 differently by reference to stated exceptions or factors (see
8 [Legislation Act](#), s 48).

9 (b) includes anything required to be included by a conservator
10 guideline; and

11 *Note* **Conservator guidelines**—see s 23.

12 (c) may apply, adopt or incorporate an instrument as in force from
13 time to time.

14 **Examples—instrument that may be applied, adopted or incorporated**

15 1 a *native species conservation plan*, for a native species (see s 113)

16 2 a recovery plan under the *Environment Protection and Biodiversity*
17 *Conservation Act 1999* (Cwlth), s 269A

18 *Note 1* The text of an applied, adopted or incorporated law or instrument,
19 whether applied as in force from time to time or at a particular time, is
20 taken to be a notifiable instrument if the operation of the [Legislation](#)
21 [Act](#), s 47 (5) or (6) is not disapplied (see s 47 (7)).

22 *Note 2* A notifiable instrument must be notified under the [Legislation Act](#).

23 *Note 3* An example is part of the Act, is not exhaustive and may extend, but
24 does not limit, the meaning of the provision in which it appears (see
25 [Legislation Act](#), s 126 and s 132).

26 **99 Draft action plan—conservator to prepare**

27 (1) The conservator must prepare a draft action plan for each relevant
28 species, relevant ecological community and key threatening process.

29 *Note* The draft action plan need not contain the precise location of the
30 species, community or critical habitat (see s 357).

- 1 (2) However, the conservator need not prepare a draft action plan—
- 2 (a) for a relevant species or relevant ecological community—if the
- 3 conservator reasonably believes that the species or ecological
- 4 community does not occur in the ACT; or
- 5 (b) for a vulnerable species or vulnerable ecological community—
- 6 if the conservator reasonably believes that the conservation
- 7 advice for the species or community provides adequate
- 8 guidance about the appropriate management of the species or
- 9 community; or
- 10 *Note* *Conservation advice*—see s 90.
- 11 (c) for a relevant native species—if the species is the subject of a
- 12 native species conservation plan.
- 13 *Note* *Native species conservation plan*, for a native species—see s 113.
- 14 (3) In preparing a draft action plan for a relevant species or relevant
- 15 ecological community, the conservator must consider—
- 16 (a) the impact of climate change on the species or ecological
- 17 community; and
- 18 (b) threats to the species or ecological community; and
- 19 (c) connectivity requirements of the species or ecological
- 20 community; and
- 21 (d) critical habitat of the species or ecological community.
- 22 *Note* *Critical habitat*—see the dictionary.

23 **100** **Draft action plan—consultation with scientific committee**

24 In preparing a draft action plan, the conservator must consult the

25 scientific committee.

1 **101 Draft action plan—public consultation**

- 2 (1) If the conservator prepares a draft action plan, the conservator must
3 also prepare a notice about the draft action plan (a *public*
4 *consultation notice*).
- 5 (2) A public consultation notice must—
- 6 (a) state that—
- 7 (i) anyone may give a written submission to the conservator
8 about the draft action plan; and
- 9 (ii) submissions may be given to the conservator only during
10 the period starting on the day the public consultation
11 notice is notified under the [Legislation Act](#) and ending on
12 a stated day, being a day at least 6 weeks after the day it is
13 notified (the *public consultation period*); and
- 14 (b) include the draft action plan.
- 15 (3) A public consultation notice is a notifiable instrument.
- 16 *Note* A notifiable instrument must be notified under the [Legislation Act](#).
- 17 (4) If the conservator notifies a public consultation notice for a draft
18 action plan—
- 19 (a) anyone may give a written submission to the conservator about
20 the draft plan; and
- 21 (b) the submission may be given to the conservator only during the
22 public consultation period for the draft plan; and
- 23 (c) the person making the submission may, in writing, withdraw
24 the submission at any time.
- 25 (5) The conservator may make arrangements for people with particular
26 communication needs to ensure they have adequate opportunity to
27 comment on the draft action plan.

1 **102 Draft action plan—revision**

2 If the public consultation period for a draft action plan has ended,
3 the conservator must—

- 4 (a) consider any submissions received during the public
5 consultation period; and
6 (b) make any revisions to the draft plan that the conservator
7 considers appropriate; and
8 (c) prepare a final version of the draft plan.

9 **103 Draft action plan—final version and notification**

10 (1) The final version of a draft action plan prepared under section 102
11 or section 104 is an action plan.

12 (2) An action plan is a disallowable instrument.

13 *Note 1* A disallowable instrument must be notified, and presented to the
14 Legislative Assembly, under the [Legislation Act](#).

15 *Note 2* The power to make an action plan includes the power to amend or
16 repeal the plan. The power to amend or repeal the plan is exercisable in
17 the same way, and subject to the same conditions, as the power to make
18 the plan (see [Legislation Act](#), s 46).

19 **104 Action plan—minor amendments**

20 (1) This section applies if—

- 21 (a) an action plan for a relevant species, relevant ecological
22 community or key threatening process is in force (the *existing*
23 *plan*); and
24 (b) the conservator considers that minor amendments to the
25 existing plan are appropriate.

- 1 (2) The conservator—
2 (a) may prepare a new draft action plan for the species,
3 community or process, incorporating the minor amendments
4 into the existing plan; and
5 (b) need not comply with the consultation requirements in
6 section 101 (Draft action plan—public consultation); and
7 (c) may prepare a final version of the new draft action plan, as
8 amended.

9 *Note* The final version of the new draft action plan is an action plan and is a
10 disallowable instrument (see s 103).

- 11 (3) In this section:

12 ***minor amendment***, of an action plan, means an amendment that will
13 improve the effectiveness or technical efficiency of the plan without
14 changing the substance of the plan.

15 **Examples**

- 16 1 minor correction to improve effectiveness
17 2 omission of something redundant
18 3 technical adjustment to improve efficiency

19 *Note* An example is part of the Act, is not exhaustive and may extend, but
20 does not limit, the meaning of the provision in which it appears (see
21 [Legislation Act](#), s 126 and s 132).

22 **105 Action plan—conservator to implement**

23 If an action plan is in force for a relevant species, relevant
24 ecological community or key threatening process, the conservator
25 must take reasonable steps to implement the plan.

26 **106 Action plan—monitoring and review**

- 27 (1) The conservator must—
28 (a) monitor the effectiveness of an action plan; and

- 1 (b) make the findings of the monitoring publicly accessible.
- 2 **Example—publically accessible**
- 3 published on the directorate website
- 4 *Note* An example is part of the Act, is not exhaustive and may extend, but
- 5 does not limit, the meaning of the provision in which it appears (see
- 6 [Legislation Act](#), s 126 and s 132).
- 7 (2) However, if the conservator considers that a species or ecological
- 8 community could be threatened by the disclosure of a particular
- 9 detail in a finding, the conservator—
- 10 (a) need not include the particular detail; but
- 11 (b) must instead include a general statement about the finding.
- 12 (3) The conservator must report to the Minister about each action plan
- 13 at least once every 5 years.
- 14 (4) The scientific committee must review an action plan—
- 15 (a) every 10 years after the plan commences; and
- 16 (b) at any other time at the conservator’s request.
- 17 (5) However, the Minister may extend the time for conducting the
- 18 review under subsection (4) (a).
- 19 (6) In reviewing an action plan, the scientific committee may make
- 20 recommendations to the conservator about the plan.

1 **Chapter 5** **Protection of native species—**
2 **conservation plans**

3 **Part 5.1** **Special protection status**

4 **107** **What is *special protection status*?**

5 (1) In this Act:

6 *special protection status*—a native species has *special protection*
7 *status* if it is—

8 (a) a threatened native species; or

9 *Note* *Threatened native species*—see s 59.

10 (b) a listed threatened species; or

11 (c) a listed migratory species.

12 *Note* *Listed migratory species*—see the *Environment Protection and*
13 *Biodiversity Conservation Act 1999* (Cwlth), s 528.

14 (2) In this section:

15 *listed threatened species*—see the *Environment Protection and*
16 *Biodiversity Conservation Act 1999* (Cwlth), section 528.

17 *Note 1* The conservator may make a native species conservation plan for a
18 species that has special protection status (see pt 5.3).

19 *Note 2* The conservator must make an action plan for regular migratory species
20 (see s 99).

1 **Part 5.2** **Protected native species**

2 **108** **What is a *protected native species*?**

3 In this Act:

4 *protected native species* means a native species listed in the
5 protected native species list.

6 **109** **Minister to make protected native species list**

7 (1) The Minister must make a list of native species that are protected
8 native species (the *protected native species list*).

9 *Note* *Native species*—see s 16.

10 (2) The protected native species list must be divided into the following
11 categories:

12 (a) restricted trade;

13 (b) rare;

14 (c) data deficient;

15 (d) any other category prescribed by regulation.

16 (3) The protected native species list is a notifiable instrument.

17 *Note 1* A notifiable instrument must be notified under the [Legislation Act](#).

18 *Note 2* The power to make the list includes the power to amend or repeal the
19 list. The power to amend or repeal the list is exercisable in the same
20 way, and subject to the same conditions, as the power to make the list
21 (see [Legislation Act](#), s 46).

22 **110** **Protected native species list—eligibility**

23 (1) A native species is eligible to be included in the restricted trade
24 category in the protected native species list if unrestricted trade in
25 the species is likely to have a negative impact on populations of the
26 species in the wild.

- 1 (2) A native species is eligible to be included in the rare category in the
2 protected native species list if—
- 3 (a) it is not a threatened native species; and
- 4 *Note Threatened native species—see s 59.*
- 5 (b) it does not have special protection status; and
- 6 *Note Special protection status—see s 107.*
- 7 (c) it is rare in the ACT.
- 8 (3) A native species is eligible to be included in the data deficient
9 category in the protected native species list if there is insufficient
10 information about the species in the ACT for the species to be
11 eligible to be—
- 12 (a) a threatened native species; or
- 13 *Note Threatened native species—see s 59.*
- 14 (b) included in any other category in the protected native species
15 list.

16 **111 Minister to develop criteria and processes for protected**
17 **native species list**

- 18 (1) The Minister must develop criteria to be used in deciding whether a
19 species is eligible to be included in a category on the protected
20 native species list (the *protected native species list criteria*).
- 21 (2) The protected native species list criteria may only include scientific
22 matters.
- 23 (3) In developing the protected native species list criteria, the Minister
24 must—
- 25 (a) have regard to the conservation of the species; and
26 (b) consult the scientific committee.

1 (4) The protected native species list criteria are a disallowable
2 instrument.

3 *Note* A disallowable instrument must be notified, and presented to the
4 Legislative Assembly, under the [Legislation Act](#).

5 (5) The Minister must also develop processes to be followed in deciding
6 whether a species is to be included in a category in the protected
7 native species list.

8 (6) The processes are a disallowable instrument.

9 **112 Protected native species list criteria—review**

10 (1) This section applies if the conservator, or the scientific committee,
11 considers that the protected native species list criteria should be
12 reviewed because—

13 (a) the criteria are not adequately identifying species eligible to be
14 included in a category on the protected native species list; or

15 (b) there are changes to national or international standards relating
16 to the criteria.

17 (2) The conservator, or the scientific committee, must recommend to
18 the Minister that the Minister review the protected native species list
19 criteria.

20 (3) The Minister must consider the recommendation and may—

21 (a) review the protected native species list criteria under
22 section 111; or

23 (b) refuse to review the protected native species list criteria.

24 (4) A decision to refuse to review the protected native species list
25 criteria, including a statement of reasons for the decision, is a
26 notifiable instrument.

27 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

1 **Part 5.3** **Native species conservation**
2 **plans**

3 **113** **What is a *native species conservation plan*?**

4 In this Act:

5 *native species conservation plan*, for a native species, means a plan
6 for the species on stated land, notified under section 120 (Draft
7 native species conservation plan—final version and notification).

8 *Note* The power to make an instrument includes the power to amend or repeal
9 the instrument. The power to amend or repeal the instrument is
10 exercisable in the same way, and subject to the same conditions, as the
11 power to make the instrument (see [Legislation Act](#), s 46).

12 **114** **What is a *draft native species conservation plan*?—pt 5.3**

13 In this part:

14 *draft native species conservation plan*, for a native species on stated
15 land—

- 16 (a) means a draft plan detailing how the native species may be
17 appropriately managed on the stated land; and
18 (b) includes anything required to be included by a conservator
19 guideline; and

20 *Note* *Conservator guidelines*—see s 23.

- 21 (c) may apply, adopt or incorporate an instrument as in force from
22 time to time.

23 **Example—instrument that may be applied, adopted or incorporated**
24 a fisheries management plan under the [Fisheries Act 2000](#)

25 *Note 1* The text of an applied, adopted or incorporated law or instrument,
26 whether applied as in force from time to time or at a particular
27 time, is taken to be a notifiable instrument if the operation of the
28 [Legislation Act](#), s 47 (5) or (6) is not disappplied (see s 47 (7)).

- 1 *Note 2* A notifiable instrument must be notified under the [Legislation Act](#).
2
- 3 *Note 3* A native species conservation plan may include provisions about
4 carrying on an activity that would usually require a nature
5 conservation licence. If a person intends to carry on the activity
6 under a plan, the person must apply for a nature conservation
7 licence in the usual way.
- 8 *Note 4* An example is part of the Act, is not exhaustive and may extend,
9 but does not limit, the meaning of the provision in which it
10 appears (see [Legislation Act](#), s 126 and s 132).

11 **115 Draft native species conservation plan—conservator to**
12 **prepare**

13 The conservator may prepare a draft native species conservation
14 plan for stated land for—

- 15 (a) a native species that has special protection status; or

16 *Note* **Special protection status**—see s 107.

- 17 (b) any other native species the conservator considers appropriate
18 for a native species conservation plan.

19 *Note 1* Power to make a statutory instrument includes power to make different
20 provision in relation to different matters or different classes of matters,
21 and to make an instrument that applies differently by reference to stated
22 exceptions or factors (see [Legislation Act](#), s 48).

23 *Note 2* A species that is the subject of a native species conservation plan is
24 eligible to be included in the conservation dependent category on the
25 threatened native species list if the ending of the plan may result in the
26 species becoming vulnerable, endangered or critically endangered
27 (see s 62 (6)).

28 *Note 3* The draft native species conservation plan need not contain the precise
29 location of the species (see s 357).

1 **116 Draft native species conservation plan—consultation with**
2 **scientific committee**

3 In preparing a draft native species conservation plan, the
4 conservator must consult the scientific committee.

5 **117 Draft native species conservation plan—consultation with**
6 **lessee and custodian**

7 In preparing a draft native species conservation plan for stated land,
8 the conservator must consult—

- 9 (a) if the land is leased land—the lessee of the land; and
10 (b) if the land is unleased land or public land—the custodian of the
11 land.

12 **118 Draft native species conservation plan—public**
13 **consultation**

14 (1) If the conservator prepares a draft native species conservation plan,
15 the conservator must also prepare a notice about the draft native
16 species conservation plan (a *public consultation notice*).

17 (2) A public consultation notice must—

18 (a) state that—

19 (i) anyone may give a written submission to the conservator
20 about the draft native species conservation plan; and

21 (ii) submissions may be given to the conservator only during
22 the period starting on the day the public consultation
23 notice is notified under the [Legislation Act](#) and ending on
24 a stated day, being a day at least 6 weeks after the day it is
25 notified (the *public consultation period*); and

26 (b) include the draft native species conservation plan.

27 (3) A public consultation notice is a notifiable instrument.

28 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

- 1 (4) If the conservator notifies a public consultation notice for a draft
2 native species conservation plan—
- 3 (a) anyone may give a written submission to the conservator about
4 the draft plan; and
- 5 (b) the submission may be given to the conservator only during the
6 public consultation period for the draft plan; and
- 7 (c) the person making the submission may, in writing, withdraw
8 the submission at any time.
- 9 (5) The conservator may make arrangements for people with particular
10 communication needs to ensure they have adequate opportunity to
11 comment on the draft plan.

12 **119 Draft native species conservation plan—revision**

- 13 If the public consultation period for a draft native species
14 conservation plan has ended, the conservator must—
- 15 (a) consider any submissions received during the public
16 consultation period; and
- 17 (b) make any revisions to the draft plan that the conservator
18 considers appropriate; and
- 19 (c) prepare a final version of the draft plan.

20 **120 Draft native species conservation plan—final version and
21 notification**

- 22 (1) The final version of a draft native species conservation plan
23 prepared under section 119 or section 121 is a native species
24 conservation plan.

1 (2) A native species conservation plan is a notifiable instrument.

2 *Note 1* A notifiable instrument must be notified under the [Legislation Act](#).

3 *Note 2* The power to make a native species conservation plan includes the
4 power to amend or repeal the plan. The power to amend or repeal the
5 plan is exercisable in the same way, and subject to the same conditions,
6 as the power to make the plan (see [Legislation Act](#), s 46).

7 **121 Native species conservation plan—minor amendments**

8 (1) This section applies if—

9 (a) a native species conservation plan for a native species is in
10 force (the *existing plan*); and

11 (b) the conservator considers that minor amendments to the
12 existing plan are appropriate.

13 (2) The conservator—

14 (a) may prepare a new draft native species conservation plan for
15 the native species, incorporating the minor amendments into
16 the existing plan; and

17 (b) need not comply with the consultation requirements in
18 section 117 to section 119; and

19 (c) may prepare a final version of the new draft native species
20 conservation plan, as amended.

21 *Note* The final version of the new draft native species conservation plan is a
22 native species conservation plan and is a notifiable instrument
23 (see s 120).

1 (3) In this section:

2 ***minor amendment***, of a native species conservation plan, means an
3 amendment that will improve the effectiveness or technical
4 efficiency of the plan without changing the substance of the plan.

5 **Examples**

- 6 1 minor correction to improve effectiveness
7 2 omission of something redundant
8 3 technical adjustment to improve efficiency

9 *Note* An example is part of the Act, is not exhaustive and may extend, but
10 does not limit, the meaning of the provision in which it appears (see
11 [Legislation Act](#), s 126 and s 132).

12 **122 Native species conservation plan—conservator etc to**
13 **implement**

14 If a native species conservation plan is in force for a native species
15 on stated land, the following people must take reasonable steps to
16 implement the plan:

- 17 (a) the conservator;
18 (b) if the land is leased land—the lessee of the land;
19 (c) if the land is unleased land or public land—the custodian of the
20 land.

21 **123 Native species conservation plan—monitoring and review**

22 (1) The conservator must—

- 23 (a) monitor the effectiveness of a native species conservation plan;
24 and

- 1 (b) make the findings of the monitoring publicly accessible.
- 2 **Example—publically accessible**
- 3 published on the directorate website
- 4 *Note* An example is part of the Act, is not exhaustive and may extend, but
- 5 does not limit, the meaning of the provision in which it appears (see
- 6 [Legislation Act](#), s 126 and s 132).
- 7 (2) However, if the conservator considers that a species could be
- 8 threatened by the disclosure of a particular detail in a finding, the
- 9 conservator—
- 10 (a) need not include the particular detail; but
- 11 (b) must instead include a general statement about the finding.
- 12 (3) The conservator may ask the scientific committee to review a native
- 13 species conservation plan.
- 14 (4) In reviewing a native species conservation plan, the scientific
- 15 committee may make recommendations to the conservator about the
- 16 plan.

1 **Chapter 6 Protection of native species—**
2 **offences**

3 **Part 6.1 Offences**

4 **Division 6.1.1 Definitions—pt 6.1**

5 **124 Definitions—pt 6.1**

6 In this part:

7 *sell* includes—

- 8 (a) sell by wholesale, retail, auction or tender; and
9 (b) barter or exchange; and
10 (c) supply for profit or other commercial gain; and
11 (d) offer for sale, receive for sale or expose for sale; and
12 (e) have in possession for sale.

13 *take* includes—

- 14 (a) for an animal—harvest, catch, capture and trap; and
15 (b) for a plant—harvest, pick, gather and cut.

16 **Division 6.1.2 Native animals**

17 **125 Definitions—div 6.1.2**

18 In this division:

19 *interfere with* an item, includes damage or destroy the item.

1 *nest*, of an animal, includes—

2 (a) a place, structure or object that is being, or has been within the
3 previous 2 years, used as a nesting place by the animal; or

4 (b) a partially constructed nest that has not been used as a nesting
5 place by the animal.

6 **126 Offence—interfere with nest of native animal**

7 (1) A person commits an offence if the person—

8 (a) interferes with—

9 (i) the nest of an animal; or

10 (ii) something in the immediate environment of the nest of an
11 animal; and

12 (b) the animal is a native animal.

13 Maximum penalty: 20 penalty units.

14 *Note* ***Interfere with*** an item—see s 125.
15 ***Nest***, of an animal—see s 125.

16 (2) A person commits an offence if—

17 (a) the person interferes with—

18 (i) the nest of an animal; or

19 (ii) something in the immediate environment of the nest of an
20 animal; and

21 (b) the animal—

22 (i) is a native animal; and

23 (ii) has special protection status.

24 Maximum penalty: 30 penalty units.

25 *Note* ***Special protection status***—see s 107.

- 1 (3) An offence against this section is a strict liability offence.
2 (4) A person has the benefit of the chapter 6 exceptions for an offence
3 against this section.

4 *Note* The chapter 6 exceptions are set out in s 151.

5 **127 Offence—interfere with nest of native animal—endanger**
6 **progeny or breeding**

- 7 (1) A person commits an offence if—
8 (a) the person interferes with—
9 (i) the nest of an animal; or
10 (ii) something in the immediate environment of the nest of an
11 animal; and
12 (b) the interference—
13 (i) places the animal or its progeny in danger of death; or
14 (ii) places the animal in danger of not being able to breed—
15 (A) if the interference happens during the animal’s
16 breeding season—during the breeding season; or
17 (B) in any other case—during the animal’s next breeding
18 season; and
19 (c) the animal is a native animal.

20 Maximum penalty: 100 penalty units, imprisonment for 1 year or
21 both.

22 *Note* **Interfere with** an item—see s 125.
23 **Nest**, of an animal—see s 125.
24 **Progeny**—see s (5).

- 1 (2) A person commits an offence if—
- 2 (a) the person interferes with—
- 3 (i) the nest of an animal; or
- 4 (ii) something in the immediate environment of the nest of an
- 5 animal; and
- 6 (b) the interference—
- 7 (i) places the animal or its progeny in danger of death; or
- 8 (ii) places the animal in danger of not being able to breed—
- 9 (A) if the interference happens during the animal’s
- 10 breeding season—during the breeding season; or
- 11 (B) in any other case—during the animal’s next breeding
- 12 season; and
- 13 (c) the animal—
- 14 (i) is a native animal; and
- 15 (ii) has special protection status.
- 16 Maximum penalty: 200 penalty units, imprisonment for 2 years or
- 17 both.
- 18 *Note* ***Special protection status***—see s 107.
- 19 (3) This section does not apply to a person if the person believed on
- 20 reasonable grounds that—
- 21 (a) the danger did not exist; or
- 22 (b) for an offence involving interference with a nest—the thing
- 23 interfered with was not a nest; or

1 (c) for an offence involving interference with something in the
2 immediate environment of a nest—the thing interfered with
3 was not in the immediate environment of a nest.

4 *Note* The defendant has an evidential burden in relation to the matters
5 mentioned in s (3) (see [Criminal Code](#), s 58).

6 (4) A person has the benefit of the chapter 6 exceptions for an offence
7 against this section.

8 *Note* The chapter 6 exceptions are set out in s 151.

9 (5) In this section:

10 *progeny*, of an animal—

11 (a) means any descendant of the animal; and

12 (b) includes any animal reproductive material of the animal.

13 **128 Offence—kill native animal**

14 (1) A person commits an offence if—

15 (a) the person engages in conduct; and

16 (b) the conduct causes the death of an animal; and

17 (c) the animal is a native animal.

18 Maximum penalty: 100 penalty units, imprisonment for 1 year or
19 both.

20 (2) A person commits an offence if—

21 (a) the person engages in conduct; and

22 (b) the conduct causes the death of an animal; and

23 (c) the animal—

24 (i) is a native animal; and

1 (ii) has special protection status.
2 Maximum penalty: 200 penalty units, imprisonment for 2 years or
3 both.

4 *Note* **Special protection status**—see s 107.

5 (3) This section does not apply to a person if the death of the animal
6 was caused—

7 (a) in circumstances in which the animal was a danger to the
8 person; or

9 (b) by an accidental collision with a motor vehicle.

10 (4) This section does not apply to a person if—

11 (a) the animal is a fish that—

12 (i) has special protection status; or

13 (ii) is a protected native species; and

14 (b) the conduct constituting the offence is consistent with a native
15 species conservation plan for the animal.

16 **Example**

17 The Murray cod is a nationally threatened species that is stocked in Canberra's
18 lakes. Fishing for Murray cod in areas and at times identified in the native species
19 conservation plan for Murray cod would not be an offence.

20 *Note 1* **Native species conservation plan**, for a native species—see s 113.

21 *Note 2* The defendant has an evidential burden in relation to the matters
22 mentioned in s (3) and s (4) (see [Criminal Code](#), s 58).

23 *Note 3* An example is part of the Act, is not exhaustive and may extend, but
24 does not limit, the meaning of the provision in which it appears (see
25 [Legislation Act](#), s 126 and s 132).

26 (5) A person also has the benefit of the chapter 6 exceptions for an
27 offence against this section.

28 *Note* The chapter 6 exceptions are set out in s 151.

- 1 **129 Offence—injure or endanger native animal**
- 2 (1) A person commits an offence if—
- 3 (a) the person engages in conduct; and
- 4 (b) the conduct causes injury to an animal; and
- 5 (c) the animal is a native animal.
- 6 Maximum penalty: 50 penalty units.
- 7 (2) An offence against subsection (1) is a strict liability offence.
- 8 (3) A person commits an offence if—
- 9 (a) the person engages in conduct; and
- 10 (b) the conduct places an animal in danger of injury or death; and
- 11 (c) the animal is a native animal.
- 12 Maximum penalty: 50 penalty units.
- 13 (4) This section does not apply to a person if the injury or
- 14 endangerment of the animal was caused—
- 15 (a) in circumstances in which the animal was a danger to the
- 16 person; or
- 17 (b) by an accidental collision with a motor vehicle.
- 18 (5) This section does not apply to a person if—
- 19 (a) the animal is a fish that—
- 20 (i) has special protection status; or
- 21 (ii) is a protected native species; and

1 (b) the conduct constituting the offence is consistent with a native
2 species conservation plan for the animal.

3 *Note 1* **Native species conservation plan**, for a native species—see s 113.

4 *Note 2* The defendant has an evidential burden in relation to the matters
5 mentioned in s (4) and s (5) (see [Criminal Code](#), s 58).

6 (6) A person also has the benefit of the chapter 6 exceptions for an
7 offence against this section.

8 *Note* The chapter 6 exceptions are set out in s 151.

9 **130 Offence—take native animal**

10 (1) A person commits an offence if—

11 (a) the person takes an animal, whether dead or alive; and

12 (b) the animal is a native animal.

13 Maximum penalty: 100 penalty units, imprisonment for 1 year or
14 both.

15 *Note* **Take**—see s 124.

16 (2) A person commits an offence if—

17 (a) the person takes an animal, whether dead or alive; and

18 (b) the animal—

19 (i) is a native animal; and

20 (ii) has special protection status.

21 Maximum penalty: 200 penalty units, imprisonment for 2 years or
22 both.

23 *Note* **Special protection status**—see s 107.

1 (3) This section does not apply to a person if the animal is suffering
2 from a disease, illness or injury and the person takes the animal to
3 give it to—

- 4 (a) a conservation officer; or
5 (b) a veterinary surgeon; or
6 (c) someone licensed to keep the animal.

7 *Note* **Nature conservation licence**—see s 260.

8 (4) This section does not apply to a person if—

- 9 (a) the animal is a fish that—
10 (i) has special protection status; or
11 (ii) is a protected native species; and
12 (b) the conduct constituting the offence is consistent with a native
13 species conservation plan for the animal.

14 *Note 1* **Native species conservation plan**, for a native species—see s 113.

15 *Note 2* The defendant has an evidential burden in relation to the matters
16 mentioned in s (3) and s (4) (see [Criminal Code](#), s 58).

17 (5) A person also has the benefit of the chapter 6 exceptions for an
18 offence against this section.

19 *Note* The chapter 6 exceptions are set out in s 151.

20 **131 Offence—keep non-exempt animal**

- 21 (1) A person commits an offence if—
22 (a) the person keeps an animal; and
23 (b) the animal is not an exempt animal.

24 Maximum penalty: 100 penalty units, imprisonment for 1 year or
25 both.

26 *Note* **Exempt animal**—see s 152.

- 1 (2) A person commits an offence if—
2 (a) the person keeps an animal; and
3 (b) the animal has special protection status; and
4 (c) the animal is not an exempt animal.

5 Maximum penalty: 200 penalty units, imprisonment for 2 years or
6 both.

7 *Note* **Special protection status**—see s 107.

- 8 (3) This section does not apply to a person if—
9 (a) the animal is suffering from a disease, illness or injury; and
10 (b) the person keeps the animal to give it to—
11 (i) a conservation officer; or
12 (ii) a veterinary surgeon; or
13 (iii) someone licensed to keep the animal; and
14 (c) the person keeps the animal for not more than 48 hours.

15 *Note* The defendant has an evidential burden in relation to the matters
16 mentioned in s (3) (see [Criminal Code](#), s 58).

- 17 (4) A person also has the benefit of the chapter 6 exceptions for an
18 offence against this section.

19 *Note* The chapter 6 exceptions are set out in s 151.

20 **132 Offence—sell non-exempt animal**

- 21 (1) A person commits an offence if—
22 (a) the person sells an animal; and

1 (b) the animal is not an exempt animal.

2 Maximum penalty: 100 penalty units, imprisonment for 1 year or
3 both.

4 *Note* **Exempt animal**—see s 152.
5 **Sell** includes offer for sale (see s 124).

6 (2) A person commits an offence if—

7 (a) the person sells an animal; and

8 (b) the animal has special protection status; and

9 (c) the animal is not an exempt animal.

10 Maximum penalty: 200 penalty units, imprisonment for 2 years or
11 both.

12 *Note* **Special protection status**—see s 107.

13 (3) A person has the benefit of the chapter 6 exceptions for an offence
14 against this section.

15 *Note* The chapter 6 exceptions are set out in s 151.

16 **133 Offence—offer to sell animal without disclosing licence**

17 (1) A person commits an offence if—

18 (a) the person holds a nature conservation licence to sell an
19 animal; and

20 (b) the person offers to sell the animal; and

21 (c) the offer does not disclose—

22 (i) that the person is licensed to sell the animal; and

23 (ii) the person's licence number.

24 Maximum penalty: 50 penalty units.

25 *Note* **Nature conservation licence**—see s 260.
26 **Sell** includes offer for sale (see s 124).

1 (2) An offence against this section is a strict liability offence.

2 **134 Offence—import non-exempt animal**

3 (1) A person commits an offence if—

4 (a) the person imports an animal into the ACT; and

5 (b) the animal is not an exempt animal.

6 Maximum penalty: 100 penalty units, imprisonment for 1 year or
7 both.

8 *Note Exempt animal*—see s 152.

9 (2) A person commits an offence if—

10 (a) the person imports an animal into the ACT; and

11 (b) the animal has special protection status; and

12 (c) the animal is not an exempt animal.

13 Maximum penalty: 200 penalty units, imprisonment for 2 years or
14 both.

15 *Note Special protection status*—see s 107.

16 (3) A person has the benefit of the chapter 6 exceptions for an offence
17 against this section.

18 *Note* The chapter 6 exceptions are set out in s 151.

19 **135 Offence—export non-exempt animal**

20 (1) A person commits an offence if—

21 (a) the person exports an animal from the ACT; and

22 (b) the animal is not an exempt animal.

23 Maximum penalty: 100 penalty units, imprisonment for 1 year or
24 both.

25 *Note Exempt animal*—see s 152.

- 1 (2) A person commits an offence if—
2 (a) the person exports an animal from the ACT; and
3 (b) the animal has special protection status; and
4 (c) the animal is not an exempt animal.

5 Maximum penalty: 200 penalty units, imprisonment for 2 years or
6 both.

7 *Note* **Special protection status**—see s 107.

- 8 (3) A person has the benefit of the chapter 6 exceptions for an offence
9 against this section.

10 *Note* The chapter 6 exceptions are set out in s 151.

11 **136 Offence—release animal from captivity**

- 12 (1) A person commits an offence if the person releases an animal from
13 captivity.

14 Maximum penalty: 50 penalty units.

- 15 (2) An offence against this section is a strict liability offence.

- 16 (3) This section does not apply to the release of a dog or a cat if the
17 release would not constitute an offence under the *Domestic Animals*
18 *Act 2000*.

19 *Note* The defendant has an evidential burden in relation to the matters
20 mentioned in s (3) (see *Criminal Code*, s 58).

- 21 (4) A person also has the benefit of the chapter 6 exceptions for an
22 offence against this section.

23 *Note* The chapter 6 exceptions are set out in s 151.

1 **Division 6.1.3 Native plants**

2 **137 Definitions—div 6.1.3**

3 In this division:

4 *built-up urban area*—see the *Tree Protection Act 2005*,
5 section 7 (2) (Application of Act—built-up urban areas).

6 *damage*, a tree, includes the following:

- 7 (a) kill or destroy the tree;
- 8 (b) poison the tree;
- 9 (c) ringbark the tree (whether partially or completely);
- 10 (d) fell or remove the tree;
- 11 (e) cut branches or stems of the tree between branch unions;
- 12 (f) remove branches of the tree to a previously pruned or lopped
13 point;
- 14 (g) major pruning of the tree;
- 15 (h) anything else done to or in relation to the tree that—
- 16 (i) causes it to die; or
- 17 (ii) significantly reduces its expected life; or
- 18 (iii) significantly and adversely affects its health, stability or
19 general appearance.

20 *native timber*—

- 21 (a) means timber from a tree that is a native plant, whether living
22 or dead; and
- 23 (b) includes—
- 24 (i) a standing or fallen native tree; and

- 1 (ii) any material from a standing or fallen native tree; but
2 (c) does not include a tree seedling.

3 ***native tree***—

- 4 (a) means a tree that is a native plant, whether living or dead; but
5 (b) does not include a tree seedling.

6 ***plant tag***, for a plant, means a tag made of durable material that
7 displays the following details:

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

10 ***tree seedling*** means a tree that is not more than 2m high.

11 **138 Offence—take native plant—unleased land**

12 (1) A person commits an offence if—

- 13 (a) the person takes a plant; and
14 (b) the plant is—

- 15 (i) a native plant; and
16 (ii) growing on unleased land.

17 Maximum penalty: 50 penalty units.

18 *Note* **Take**—see s 124.

19 (2) An offence against this section is a strict liability offence.

20 (3) This section does not apply to a person if the person—

- 21 (a) is a public servant exercising a function as a public servant; or
22 (b) is authorised to take the plant under a development approval
23 under the *Planning and Development Act 2007*, chapter 7
24 (Development approvals); or

1 (c) only takes seeds from the plant for domestic use.

2 *Note* The defendant has an evidential burden in relation to the matters
3 mentioned in s (3) (see [Criminal Code](#), s 58).

4 (4) A person also has the benefit of the chapter 6 exceptions for an
5 offence against this section.

6 *Note* The chapter 6 exceptions are set out in s 151.

7 **139 Offence—take and sell native plant—unleased land**

8 (1) A person commits an offence if—

9 (a) the person takes a plant; and

10 (b) the plant is—

11 (i) a native plant; and

12 (ii) growing on unleased land; and

13 (c) the person sells the plant.

14 Maximum penalty: 100 penalty units, imprisonment for 1 year or
15 both.

16 *Note* **Sell** includes offer for sale (see s 124).

17 **Take**—see s 124.

18 (2) This section does not apply to a person if the plant is native timber.

19 *Note 1* **Native timber**—see s 137.

20 *Note 2* It is an offence to damage a native tree on unleased land (see s 142). It
21 is also an offence to take fallen native timber from unleased land
22 (see s 144).

23 *Note 3* The defendant has an evidential burden in relation to the matters
24 mentioned in s (2) (see [Criminal Code](#), s 58).

25 (3) A person also has the benefit of the chapter 6 exceptions for an
26 offence against this section.

27 *Note* The chapter 6 exceptions are set out in s 151.

- 1 **140** **Offence—take native plant—protected native species**
- 2 (1) A person commits an offence if—
- 3 (a) the person takes a plant; and
- 4 (b) the plant is a protected native species.
- 5 Maximum penalty: 50 penalty units.
- 6 *Note* ***Protected native species***—see s 108.
- 7 ***Take***—see s 124.
- 8 (2) An offence against this section is a strict liability offence.
- 9 (3) This section does not apply to a person if the person—
- 10 (a) is a public servant exercising a function as a public servant; or
- 11 (b) is an occupier of land outside a built-up urban area and the
- 12 person—
- 13 (i) takes the plant in the course of cultivating the plant on the
- 14 land; or
- 15 (ii) takes seeds from a plant growing on the land to cultivate
- 16 the plant on the land; or
- 17 (c) is an occupier of land and the plant—
- 18 (i) is growing on the land; and
- 19 (ii) was planted by the person; or
- 20 (d) is an occupier of land in a built-up urban area and the plant is
- 21 growing on the land; or
- 22 (e) is an occupier of land outside a built-up urban area and the
- 23 person takes the plant in the course of using the land for
- 24 primary production in accordance with the purpose authorised
- 25 by the lease; or

1 (f) is authorised to take the plant under a development approval
2 under the *Planning and Development Act 2007*, chapter 7
3 (Development approvals).

4 *Note 1* **Built-up urban area**—see s 137.

5 *Note 2* The defendant has an evidential burden in relation to the matters
6 mentioned in s (3) (see [Criminal Code](#), s 58).

7 (4) A person also has the benefit of the chapter 6 exceptions for an
8 offence against this section.

9 *Note* The chapter 6 exceptions are set out in s 151.

10 **141 Offence—take native plant—special protection status**

11 (1) A person commits an offence if—

12 (a) the person takes a plant; and

13 (b) the plant—

14 (i) is a native plant; and

15 (ii) has special protection status.

16 Maximum penalty: 200 penalty units, imprisonment for 2 years or
17 both.

18 *Note* **Special protection status**—see s 107.

19 **Take**—see s 124.

20 (2) This section does not apply to a person if the person is—

21 (a) a public servant exercising a function as a public servant; or

22 (b) authorised to take the plant under a development approval
23 under the *Planning and Development Act 2007*, chapter 7
24 (Development approvals).

25 *Note* The defendant has an evidential burden in relation to the matters
26 mentioned in s (2) (see [Criminal Code](#), s 58).

1 (3) A person has the benefit of the chapter 6 exceptions for an offence
2 against this section.

3 *Note* The chapter 6 exceptions are set out in s 151.

4 **142 Offence—damage native tree—unleased land**

5 (1) A person commits an offence if—

6 (a) the person damages a tree; and

7 (b) the tree is—

8 (i) a native tree; and

9 (ii) on unleased land.

10 Maximum penalty: 400 penalty units.

11 *Note* **Damage**, a tree includes fell the tree—see s 137.

12 **Native tree**—see s 137.

13 (2) This section does not apply to a person if the person is—

14 (a) a public servant exercising a function as a public servant; or

15 (b) authorised to engage in the conduct constituting the offence
16 under a development approval under the *Planning and*
17 *Development Act 2007*, chapter 7 (Development approvals).

18 *Note* The defendant has an evidential burden in relation to the matters
19 mentioned in s (2) (see [Criminal Code](#), s 58).

20 (3) A person also has the benefit of the chapter 6 exceptions for an
21 offence against this section.

22 *Note* The chapter 6 exceptions are set out in s 151.

23 (4) In addition to the penalty that may be imposed for an offence
24 against this section, the court may order the defendant to—

25 (a) make good the damage incurred; or

26 (b) pay the Territory the cost of making good the damage.

- 1 (5) The Territory may enforce an order made under subsection (4) as if
2 it were a judgment of the Magistrates Court in a civil proceeding.

3 **143 Offence—damage native tree—leased land**

- 4 (1) A person commits an offence if—
5 (a) the person damages a tree; and
6 (b) the tree is—
7 (i) a native tree; and
8 (ii) on leased land outside a built-up urban area.

9 Maximum penalty: 200 penalty units, imprisonment for 2 years or
10 both.

11 *Note* **Built-up urban area**—see s 137.
12 **Damage**, a tree includes fell the tree—see s 137.
13 **Native tree**—see s 137.

- 14 (2) This section does not apply to a person if—
15 (a) the tree was planted by an occupier of the land and damaged by
16 an occupier of the land; or
17 (b) the tree was damaged by an occupier of the land with the
18 intention of using it on the land for a purpose other than sale;
19 or

20 *Note* **Sell** includes offer for sale (see s 124).

- 21 (c) the person has a reasonable excuse; or
22 (d) the person is authorised to engage in the conduct constituting
23 the offence under a development approval under the *Planning*
24 *and Development Act 2007*, chapter 7 (Development
25 approvals).

26 *Note* The defendant has an evidential burden in relation to the matters
27 mentioned in s (2) (see *Criminal Code*, s 58).

1 (3) A person also has the benefit of the chapter 6 exceptions for an
2 offence against this section.

3 *Note* The chapter 6 exceptions are set out in s 151.

4 **144 Offence—damage or take fallen native timber**

5 (1) A person commits an offence if—

6 (a) the person damages fallen timber; and

7 (b) the timber—

8 (i) is native timber; and

9 (ii) has a diameter of more than 10cm; and

10 (iii) is on unleased land.

11 Maximum penalty: 50 penalty units.

12 (2) A person commits an offence if—

13 (a) the person takes fallen timber from land; and

14 (b) the timber is native timber; and

15 (c) the land is—

16 (i) unleased land; or

17 (ii) leased land outside a built-up urban area.

18 Maximum penalty: 50 penalty units.

19 *Note* **Built-up urban area**—see s 137.

20 **Native timber**—see s 137.

21 **Take**—see s (8).

22 (3) An offence against subsection (2) is a strict liability offence.

23 (4) This section does not apply to a person if the person is—

24 (a) a public servant exercising a function as a public servant; or

1 (b) authorised to engage in the conduct constituting the offence
2 under a development approval under the *Planning and*
3 *Development Act 2007*, chapter 7 (Development approvals).

4 *Note* The defendant has an evidential burden in relation to the matters
5 mentioned in s (4) (see *Criminal Code*, s 58).

6 (5) A person has the benefit of the chapter 6 exceptions for an offence
7 against this section.

8 *Note* The chapter 6 exceptions are set out in s 151.

9 (6) In addition to the penalty that may be imposed for an offence
10 against subsection (2), the court may order the defendant to—

11 (a) make good the damage incurred; or

12 (b) pay the Territory the cost of making good the damage.

13 (7) The Territory may enforce an order made under subsection (6) as if
14 it were a judgment of the Magistrates Court in a civil proceeding.

15 (8) In this section:

16 *take* means—

17 (a) for timber on leased land—take the timber from the land
18 subject to the lease; or

19 (b) for timber on unleased land—take the timber from the
20 immediate vicinity.

21 **145 Offence—offer to sell native plant without disclosing**
22 **licence**

23 (1) A person commits an offence if—

24 (a) the person holds a nature conservation licence to sell a native
25 plant; and

26 (b) the person offers to sell the native plant; and

- 1 (c) the offer does not disclose—
2 (i) that the person is licensed to sell the native plant; and
3 (ii) the person’s licence number.

4 Maximum penalty: 50 penalty units.

5 *Note* **Nature conservation licence**—see s 260.
6 **Sell** includes offer for sale (see s 124).

- 7 (2) An offence against this section is a strict liability offence.

8 **146 Offence—sell native plant—protected or special**
9 **protection status**

- 10 (1) A person commits an offence if—

- 11 (a) the person sells a plant; and
12 (b) the plant is—
13 (i) a native plant; and
14 (ii) a protected native species.

15 Maximum penalty: 100 penalty units, imprisonment for 1 year or
16 both.

17 *Note* **Protected native species**—see s 108.
18 **Sell** includes offer for sale (see s 124).

- 19 (2) A person commits an offence if—

- 20 (a) the person sells a plant; and
21 (b) the plant—
22 (i) is a native plant; and
23 (ii) has special protection status.

24 Maximum penalty: 200 penalty units, imprisonment for 2 years or
25 both.

26 *Note* **Special protection status**—see s 107.

- 1 (3) A person has the benefit of the chapter 6 exceptions for an offence
2 against this section.

3 *Note* The chapter 6 exceptions are set out in s 151.

4 **147 Offence—sell native plant without plant tag—protected or**
5 **special protection status**

- 6 (1) A person commits an offence if—
7 (a) the person sells a plant; and
8 (b) the plant is—
9 (i) a native plant; and
10 (ii) a protected native species; and
11 (c) the plant is not a seed or a dead plant; and
12 (d) a plant tag is not visibly attached to the plant at the time of
13 sale.

14 Maximum penalty: 25 penalty units.

15 *Note* *Protected native species*—see s 108.
16 *Sell* includes offer for sale (see s 124).

- 17 (2) A person commits an offence if—
18 (a) the person sells a plant; and
19 (b) the plant—
20 (i) is a native plant; and
21 (ii) has special protection status; and
22 (c) the plant is not a seed or a dead plant; and

1 (d) a plant tag is not visibly attached to the plant at the time of
2 sale.

3 Maximum penalty: 50 penalty units.

4 *Note Special protection status—see s 107.*

5 (3) An offence against this section is a strict liability offence.

6 **148 Offence—import native plant—protected or special**
7 **protection status**

8 (1) A person commits an offence if—

9 (a) the person imports a plant into the ACT; and

10 (b) the plant is—

11 (i) a native plant; and

12 (ii) a protected native species.

13 Maximum penalty: 100 penalty units, imprisonment for 1 year or
14 both.

15 *Note Protected native species—see s 108.*

16 (2) A person commits an offence if—

17 (a) the person imports a plant into the ACT; and

18 (b) the plant—

19 (i) is a native plant; and

20 (ii) has special protection status.

21 Maximum penalty: 200 penalty units, imprisonment for 2 years or
22 both.

23 *Note Special protection status—see s 107.*

1 (3) This section does not apply to the importation of native timber into
2 the ACT.

3 *Note 1* **Native timber**—see s 137.

4 *Note 2* The defendant has an evidential burden in relation to the matters
5 mentioned in s (3) (see [Criminal Code](#), s 58).

6 (4) A person has the benefit of the chapter 6 exceptions for an offence
7 against this section.

8 *Note* The chapter 6 exceptions are set out in s 151.

9 **149 Offence—export native plant—protected or special**
10 **protection status**

11 (1) A person commits an offence if—

12 (a) the person exports a plant from the ACT; and

13 (b) the plant is—

14 (i) a native plant; and

15 (ii) a protected native species.

16 Maximum penalty: 100 penalty units, imprisonment for 1 year or
17 both.

18 *Note* **Protected native species**—see s 108.

19 (2) A person commits an offence if—

20 (a) the person exports a plant from the ACT; and

21 (b) the plant—

22 (i) is a native plant; and

23 (ii) has special protection status.

24 Maximum penalty: 200 penalty units, imprisonment for 2 years or
25 both.

26 *Note* **Special protection status**—see s 107.

1 (3) A person has the benefit of the chapter 6 exceptions for an offence
2 against this section.

3 *Note* The chapter 6 exceptions are set out in s 151.

4 **150 Offence—export plant without plant tag—protected or**
5 **special protection status**

6 (1) A person commits an offence if—

7 (a) the person exports a plant from the ACT; and

8 (b) the plant is—

9 (i) a native plant; and

10 (ii) a protected native species; and

11 (c) the plant is not a seed or a dead plant; and

12 (d) a plant tag is not visibly attached to the plant at the time of
13 export.

14 Maximum penalty: 25 penalty units.

15 *Note* **Protected native species**—see s 108.

16 (2) A person commits an offence if—

17 (a) the person exports a plant from the ACT; and

18 (b) the plant—

19 (i) is a native plant; and

20 (ii) has special protection status; and

21 (c) the plant is not a seed or a dead plant; and

22 (d) a plant tag is not visibly attached to the plant at the time of
23 export.

24 Maximum penalty: 50 penalty units.

25 *Note* **Special protection status**—see s 107.

1 (3) An offence against this section is a strict liability offence.

2 **Division 6.1.4 Exceptions to offences**

3 **151 Chapter 6 exceptions**

4 (1) This section applies if a person has the benefit of the
5 chapter 6 exceptions for an offence.

6 (2) The offence does not apply to the person if—

7 (a) the conduct constituting the offence is—

8 (i) a restricted activity under an activities declaration and the
9 person is complying with the directions and requirements
10 stated in the declaration; or

11 *Note* **Activities declaration**—see s 254.
12 **Restricted activity**—see s 254.

13 (ii) undertaken in accordance with a management agreement;
14 or

15 *Note* **Management agreement**—see s 308.

16 (iii) undertaken in implementing a controlled native species
17 management plan under section 165 (Controlled native
18 species management plan—conservator etc to
19 implement); or

20 *Note* **Controlled native species management plan**—see s 156.

21 (b) the person is authorised to engage in the conduct constituting
22 the offence under—

23 (i) a nature conservation licence; or

24 *Note* **Nature conservation licence**—see s 260.

25 (ii) a public unleased land permit; or

1 (c) the person is a conservation officer exercising a function under
2 this Act.

3 *Note 1* The defendant has an evidential burden in relation to the matters
4 mentioned in s (2) (see [Criminal Code](#), s 58).

5 *Note 2* This Act does not apply to emergency services personnel exercising
6 functions under the [Emergencies Act 2004](#) for the purpose of protecting
7 life or property or controlling, extinguishing or preventing the spread of
8 a fire (see s 7).

1 **Part 6.2** **Other matters**

2 **152** **What is an *exempt animal*?**

3 In this Act:

4 *exempt animal* means an animal for which an exempt animal
5 declaration is in force.

6 **153** **Declarations—exempt animals**

7 (1) The conservator may declare a stated animal to be an exempt animal
8 (an *exempt animal declaration*).

9 *Note* Power to make a statutory instrument (including a regulation) includes
10 power to make different provision for different categories (see
11 [Legislation Act](#), s 48).

12 (2) In making an exempt animal declaration, the conservator must
13 consider—

14 (a) the need to protect native species in the ACT; and

15 (b) the need to conserve the significant ecosystems of the ACT,
16 New South Wales and Australia.

17 (3) An exempt animal declaration is a disallowable instrument.

18 *Note* A disallowable instrument must be notified, and presented to the
19 Legislative Assembly, under the [Legislation Act](#).

20 **154** **Interest in native animal ends with escape**

21 If a person holds an interest in a native animal and the animal
22 escapes, the person's interest in the animal ends.

23 *Note* Also, if the person held a nature conservation licence to keep the
24 escaped native animal, the licence no longer applies in relation to the
25 animal (see s 274 (4)).

1 **Chapter 7** **Controlled native species**
2 **management plans**

3 **155** **What is a *controlled native species*?—ch 7**

4 (1) In this chapter:

5 *controlled native species* means a native species declared to be a
6 controlled native species under subsection (2).

7 (2) The Minister may declare a native species to be a controlled native
8 species if satisfied that the species is having an unacceptable impact
9 on an environmental, social or economic asset.

10 **Example—unacceptable impact on social asset**

11 a threatened native species poses a serious threat to human health

12 *Note 1* Power to make a statutory instrument includes power to make different
13 provision in relation to different matters or different classes of matters,
14 and to make an instrument that applies differently by reference to stated
15 exceptions or factors (see [Legislation Act](#), s 48).

16 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
17 does not limit, the meaning of the provision in which it appears (see
18 [Legislation Act](#), s 126 and s 132).

19 (3) A declaration is a disallowable instrument.

20 *Note* A disallowable instrument must be notified, and presented to the
21 Legislative Assembly, under the [Legislation Act](#).

- 1 **156** **What is a *controlled native species management plan*?**
- 2 In this Act:
- 3 ***controlled native species management plan***, for a controlled native
4 species, means a plan for the species on stated land, notified under
5 section 163 (Draft controlled native species management plan—
6 final version and notification).
- 7 *Note* The power to make the plan includes the power to amend or repeal the
8 plan. The power to amend or repeal the plan is exercisable in the same
9 way, and subject to the same conditions, as the power to make the plan
10 (see [Legislation Act](#), s 46).
- 11 **157** **What is a *draft controlled native species management***
12 ***plan*?—ch 7**
- 13 (1) In this chapter:
- 14 ***draft controlled native species management plan***, for a controlled
15 native species on stated land—
- 16 (a) means a draft plan detailing how the species may be
17 appropriately managed on the stated land; and
- 18 **Examples—appropriate management**
- 19 1 prohibiting the feeding of an animal species
20 2 prohibiting the propagation of a plant species
21 3 best practice in relation to management of the species
- 22 *Note* An example is part of the Act, is not exhaustive and may extend,
23 but does not limit, the meaning of the provision in which it
24 appears (see [Legislation Act](#), s 126 and s 132).
- 25 (b) includes anything required to be included by a conservator
26 guideline; and
- 27 *Note* **Conservator guidelines**—see s 23.

1 (c) may apply, adopt or incorporate an instrument as in force from
2 time to time.

3 **Example—instrument that may be applied, adopted or incorporated**
4 a controlled native species management plan may incorporate requirements
5 agreed to in a conservation agreement under the *Environment Protection and*
6 *Biodiversity Conservation Act 1999* (Cwlth)

7 *Note 1* The text of an applied, adopted or incorporated law or instrument,
8 whether applied as in force from time to time or at a particular time, is
9 taken to be a notifiable instrument if the operation of the *Legislation*
10 *Act*, s 47 (5) or (6) is not disappplied (see s 47 (7)).

11 *Note 2* A notifiable instrument must be notified under the *Legislation Act*.

12 *Note 3* A controlled native species management plan may include provisions
13 about carrying on an activity that would usually require a nature
14 conservation licence. If a person intends to carry on the activity under a
15 plan, the person must apply for a nature conservation licence in the
16 usual way.

17 (2) If a controlled native species management plan is inconsistent with
18 an approved code of practice, or mandatory code of practice, under
19 the *Animal Welfare Act 1992*, the code of practice prevails to the
20 extent of the inconsistency.

21 **158 Draft controlled native species management plan—**
22 **conservator to prepare**

23 The conservator may prepare a draft controlled native species
24 management plan for a controlled native species on stated land.

25 *Note* Power to make a statutory instrument includes power to make different
26 provision in relation to different matters or different classes of matters,
27 and to make an instrument that applies differently by reference to stated
28 exceptions or factors (see *Legislation Act*, s 48).

- 1 **159** **Draft controlled native species management plan—**
2 **consultation with lessee and custodian**
- 3 In preparing a draft controlled native species management plan for a
4 controlled native species on stated land, the conservator must
5 consult—
- 6 (a) if the land is leased land—the lessee of the land; and
- 7 (b) if the land is unleased land or public land—the custodian of the
8 land.
- 9 **160** **Draft controlled native species management plan—public**
10 **consultation**
- 11 (1) If the conservator prepares a draft controlled native species
12 management plan, the conservator must also prepare a notice about
13 the draft plan (a *public consultation notice*).
- 14 (2) A public consultation notice must—
- 15 (a) state that—
- 16 (i) anyone may give a written submission to the conservator
17 about the draft controlled native species management
18 plan; and
- 19 (ii) submissions may be given to the conservator only during
20 the period starting on the day the public consultation
21 notice is notified under the [Legislation Act](#) and ending on
22 a stated day, being a day at least 6 weeks after the day it is
23 notified (the *public consultation period*); and
- 24 (b) include the draft controlled native species management plan.
- 25 (3) A public consultation notice is a notifiable instrument.
- 26 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

- 1 (4) If the conservator notifies a public consultation notice for a draft
2 controlled native species management plan—
- 3 (a) anyone may give a written submission to the conservator about
4 the draft plan; and
- 5 (b) the submission may be given to the conservator only during the
6 public consultation period for the draft plan; and
- 7 (c) the person making the submission may, in writing, withdraw
8 the submission at any time.
- 9 (5) The conservator may make arrangements for people with particular
10 communication needs to ensure they have adequate opportunity to
11 comment on the draft plan.

12 **161 Draft controlled native species management plan—**
13 **revision**

- 14 If the public consultation period for a draft controlled native species
15 management plan has ended, the conservator must—
- 16 (a) consider any submissions received during the public
17 consultation period; and
- 18 (b) make any revisions to the plan that the conservator considers
19 appropriate; and
- 20 (c) prepare a final version of the plan.

21 **162 Draft controlled native species management plan—**
22 **emergencies**

- 23 (1) This section applies if the conservator—
- 24 (a) is preparing a draft controlled native species management plan
25 for a controlled native species; and
- 26 (b) considers that the situation is an emergency.

- 1 (2) The conservator—
- 2 (a) need not comply with the consultation requirements in
- 3 section 160 (Draft controlled native species management
- 4 plan—public consultation); and
- 5 (b) may prepare a final version of the draft controlled native
- 6 species management plan.

7 *Note* The final version of a draft controlled native species management plan

8 is a controlled native species management plan and is a disallowable

9 instrument (see s 163).

10 **163 Draft controlled native species management plan—final**

11 **version and notification**

- 12 (1) The final version of a draft controlled native species management
- 13 plan prepared under section 161, section 162 or section 164 is a
- 14 controlled native species management plan.
- 15 (2) A controlled native species management plan is a disallowable
- 16 instrument.

17 *Note 1* A disallowable instrument must be notified, and presented to the

18 Legislative Assembly, under the [Legislation Act](#).

19 *Note 2* The power to make a controlled native species management plan

20 includes the power to amend or repeal the plan. The power to amend or

21 repeal the plan is exercisable in the same way, and subject to the same

22 conditions, as the power to make the plan (see [Legislation Act](#), s 46).

23 **164 Controlled native species management plan—minor**

24 **amendments**

- 25 (1) This section applies if—
- 26 (a) a controlled native species management plan for a controlled
- 27 native species is in force (the *existing plan*); and
- 28 (b) the conservator considers that minor amendments to the
- 29 existing plan are appropriate.

1 (2) The conservator—

2 (a) may prepare a new draft controlled native species management
3 plan for the controlled native species, incorporating the minor
4 amendments into the existing plan; and

5 (b) need not comply with the consultation requirements in
6 section 160 (Draft controlled native species management
7 plan—public consultation); and

8 (c) may prepare a final version of the new draft controlled native
9 species management plan, as amended.

10 *Note* The final version of the new draft controlled native species management
11 plan is a controlled native species management plan and is a
12 disallowable instrument (see s 163).

13 (3) In this section:

14 ***minor amendment***, of a controlled native species management plan,
15 means an amendment that will improve the effectiveness or
16 technical efficiency of the plan without changing the substance of
17 the plan.

18 **Examples**

19 1 minor correction to improve effectiveness

20 2 omission of something redundant

21 3 technical adjustment to improve efficiency

22 *Note* An example is part of the Act, is not exhaustive and may extend, but
23 does not limit, the meaning of the provision in which it appears (see
24 [Legislation Act](#), s 126 and s 132).

25 **165 Controlled native species management plan—**
26 **conservator etc to implement**

27 (1) If a controlled native species management plan is in force for a
28 controlled native species on stated land, the following people must
29 take reasonable steps to implement the plan:

30 (a) the conservator;

1 (b) if the land is unleased land or public land—the custodian of the
2 land.

3 (2) In implementing the plan, the conservator or the custodian may
4 authorise another person to take action to implement the plan.

5 *Note 1* Power to make a statutory instrument includes power to make different
6 provision in relation to different matters or different classes of matters
7 (see [Legislation Act](#), s 48).

8 *Note 2* The power to make an instrument includes the power to amend or repeal
9 the instrument (see [Legislation Act](#), s 46).

10 (3) An authorisation under subsection (2) must—

11 (a) be in writing; and

12 (b) state—

13 (i) the authorised person; and

14 (ii) the authorised action; and

15 **Example**

16 dispersing a camp of grey-headed flying foxes

17 *Note* An example is part of the Act, is not exhaustive and may
18 extend, but does not limit, the meaning of the provision in
19 which it appears (see [Legislation Act](#), s 126 and s 132).

20 (iii) any conditions that apply to the action; and

21 **Example**

22 shooting of wildlife may only be done at night and in accordance
23 with the animal welfare guidelines

24 (iv) the period of time that the authorisation is in force.

- 1 **166** **Controlled native species management plan—monitoring**
2 **and review**
- 3 (1) The conservator must monitor the effectiveness of a controlled
4 native species management plan.
- 5 (2) The conservator must review each controlled native species
6 management plan at least once every 5 years.

1 **Chapter 8 Reserves—management**
2 **planning**

3 **Part 8.1 Definitions**

4 **167 What is a reserve?—Act**

5 (1) In this Act:

6 *reserve*—

7 (a) means—

8 (i) a wilderness area; and

9 (ii) a national park; and

10 (iii) a nature reserve; and

11 (iv) a catchment area; and

12 (b) includes any other area of public land that is—

13 (i) reserved in the [territory plan](#) under the *Planning and*
14 *Development Act 2007*, section 315 (Reserved areas—
15 public land); and

16 (ii) prescribed by regulation to be a reserve; but

17 (c) does not include an area prescribed by regulation as excluded
18 from a reserve.

19 (2) In this section:

20 *catchment area* means an area of public land reserved in the
21 [territory plan](#) for the protection of water supply under the *Planning*
22 *and Development Act 2007*, section 315 (g).

23 *national park* means an area of public land reserved in the [territory](#)
24 [plan](#) for a national park under the *Planning and Development*
25 *Act 2007*, section 315 (b).

1 *nature reserve* means an area of public land reserved in the [territory](#)
2 [plan](#) for a nature reserve under the *Planning and Development*
3 *Act 2007*, section 315 (c).

4 **168 What is a *wilderness area*?—Act**

5 In this Act:

6 *wilderness area* means an area of public land reserved in the
7 [territory plan](#) for a wilderness area under the *Planning and*
8 *Development Act 2007*, section 315 (a).

1 **Part 8.2 IUCN categories for reserves**

2 *Note* IUCN refers to the International Union for Conservation of Nature.

3 **169 What is an IUCN category for a reserve?—pt 8.2**

4 In this part:

5 *IUCN category*—see the *Environment Protection and Biodiversity*
6 *Conservation Act 1999* (Cwlth), section 346 (1) (Content of
7 Proclamation declaring Commonwealth reserve).

8 **170 Assignment of reserves to IUCN categories**

- 9 (1) The conservator may assign a reserve to an IUCN category.
- 10 (2) The conservator may divide a reserve into parts (*zones*) and assign
11 each zone to an IUCN category.
- 12 (3) Before the conservator assigns a reserve or zone to an
13 IUCN category, the conservator must—
- 14 (a) be satisfied that the reserve or zone—
- 15 (i) has the characteristics (if any) prescribed by regulation
16 for the category; and
- 17 (ii) meets the criteria (if any) prescribed by regulation for the
18 category; and
- 19 (iii) will be managed in accordance with the IUCN reserve
20 management objectives for the category; and
- 21 (b) consult the custodian of the reserve.
- 22 (4) An assignment of a reserve or zone to an IUCN category is a
23 notifiable instrument.

24 *Note 1* A notifiable instrument must be notified under the [Legislation Act](#).

25 *Note 2* The power to make an instrument includes the power to amend or repeal
26 the instrument (see [Legislation Act](#), s 46).

1 **171 IUCN reserve management objectives**

2 A regulation may prescribe objectives for each IUCN category (the
3 *IUCN reserve management objectives*).

4 **172 Management of reserve assigned to IUCN category if no**
5 **reserve management plan**

- 6 (1) This section applies if—
- 7 (a) there is no reserve management plan in force for a reserve; but
- 8 (b) the reserve, or a zone of the reserve, has been assigned by the
9 conservator to an IUCN category.
- 10 (2) If the reserve has been assigned to an IUCN category, the custodian
11 of the reserve must manage the reserve in accordance with the
12 IUCN reserve management objectives for the IUCN category to
13 which the reserve is assigned.
- 14 (3) If a zone of the reserve has been assigned to an IUCN category, the
15 custodian of the zone must manage the zone in accordance with the
16 IUCN reserve management objectives for the IUCN category to
17 which the zone is assigned.

18 *Note* The land must also be managed in accordance with the management
19 objectives for the land and any management plan for the land
20 (see *Planning and Development Act 2007*, s 316).

1 **Part 8.3** **Reserve management plans**

2 *Note* Under the *Planning and Development Act 2007*, s 316 (b), each area of
3 public land identified in the *territory plan* must be managed in
4 accordance with the public land management plan for the area. If the
5 area is a reserve, the public land management plan is a reserve
6 management plan for the area under this part (see *Planning and*
7 *Development Act 2007*, s 318 (1) (a)).

8 **173** **What is a reserve management plan?**

9 In this Act:

10 *reserve management plan*, for a reserve—

11 (a) means a plan for the reserve, notified under section 182 (Draft
12 reserve management plan—Minister’s approval and
13 notification); and

14 (b) if the reserve includes a Ramsar wetland—includes a Ramsar
15 wetlands management plan for the wetland.

16 *Note 1* *Ramsar wetland*—see s 188.
17 *Ramsar wetland management plan*, for a Ramsar wetland—see s 189.

18 *Note 2* The power to make a plan includes the power to amend or repeal the
19 plan. The power to amend or repeal the plan is exercisable in the same
20 way, and subject to the same conditions, as the power to make the plan
21 (see *Legislation Act*, s 46).

1 **174** **What is a *draft reserve management plan*?—pt 8.3**

2 In this part:

3 ***draft reserve management plan***, for a reserve, means a draft
4 management plan for the reserve that—

5 (a) identifies the reserve; and

6 (b) describes how the planning and development management
7 objectives for the reserve are to be implemented or promoted in
8 the reserve; and

9 *Note* ***Planning and development management objectives***—see the
10 dictionary.

11 (c) for a reserve or zone that is assigned to an IUCN category—

12 (i) is consistent with the IUCN reserve management
13 objectives for the category; and

14 (ii) describes how the IUCN reserve management objectives
15 for the reserve are to be implemented or promoted in the
16 reserve or zone.

17 *Note* ***IUCN category***, for a reserve—see s 169.
18 ***IUCN reserve management objectives***—see s 171.

19 **175** **Draft reserve management plan—custodian to prepare**

20 (1) The custodian of a reserve must prepare a draft reserve management
21 plan for the reserve.

22 *Note* Power to make a statutory instrument includes power to make different
23 provision in relation to different matters or different classes of matters,
24 and to make an instrument that applies differently by reference to stated
25 exceptions or factors (see [Legislation Act](#), s 48).

26 (2) In preparing a draft reserve management plan, the custodian must
27 consult—

28 (a) the conservator; and

29 (b) the planning and land authority.

-
- 1 **176** **Draft reserve management plan—planning reports and**
2 **strategic environmental assessments**
- 3 (1) At any time before a draft reserve management plan for a reserve is
4 approved by the Minister under section 181 (3) (a), the Minister
5 may direct the planning and land authority to prepare—
- 6 (a) a planning report for the draft plan; or
- 7 (b) a strategic environmental assessment for the draft plan.
- 8 (2) If a planning report or strategic environmental assessment is
9 prepared under subsection (1), the custodian of the reserve must
10 consider the report or assessment in preparing the draft reserve
11 management plan for the reserve.
- 12 (3) In this section:
- 13 *planning and land authority*—see the *Planning and Development*
14 *Act 2007*, dictionary.
- 15 *planning report*—see the *Planning and Development Act 2007*,
16 section 97 (What is a *planning report*?).
- 17 *strategic environmental assessment*—see the *Planning and*
18 *Development Act 2007*, section 99 (What is a *strategic*
19 *environmental assessment*?).
- 20 **177** **Draft reserve management plan—public consultation**
- 21 (1) If the custodian of a reserve prepares a draft reserve management
22 plan for the reserve, the custodian must also prepare a notice about
23 the draft reserve management plan (a *public consultation notice*).
- 24 (2) A public consultation notice must—
- 25 (a) state that—
- 26 (i) anyone may give a written submission to the custodian of
27 the reserve about the draft reserve management plan; and

- 1 (ii) submissions may be given to the custodian only during
2 the period starting on the day the public consultation
3 notice is notified under the [Legislation Act](#) and ending on
4 a stated day, being a day at least 6 weeks after the day it is
5 notified (the *public consultation period*); and
- 6 (b) include the draft reserve management plan.
- 7 (3) A public consultation notice is a notifiable instrument.
- 8 *Note* A notifiable instrument must be notified under the [Legislation Act](#).
- 9 (4) If the custodian of a reserve notifies a public consultation notice for
10 a draft reserve management plan—
- 11 (a) anyone may give a written submission to the custodian about
12 the draft plan; and
- 13 (b) the submission may be given to the custodian only during the
14 public consultation period for the draft plan; and
- 15 (c) the person making the submission may, in writing, withdraw
16 the submission at any time.
- 17 (5) The custodian may make arrangements for people with particular
18 communication needs to ensure they have adequate opportunity to
19 comment on the draft plan.

20 **178 Draft reserve management plan—revision and**
21 **submission to Minister**

- 22 (1) If the public consultation period for a draft reserve management
23 plan has ended, the custodian of the reserve must—
- 24 (a) consider any submissions received during the public
25 consultation period; and
- 26 (b) make any revisions to the draft plan that the custodian
27 considers appropriate.

- 1 (2) The custodian of the reserve must then submit the draft plan to the
2 Minister for approval.
- 3 (3) The submission must be accompanied by a report—
- 4 (a) setting out the issues raised in any submissions given to the
5 custodian during the public consultation period for the draft
6 plan; and
- 7 (b) if the conservator or the planning and land authority made a
8 submission during the public consultation period
9 recommending a change to the draft plan and the custodian did
10 not revise the draft plan to incorporate the change—explaining
11 why the custodian did not make the recommended change.

12 **179 Draft reserve management plan—referral to Legislative**
13 **Assembly committee**

- 14 (1) This section applies if the custodian of a reserve submits a draft
15 reserve management plan to the Minister for approval.
- 16 (2) The Minister must, not later than 5 working days after the day the
17 Minister receives the draft plan, refer the following to an appropriate
18 committee of the Legislative Assembly:
- 19 (a) the draft plan;
- 20 (b) the report mentioned in section 178 (3).
- 21 (3) The committee must consider the draft plan and report and either—
- 22 (a) recommend that the Minister approves the draft plan; or
- 23 (b) make another recommendation about the draft plan.
- 24 (4) The committee must tell the Minister about the recommendation and
25 refer the matter back to the Minister.

- 1 **180 Draft reserve management plan—committee to report**
- 2 (1) This section applies if the Minister has referred a draft plan to a
3 committee of the Legislative Assembly under section 179.
- 4 (2) The Minister must not take action under section 181 in relation to
5 the draft plan until—
- 6 (a) the committee has referred the draft plan back to the Minister
7 under section 179 (4); or
- 8 (b) 6 months after the day the draft plan was given to the
9 committee.
- 10 (3) If the committee has not referred the draft plan back to the Minister
11 6 months after the day the draft plan was given to the committee, the
12 Minister may take action under section 181 in relation to the draft
13 plan.
- 14 (4) After the committee refers the draft plan back to the Minister, the
15 Minister must take action under section 181 in relation to the draft
16 plan.
- 17 **181 Draft reserve management plan—Minister to approve,
18 return or reject**
- 19 (1) This section applies if—
- 20 (a) a Legislative Assembly committee refers a draft plan back to
21 the Minister under section 179 (4); or
- 22 (b) the Minister may take action under section 180 (3); or
- 23 (c) a custodian resubmits a draft plan to the Minister under
24 section 183 (Draft reserve management plan—Minister’s
25 direction to revise etc).
- 26 (2) If the Legislative Assembly committee has made a recommendation
27 about the draft plan, the Minister must consider the
28 recommendation.

- 1 (3) The Minister must, not later than the required time—
2 (a) approve the draft plan; or
3 (b) return the draft plan to the custodian and direct the custodian to
4 take 1 or more of the following actions in relation to it:
5 (i) if the Legislative Assembly committee has made a
6 recommendation about the draft plan—consider the
7 recommendation;
8 (ii) carry out stated further consultation;
9 (iii) consider a revision suggested by the Minister;
10 (iv) revise the draft plan in a stated way; or
11 (c) reject the draft plan.
12 (4) In this section:
13 *required time* means 45 working days after—
14 (a) if subsection (1) (a) applies—the day the committee tells the
15 Minister about the recommendation under section 179 (4); or
16 (b) if subsection (1) (b) applies—the end of the 6-month period
17 mentioned in section 180 (3); or
18 (c) if subsection (1) (c) applies—the day the custodian resubmits
19 the plan to the Minister.

20 **182 Draft reserve management plan—Minister’s approval and**
21 **notification**

- 22 (1) A draft reserve management plan approved by the Minister under
23 section 181 (3) (a) or section 185 (3) (a) is a reserve management
24 plan.

1 (2) A reserve management plan is a disallowable instrument.

2 *Note 1* A disallowable instrument must be notified, and presented to the
3 Legislative Assembly, under the [Legislation Act](#).

4 *Note 2* The power to make a reserve management plan includes the power to
5 amend or repeal the plan. The power to amend or repeal the plan is
6 exercisable in the same way, and subject to the same conditions, as the
7 power to make the plan (see [Legislation Act](#), s 46).

8 *Note 3* Minor amendments may be made to the plan under s 185.

9 **183 Draft reserve management plan—Minister’s direction to**
10 **revise etc**

11 (1) This section applies if the Minister gives the custodian of a reserve a
12 direction under section 181 (3) (b).

13 (2) The custodian must—

14 (a) give effect to the direction; and

15 (b) resubmit the draft plan to the Minister for approval.

16 (3) The Minister must decide, under section 181, what to do with the
17 resubmitted draft plan.

18 **184 Draft reserve management plan—Minister’s rejection**

19 (1) If the Minister rejects a draft reserve management plan under
20 section 181 (3) (c), the Minister must prepare a notice stating that
21 the draft plan is rejected (a *rejection notice*).

22 (2) A rejection notice is a notifiable instrument.

23 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

24 **185 Reserve management plan—minor amendments**

25 (1) This section applies if—

26 (a) a reserve management plan for a reserve is in force (the
27 *existing plan*); and

- 1 (b) the custodian considers that minor amendments to the existing
2 plan are appropriate.
- 3 (2) The custodian—
- 4 (a) may prepare a new draft reserve management plan for the
5 reserve, incorporating the minor amendments into the existing
6 plan; and
- 7 (b) need not comply with the requirements in this part; and
- 8 (c) may submit the new draft reserve management plan to the
9 Minister for approval.
- 10 (3) If the custodian submits a new draft reserve management plan to the
11 Minister for approval, the Minister must—
- 12 (a) approve the plan; or
- 13 (b) reject the plan.
- 14 *Note* The new draft reserve management plan approved by the Minister is a
15 reserve management plan and is a disallowable instrument (see s 182).
- 16 (4) In this section:
- 17 ***minor amendment***, of a reserve management plan for a reserve,
18 means an amendment that will improve the effectiveness or
19 technical efficiency of the plan without changing the substance of
20 the plan.
- 21 **Examples**
- 22 1 minor correction to improve effectiveness
- 23 2 omission of something redundant
- 24 3 technical adjustment to improve efficiency
- 25 *Note* An example is part of the Act, is not exhaustive and may extend, but
26 does not limit, the meaning of the provision in which it appears (see
27 [Legislation Act](#), s 126 and s 132).

- 1 **186** **Reserve management plan—custodian to implement**
- 2 If a reserve management plan is in force for a reserve, the custodian
- 3 of the reserve must take reasonable steps to implement the plan.
- 4 **187** **Reserve management plan—review**
- 5 (1) This section applies if a reserve management plan is in force for a
- 6 reserve.
- 7 (2) The custodian of the reserve must report to the Minister about the
- 8 implementation of the plan at least once every 5 years.
- 9 (3) The custodian of the reserve must review the plan—
- 10 (a) every 10 years after the plan commences; and
- 11 (b) at any other time at the Minister’s request.
- 12 (4) However, the Minister may extend the time for conducting a review
- 13 under subsection (3) (a).
- 14 (5) In carrying out a review, the custodian must consult the conservator.

1 **Part 8.4** **Ramsar wetlands management**
2 **plans**

3 *Note* Ramsar wetlands are wetlands of international importance.

4 **188** **What is a *Ramsar wetland*?**

5 (1) In this Act:

6 ***Ramsar wetland*** means a declared Ramsar wetland.

7 (2) In this section:

8 ***declared Ramsar wetland***—see the *Environment Protection and*
9 *Biodiversity Conservation Act 1999* (Cwlth), section 17 (What is a
10 *declared Ramsar wetland*?).

11 **189** **What is a *Ramsar wetland management plan*?**

12 In this Act:

13 ***Ramsar wetland management plan***, for a Ramsar wetland, means a
14 plan for the wetland notified under section 196 (Draft Ramsar
15 wetland management plan—Minister’s approval and notification).

1 **190** **What is a *draft Ramsar wetland management***
2 ***plan?*—pt 8.4**

3 (1) In this part:

4 ***draft Ramsar wetland management plan***, for a Ramsar wetland—

5 (a) means a draft plan detailing how the Ramsar wetland, and its
6 surrounding area, is to be managed to preserve and protect the
7 ecological character of the Ramsar wetland; and

8 *Note* Power to make a statutory instrument includes power to make
9 different provision in relation to different matters or different
10 classes of matters, and to make an instrument that applies
11 differently by reference to stated exceptions or factors (see
12 [Legislation Act](#), s 48).

13 (b) includes anything required to be included by a conservator
14 guideline; and

15 *Note* ***Conservator guidelines***—see s 23.

16 (c) may apply, adopt or incorporate an instrument as in force from
17 time to time.

18 *Note 1* The text of an applied, adopted or incorporated law or instrument,
19 whether applied as in force from time to time or at a particular
20 time, is taken to be a notifiable instrument if the operation of the
21 [Legislation Act](#), s 47 (5) or (6) is not disappplied (see s 47 (7)).

22 *Note 2* A notifiable instrument must be notified under the [Legislation](#)
23 *Act*.

24 (2) In this section:

25 ***ecological character***—see the [Environment Protection and](#)
26 ***Biodiversity Conservation Act 1999*** (Cwlth), section 16 (3)
27 (Requirement for approval of activities with a significant impact on
28 a declared Ramsar wetland).

1 **191 Draft Ramsar wetland management plan—conservator to**
2 **prepare**

3 The conservator may prepare a draft Ramsar wetland management
4 plan for a Ramsar wetland.

5 **192 Draft Ramsar wetland management plan—consultation**
6 **with Commonwealth and custodian**

7 In preparing a draft Ramsar wetland management plan, the
8 conservator must consult—

9 (a) the Commonwealth Minister responsible for administering the
10 *Environment Protection and Biodiversity Conservation*
11 *Act 1999* (Cwlth); and

12 (b) if the Ramsar wetland is located on unleased land or public
13 land—the custodian of each area of land where the wetland is
14 located.

15 **193 Draft Ramsar wetland management plan—public**
16 **consultation**

17 (1) If the conservator prepares a draft Ramsar wetland management
18 plan, the conservator must also prepare a notice about the draft
19 Ramsar wetland management plan (a *public consultation notice*).

20 (2) A public consultation notice must—

21 (a) state that—

22 (i) anyone may give a written submission to the conservator
23 about the draft Ramsar wetland management plan; and

24 (ii) submissions may be given to the conservator only during
25 the period starting on the day the public consultation
26 notice is notified under the *Legislation Act* and ending on
27 a stated day, being a day at least 6 weeks after the day it is
28 notified (the *public consultation period*); and

- 1 (b) include the draft Ramsar wetland management plan.
- 2 (3) A public consultation notice is a notifiable instrument.
- 3 *Note* A notifiable instrument must be notified under the [Legislation Act](#).
- 4 (4) If the conservator notifies a public consultation notice for a draft
5 Ramsar wetland management plan—
- 6 (a) anyone may give a written submission to the conservator about
7 the draft plan; and
- 8 (b) the submission may be given to the conservator only during the
9 public consultation period for the draft plan; and
- 10 (c) the person making the submission may, in writing, withdraw
11 the submission at any time.
- 12 (5) The conservator may make arrangements for people with particular
13 communication needs to ensure they have adequate opportunity to
14 comment on the draft plan.

15 **194 Draft Ramsar wetland management plan—revision and**
16 **submission to Minister**

- 17 (1) If the public consultation period for a draft Ramsar wetland
18 management plan has ended, the conservator must—
- 19 (a) consider any submissions received during the public
20 consultation period; and
- 21 (b) make any revisions to the draft plan that the conservator
22 considers appropriate.
- 23 (2) The conservator must then submit the draft plan to the Minister for
24 approval.
- 25 (3) The submission must be accompanied by a report setting out the
26 issues raised in any submissions given to the conservator during the
27 public consultation period for the draft plan.

1 **195** **Draft Ramsar wetland management plan—Minister to**
2 **approve, return or reject**

3 If the conservator submits a draft Ramsar wetland management plan
4 to the Minister for approval, the Minister must, not later than
5 45 days after receiving the submission—

- 6 (a) approve the draft plan; or
7 (b) return the draft plan to the conservator and direct the
8 conservator to take 1 or more of the following actions in
9 relation to it:
10 (i) carry out stated further consultation;
11 (ii) consider a relevant report;
12 (iii) revise the draft plan in a stated way; or
13 (c) reject the draft plan.

14 **196** **Draft Ramsar wetland management plan—Minister’s**
15 **approval and notification**

16 (1) A draft Ramsar wetland management plan approved by the Minister
17 under section 195 (a) or section 199 (3) is a Ramsar wetland
18 management plan.

19 (2) A Ramsar wetland management plan is a disallowable instrument.

20 *Note 1* A disallowable instrument must be notified, and presented to the
21 Legislative Assembly, under the [Legislation Act](#).

22 *Note 2* The power to make a Ramsar wetland management plan includes the
23 power to amend or repeal the plan. The power to amend or repeal the
24 plan is exercisable in the same way, and subject to the same conditions,
25 as the power to make the plan (see [Legislation Act](#), s 46).

26 *Note 3* Minor amendments may be made to the Ramsar wetland management
27 plan under s 199.

- 1 **197** **Draft Ramsar wetland management plan—Minister’s**
2 **direction to revise etc**
- 3 (1) This section applies if the Minister gives the conservator a direction
4 under section 195 (b).
- 5 (2) The conservator must—
- 6 (a) give effect to the direction; and
- 7 (b) resubmit the draft plan to the Minister for approval.
- 8 (3) The Minister must decide, under section 195, what to do with the
9 resubmitted draft plan.
- 10 **198** **Draft Ramsar wetland management plan—Minister’s**
11 **rejection**
- 12 (1) If the Minister rejects a draft nature conservation Ramsar wetland
13 management plan under section 195 (c), the Minister must prepare a
14 notice stating that the draft plan is rejected (a *rejection notice*).
- 15 (2) A rejection notice is a notifiable instrument.
- 16 *Note* A notifiable instrument must be notified under the [Legislation Act](#).
- 17 **199** **Ramsar wetland management plan—minor amendments**
- 18 (1) This section applies if—
- 19 (a) a Ramsar wetland management plan for a Ramsar wetland is in
20 force (the *existing plan*); and
- 21 (b) the conservator considers that minor amendments to the
22 existing plan are appropriate.
- 23 (2) The conservator—
- 24 (a) may prepare a new draft Ramsar wetland management plan for
25 the wetland, incorporating the minor amendments into the
26 existing plan; and
- 27 (b) need not comply with the requirements in this part; and

1 (c) may submit the new draft Ramsar wetland management plan to
2 the Minister for approval.

3 (3) If the conservator submits a new draft Ramsar wetland management
4 plan to the Minister for approval, the Minister must—

5 (a) approve the plan; or

6 (b) reject the plan.

7 *Note* The new draft Ramsar wetland management plan approved by the
8 Minister is a Ramsar wetland management plan and is a disallowable
9 instrument (see s 196).

10 (4) In this section:

11 *minor amendment*, of a Ramsar wetland management plan, means
12 an amendment that will improve the effectiveness or technical
13 efficiency of the plan without changing the substance of the plan.

14 **Examples**

15 1 minor correction to improve effectiveness

16 2 omission of something redundant

17 3 technical adjustment to improve efficiency

18 *Note* An example is part of the Act, is not exhaustive and may extend, but
19 does not limit, the meaning of the provision in which it appears (see
20 [Legislation Act](#), s 126 and s 132).

21 **200 Ramsar wetland management plan—conservator etc to**
22 **implement**

23 If a Ramsar wetland management plan is in force for a Ramsar
24 wetland, the following people must take reasonable steps to
25 implement the plan:

26 (a) the conservator;

27 (b) if the Ramsar wetland is located on unleased land or public
28 land—the custodian of each area of land where the wetland is
29 located.

- 1 **201 Ramsar wetland management plan—monitoring and**
2 **review**
- 3 (1) The conservator must monitor the effectiveness of a Ramsar wetland
4 management plan.
- 5 (2) The conservator must report to the Minister about each Ramsar
6 wetland management plan at least once every 5 years.

1 **Part 8.5** **Access to biological resources in**
2 **reserves**

3 **202** **What are *biological resources*?—pt 8.5**

4 In this part:

5 *biological resources* includes—

- 6 (a) genetic resources; and
7 (b) organisms or parts of organisms; and
8 (c) populations of species or ecological communities; and
9 (d) any other biotic component of an ecosystem with actual or
10 potential use or value for humanity.

11 **203** **What are *genetic resources*?—pt 8.5**

12 In this part:

13 *genetic resources* means—

- 14 (a) any material of plant, animal, microbial or other origin that
15 contains functional units of heredity; and
16 (b) has actual or potential value for humanity.

17 **204** **Who is an *access provider*?—pt 8.5**

18 In this part:

19 *access provider*, for biological resources in a reserve means—

- 20 (a) the Territory; and
21 (b) if native title exists in relation to the reserve—the native title
22 holders for the reserve.

1 **205 What is *accessing biological resources*?—pt 8.5**

2 (1) In this part:

3 *accessing biological resources*—

4 (a) means taking biological resources of native species for
5 research and development on any genetic resources, or
6 biochemical compounds, comprising or contained in the
7 biological resources; but

8 **Examples**

9 1 collecting living material for taxonomic research

10 2 analysing and sampling stored material for potential commercial
11 product development

12 *Note* An example is part of the Act, is not exhaustive and may extend,
13 but does not limit, the meaning of the provision in which it
14 appears (see [Legislation Act](#), s 126 and s 132).

15 (b) does not include the following activities:

16 (i) Aboriginal or Torres Strait Islander people taking
17 biological resources—

18 (A) for a purpose other than a purpose mentioned in
19 paragraph (a); and

20 (B) in the exercise of their native title rights and
21 interests;

22 (ii) accessing human remains;

23 (iii) taking biological resources that have been cultivated or
24 tended for a purpose other than a purpose mentioned in
25 paragraph (a);

26 (iv) taking public resources for a purpose other than a purpose
27 mentioned in paragraph (a);

28 (v) taking a biological resource that is a genetically modified
29 organism;

- 1 (vi) accessing biological resources mentioned in a declaration
2 under section 206.
- 3 (2) A person is taken to have access to biological resources if there is a
4 reasonable prospect that biological resources taken by the person
5 will be subject to research and development on any genetic
6 resources, or biochemical compounds, comprising or contained in
7 the biological resources.
- 8 (3) In this section:
- 9 *genetically modified organism*—see the *Gene Technology*
10 *Act 2003*, dictionary.
- 11 *taking public resources* includes the following activities:
- 12 (a) fishing for commerce or recreation;
- 13 (b) collecting broodstock for aquaculture;
- 14 (c) harvesting wildflowers;
- 15 (d) taking wild animals or plants for food;
- 16 (e) collecting peat or firewood;
- 17 (f) taking essential oils from wild plants;
- 18 (g) collecting plant reproductive material for propagation;
- 19 (h) commercial forestry.

20 **206 Application—certain biological resources**

- 21 (1) The conservator may declare that this part does not apply to stated
22 biological resources or a stated collection of biological resources
23 (including future additions to the collection) if—
- 24 (a) the resources are held as specimens away from their natural
25 environment by the Territory or a territory authority and the
26 conservator has reasonable grounds to believe that access to
27 the resources is in a way that is consistent with this part; or

- 1 (b) the conservator has reasonable grounds to believe that—
2 (i) access to the resources is under a law in force in the
3 Territory; or
4 (ii) access to the resources is under a law (other than a
5 Commonwealth law) in force in a State and, if the
6 declaration is made, access to the resources would be in a
7 way that is consistent with this part; or
8 (c) use of the resources is required to be controlled under any
9 international agreement to which Australia is a party.

10 **Example—international agreement to which Australia is a party**
11 the International Treaty on Plant Genetic Resources for Food and Agriculture

12 *Note 1* **State** includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

13 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
14 does not limit, the meaning of the provision in which it appears (see
15 [Legislation Act](#), s 126 and s 132).

16 (2) A person may ask the conservator to make a declaration.

17 *Note* If a form is approved under s 363 for this provision, the form must be
18 used.

19 (3) A declaration may be subject to conditions.

20 (4) A declaration is a notifiable instrument.

21 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

22 **207 Offence—access biological resources**

23 (1) A person commits an offence if—

24 (a) the person accesses biological resources; and

25 (b) the biological resources are in a reserve.

26 Maximum penalty: 50 penalty units.

27 (2) An offence against this section is a strict liability offence.

- 1 (3) This section does not apply to a person if—
2 (a) the person holds a nature conservation licence authorising the
3 access to the biological resources; or
4 *Note* *Nature conservation licence*—see s 260.
5 (b) the person is an access provider for the biological resources.
6 *Note* The defendant has an evidential burden in relation to the matters
7 mentioned in s (3) (see [Criminal Code](#), s 58).

8 **208 Benefit-sharing agreement—licensee required to enter**

- 9 (1) An applicant for a nature conservation licence to access biological
10 resources for commercial purposes in a reserve must enter into a
11 benefit-sharing agreement with each access provider for the
12 resources to enable the fair and equitable sharing of benefits derived
13 from the use of the resources.
14 *Note* The conservator may make a model benefit-sharing agreement as a
15 guide (see s 209 (2)).
16 (2) The conservator may, on behalf of the Territory as an access
17 provider, enter into the benefit-sharing agreement.
18 (3) A benefit-sharing agreement takes effect only if a nature
19 conservation licence for the proposed access is issued under
20 chapter 11 (Nature conservation licences).

21 **209 Benefit-sharing agreement—provisions**

- 22 (1) A benefit-sharing agreement must provide for reasonable
23 benefit-sharing arrangements, including protection for, recognition
24 of and valuing of any Aboriginal or Torres Strait Islander people's
25 knowledge to be used.
26 (2) The conservator may make a model benefit-sharing agreement as a
27 guide for applicants.

1 (3) A model benefit-sharing agreement is a notifiable instrument.

2 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

3 **210 Benefit-sharing agreement—informed consent**

4 (1) The conservator must not enter into a benefit-sharing agreement on
5 behalf of the Territory concerning access to biological resources for
6 which a native title holder is an access provider unless the
7 conservator is satisfied on reasonable grounds that the access
8 provider has given informed consent to the benefit-sharing
9 agreement.

10 (2) In considering whether an access provider has given informed
11 consent to a benefit-sharing agreement, the conservator must
12 consider the following matters:

13 (a) whether the access provider had adequate knowledge of this
14 part and was able to engage in reasonable negotiations with the
15 applicant for the nature conservation licence about the
16 benefit-sharing agreement;

17 (b) whether the access provider was given adequate time—

18 (i) to consider the application for the nature conservation
19 licence (including time to consult relevant people); and

20 (ii) to negotiate the benefit-sharing agreement;

21 (c) whether the views of any representative Aboriginal body or
22 any other body performing the functions of a representative
23 body for the reserve have been sought;

24 (d) whether the access provider has received independent legal
25 advice about the application and the requirements of this part.

1 **Chapter 9 Reserves—offences**

2 **Part 9.1 Reserves—offences generally**

3 **211 Offence—enter reserve without paying entry fee**

4 (1) A person commits an offence if—

5 (a) the Minister has determined an entry fee for a reserve; and

6 *Note* An entry fee may be determined under s 362 for this provision.

7 (b) a conservation officer asks the person to pay the entry fee for
8 the reserve; and

9 (c) the person fails to pay the entry fee; and

10 (d) the person enters the reserve.

11 Maximum penalty: 20 penalty units.

12 (2) An offence against this section is a strict liability offence.

13 **212 Offence—take animal into reserve**

14 (1) A person commits an offence if—

15 (a) the person—

16 (i) takes an animal into a reserve; or

17 (ii) allows an animal to enter a reserve; and

18 (b) the animal is not a native animal.

19 Maximum penalty: 50 penalty units.

20 (2) An offence against this section is a strict liability offence.

1 (3) This section does not apply to a person if the animal is an assistance
2 animal.

3 *Note* The defendant has an evidential burden in relation to the matters
4 mentioned in s (3) (see [Criminal Code](#), s 58).

5 (4) A person has the benefit of the chapter 9 exceptions for an offence
6 against this section.

7 *Note* The chapter 9 exceptions are set out in s 250.

8 (5) In this section:

9 *assistance animal*—see the [Domestic Animals Act 2000](#), dictionary.

10 **213 Offence—feed native animal in reserve**

11 (1) A person commits an offence if—

12 (a) the person feeds an animal in a reserve; and

13 (b) the animal is a native animal.

14 Maximum penalty: 10 penalty units.

15 (2) An offence against this section is a strict liability offence.

16 (3) A person has the benefit of the chapter 9 exceptions for an offence
17 against this section.

18 *Note* The chapter 9 exceptions are set out in s 250.

19 **214 Offence—interfere with trap or bait in reserve**

20 (1) A person commits an offence if the person—

21 (a) interferes with a trap or bait; and

22 (b) the trap or bait is in a reserve.

23 Maximum penalty: 30 penalty units.

24 *Note* **Reserve**—see s 167.

25 (2) An offence against this section is a strict liability offence.

- 1 (3) A person has the benefit of the chapter 9 exceptions for an offence
2 against this section.

3 *Note* The chapter 9 exceptions are set out in s 250.

4 **215 Offence—weapons and traps in reserve**

- 5 (1) A person commits an offence if the person possesses or uses, in a
6 reserve—

7 (a) a firearm; or

8 (b) a spear, spear gun, bow or arrow; or

9 (c) a trap, net, snare or other device designed, or capable of being
10 used, to take or capture an animal; or

11 (d) a substance that is capable of being used to take or capture an
12 animal.

13 Maximum penalty: 50 penalty units.

- 14 (2) An offence against this section is a strict liability offence.

- 15 (3) A person has the benefit of the chapter 9 exceptions for an offence
16 against this section.

17 *Note* The chapter 9 exceptions are set out in s 250.

- 18 (4) In this section:

19 *firearm*—see the *Firearms Act 1996*, section 6.

20 **216 Offence—damage native plant in reserve**

- 21 (1) A person commits an offence if—

22 (a) the person engages in conduct; and

23 (b) the conduct causes damage to a plant; and

24 (c) the plant is—

25 (i) a native plant; and

1 (ii) in a reserve.

2 Maximum penalty: 50 penalty units.

3 *Note* **Reserve**—see s 167.

4 (2) An offence against this section is a strict liability offence.

5 (3) A person has the benefit of the chapter 9 exceptions for an offence
6 against this section.

7 *Note* The chapter 9 exceptions are set out in s 250.

8 **217 Offence—take plant or plant reproductive material into**
9 **reserve**

10 (1) A person commits an offence if—

11 (a) the person takes a plant into a reserve; and

12 (b) the plant is a pest plant.

13 Maximum penalty: 30 penalty units.

14 (2) A person commits an offence if the person—

15 (a) takes plant reproductive material into a reserve; and

16 (b) leaves the plant reproductive material in the reserve.

17 Maximum penalty: 30 penalty units.

18 (3) An offence against this section is a strict liability offence.

19 **218 Offence—planting a plant in a reserve**

20 (1) A person commits an offence if the person plants a plant in a
21 reserve.

22 Maximum penalty: 30 penalty units.

23 (2) An offence against this section is a strict liability offence.

- 1 (3) A person has the benefit of the chapter 9 exceptions for an offence
2 against this section.

3 *Note* The chapter 9 exceptions are set out in s 250.

4 **219 Offence—remove soil or stone from reserve**

- 5 (1) A person commits an offence if the person removes soil or stone
6 from a reserve.

7 Maximum penalty: 30 penalty units.

8 *Note* **Reserve**—see s 167.

- 9 (2) An offence against this section is a strict liability offence.

- 10 (3) A person has the benefit of the chapter 9 exceptions for an offence
11 against this section.

12 *Note* The chapter 9 exceptions are set out in s 250.

13 **220 Offence—damage, destroy or remove things in reserve**

- 14 (1) A person commits an offence if—

15 (a) the person damages or destroys—

16 (i) a natural or constructed structure or feature; or

17 (ii) infrastructure; and

18 (b) the structure, feature or infrastructure is in a reserve.

19 Maximum penalty: 50 penalty units.

20 *Note* If a person damages territory property in a reserve, the director-general
21 may direct the person to repair the damage. Failure to comply with the
22 direction is an offence (see *Public Unleased Land Act 2013*, s 21 and
23 s 22).

- 1 (2) A person commits an offence if—
2 (a) the person damages or destroys a site or object; and
3 (b) the site or object is—
4 (i) of historical, archaeological, palaeontological or
5 geological interest; and
6 (ii) in a reserve.
7 Maximum penalty: 50 penalty units.
- 8 (3) A person commits an offence if the person removes infrastructure
9 from a reserve.
10 Maximum penalty: 50 penalty units.
- 11 (4) A person commits an offence if—
12 (a) the person removes an object from a reserve; and
13 (b) the object is of historical, archaeological, palaeontological or
14 geological interest.
15 Maximum penalty: 50 penalty units.
- 16 (5) An offence against this section is a strict liability offence.
- 17 (6) A person has the benefit of the chapter 9 exceptions for an offence
18 against this section.
19 *Note* The chapter 9 exceptions are set out in s 250.
- 20 (7) In this section:
21 ***infrastructure***, in a reserve means the buildings, roads, items and
22 equipment associated with managing the reserve.
23 **Examples—infrastructure in a reserve**
24 roads, fences, gates, signs, taps, garbage bins, toilets, visitors centre
- 25 *Note* An example is part of the Act, is not exhaustive and may extend, but
26 does not limit, the meaning of the provision in which it appears (see
27 [Legislation Act](#), s 126 and s 132).

1 **Part 9.2** **Reserves—offences in**
2 **wilderness areas**

3 **221 Offence—make road in wilderness area**

- 4 (1) A person commits an offence if the person—
5 (a) makes a track or road; and
6 (b) the track or road is in a wilderness area.

7 Maximum penalty: 50 penalty units.

- 8 (2) An offence against this section is a strict liability offence.

9 **222 Offence—use motor vehicle off road in wilderness area**

- 10 (1) A person commits an offence if—
11 (a) the person uses a motor vehicle in a wilderness area; and
12 (b) the motor vehicle is used outside a track or road that—
13 (i) is designed to be used by vehicles with 4 or more wheels;
14 and
15 (ii) was in existence when the wilderness area was reserved in
16 the [territory plan](#).

17 Maximum penalty: 50 penalty units.

- 18 (2) An offence against this section is a strict liability offence.

19 **223 Offence—excavate in wilderness area without licence**

- 20 (1) A person commits an offence if the person excavates in a wilderness
21 area.

22 Maximum penalty: 50 penalty units.

- 23 (2) An offence against this section is a strict liability offence.

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1 (3) This section does not apply to a person if the person holds a nature
2 conservation licence authorising the excavation.

3 *Note 1 Nature conservation licence*—see s 260.

4 *Note 2* The defendant has an evidential burden in relation to the matters
5 mentioned in s (3) (see [Criminal Code](#), s 58).

6 **224 Direction to restore excavation site**

7 (1) This section applies if a person—

8 (a) excavates in a wilderness area; and

9 (b) when the excavation is finished, fails to restore the excavation
10 site and its surroundings as far as possible to their former state.

11 (2) The conservator may direct the person to restore the site and
12 surroundings as far as possible to their former state (a *restore*
13 *excavation direction*).

14 (3) A restore excavation direction must be in writing and state—

15 (a) the wilderness area; and

16 (b) the excavation site and surroundings; and

17 (c) the former state of the site and surroundings; and

18 (d) when the direction must be complied with, being a day at least
19 1 month after the direction is given to the person.

20 *Note* The power to make a direction includes the power to amend or repeal
21 the direction. The power to amend or repeal the direction is exercisable
22 in the same way, and subject to the same conditions, as the power to
23 make the direction (see [Legislation Act](#), s 46).

1 **225 Offence—fail to comply with restore excavation direction**

- 2 (1) A person commits an offence if the person—
- 3 (a) is subject to a restore excavation direction; and
- 4 (b) fails to comply with the direction.
- 5 Maximum penalty: 20 penalty units.
- 6 (2) An offence against this section is a strict liability offence.
- 7 (3) This section does not apply to a person if the person takes
- 8 reasonable steps to restore the excavation site and its surroundings
- 9 as far as possible to their former state.

10 *Note* The defendant has an evidential burden in relation to the matters

11 mentioned in s (3) (see [Criminal Code](#), s 58).

12 **226 Restoration of excavation site by Territory**

- 13 (1) This section applies if a person—
- 14 (a) is subject to a restore excavation direction; and
- 15 (b) fails to comply with the direction.
- 16 (2) The conservator may—
- 17 (a) restore the site and surroundings; and
- 18 (b) recover from the person the reasonable costs of restoring the
- 19 site and surroundings.

20 *Note* An amount owing under a law may be recovered as a debt in a court of

21 competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

1 **Part 9.3 Reserves—repairing damage**

2 **227 Directions to repair damage to reserve**

3 (1) This section applies if—

4 (a) a person causes damage to—

5 (i) a reserve; or

6 (ii) Territory property on a reserve; and

7 **Examples**

- 8 • fence
- 9 • visitor facilities

10 *Note* An example is part of the Act, is not exhaustive and may
11 extend, but does not limit, the meaning of the provision in
12 which it appears (see [Legislation Act](#), s 126 and s 132).

13 (b) the damage is not authorised under a nature conservation
14 licence.

15 *Note* *Nature conservation licence*—see s 260.

16 (2) The conservator may direct the person to repair the damage (a
17 *repair damage direction*).

18 (3) A repair damage direction must be in writing and state—

19 (a) the reserve and Territory property (if any); and

20 (b) the damage to be repaired; and

21 (c) when the direction must be complied with, being a day at least
22 1 month after the direction is given to the person.

23 *Note* The power to make a direction includes the power to amend or repeal
24 the direction. The power to amend or repeal the direction is exercisable
25 in the same way, and subject to the same conditions, as the power to
26 make the direction (see [Legislation Act](#), s 46).

1 **228 Offence—fail to comply with repair damage direction**

- 2 (1) A person commits an offence if the person—
3 (a) is subject to a repair damage direction; and
4 (b) fails to comply with the direction.

5 Maximum penalty: 20 penalty units.

- 6 (2) An offence against this section is a strict liability offence.

7 **229 Repair of damage by Territory**

- 8 (1) This section applies if a person—
9 (a) is subject to a repair damage direction; and
10 (b) fails to comply with the direction.

- 11 (2) The conservator may—
12 (a) repair the damage; and
13 (b) recover from the person the reasonable costs of repairing the
14 damage.

15 *Note* An amount owing under a law may be recovered as a debt in a court of
16 competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

1 **Part 9.4** **Reserves—offences about**
2 **clearing native vegetation**

3 **230** **What is *native vegetation*?—pt 9.4**

4 In this part:

5 *native vegetation*, for an area, means any of the following kinds of
6 vegetation indigenous to the area:

- 7 (a) trees;
- 8 (b) understorey plants;
- 9 (c) groundcover consisting of any kind of grass or herbaceous
10 vegetation;
- 11 (d) plants occurring in a wetland or stream in the area.

12 **231** **What is a *native vegetation area*?—pt 9.4**

13 In this part:

14 *native vegetation area*, means an area where—

- 15 (a) either—
- 16 (i) 10% or more of the area is covered with vegetation
17 (whether dead or alive); and
- 18 (ii) no more than 60% of the ground layer vegetation cover is
19 exotic annual (at any time of year); and
- 20 (iii) more than 50% of the perennial ground layer vegetation
21 cover is native vegetation; or
- 22 (b) trees or shrubs indigenous to the area have a canopy cover of
23 10% or more in any stratum over the area.

1 **232** **What is *clearing* native vegetation?—pt 9.4**

2 In this part:

3 *clearing* native vegetation includes—

- 4 (a) cutting down, felling, thinning, logging or removing native
5 vegetation; and
- 6 (b) burning native vegetation; and
- 7 (c) doing anything else that kills, or is likely to kill, native
8 vegetation.

9 **233** **When does clearing native vegetation *cause serious***
10 ***harm* or *material harm* to a reserve?—pt 9.4**

11 In this part:

12 *cause*, serious harm or material harm, means substantially
13 contribute directly or indirectly to the harm.

14 *material harm*—clearing native vegetation in a reserve causes
15 *material harm* to the reserve if—

- 16 (a) it happens in a wetland, other than a Ramsar wetland, in the
17 reserve; or

18 *Note* *Ramsar wetland*—see s 188.

- 19 (b) the total area cleared of native vegetation is more than 0.2ha
20 but not more than 2ha; or

- 21 (c) the cost of action needed to restore native vegetation to the
22 area cleared is within the range of \$5 000 to \$50 000.

23 *serious harm*—clearing native vegetation in a reserve causes
24 *serious harm* to the reserve if—

- 25 (a) it causes the loss of, or the loss of part of—

- 26 (i) a critically endangered ecological community in the
27 reserve; or

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- 1 (ii) an endangered ecological community in the reserve; or
2 (iii) a vulnerable ecological community in the reserve; or
3 *Note* Critically endangered, endangered and vulnerable ecological
4 communities are threatened ecological communities—see s 67.
5 (b) it causes a substantial loss of habitat of native plants or native
6 animals in the reserve; or
7 (c) it happens in a Ramsar wetland in the reserve; or
8 *Note* **Ramsar wetland**—see s 188.
9 (d) the total area cleared of native vegetation in the reserve is more
10 than 2ha; or
11 (e) the cost of action needed to restore native vegetation to the
12 area cleared in the reserve is more than \$50 000.

13 **234 Offence—clear vegetation causing serious harm**

- 14 (1) A person commits an offence if—
15 (a) the person clears native vegetation in a native vegetation area;
16 and
17 (b) the native vegetation area is in a reserve; and
18 (c) the clearing causes serious harm to the reserve; and
19 (d) the person knows that—
20 (i) the vegetation is native vegetation; and
21 (ii) the area cleared is in a reserve; and
22 (iii) the clearing causes serious harm to the reserve.

23 Maximum penalty: 2 500 penalty units, imprisonment for 7 years or
24 both.

- 1 (2) A person commits an offence if—
- 2 (a) the person clears native vegetation in a native vegetation area;
- 3 and
- 4 (b) the native vegetation area is in a reserve; and
- 5 (c) the clearing causes serious harm to the reserve; and
- 6 (d) the person is reckless about whether—
- 7 (i) the vegetation is native vegetation; and
- 8 (ii) the area cleared is in a reserve; and
- 9 (iii) the clearing causes serious harm to the reserve.

10 Maximum penalty: 2 000 penalty units, imprisonment for 5 years or

11 both.

- 12 (3) A person commits an offence if—
- 13 (a) the person clears native vegetation in a native vegetation area;
- 14 and
- 15 (b) the native vegetation area is in a reserve; and
- 16 (c) the clearing causes serious harm to the reserve; and
- 17 (d) the person is negligent about whether—
- 18 (i) the vegetation is native vegetation; and
- 19 (ii) the area cleared is in a reserve; and
- 20 (iii) the clearing causes serious harm to the reserve.

21 Maximum penalty: 1 500 penalty units, imprisonment for 3 years or

22 both.

- 23 (4) A person has the benefit of the chapter 9 exceptions for an offence
- 24 against this section.

25 *Note* The chapter 9 exceptions are set out in s 250.

1 **235 Offence—clear vegetation causing material harm**

- 2 (1) A person commits an offence if—
- 3 (a) the person clears native vegetation in a native vegetation area;
- 4 and
- 5 (b) the native vegetation area is in a reserve; and
- 6 (c) the clearing causes material harm to the reserve; and
- 7 (d) the person knows that—
- 8 (i) the vegetation is native vegetation; and
- 9 (ii) the area cleared is in a reserve; and
- 10 (iii) the clearing causes material harm to the reserve.

11 Maximum penalty: 1 500 penalty units, imprisonment for 5 years or

12 both.

- 13 (2) A person commits an offence if—
- 14 (a) the person clears native vegetation in a native vegetation area;
- 15 and
- 16 (b) the native vegetation area is in a reserve; and
- 17 (c) the clearing causes material harm to the reserve; and
- 18 (d) the person is reckless about whether—
- 19 (i) the vegetation is native vegetation; and
- 20 (ii) the area cleared is in a reserve; and
- 21 (iii) the clearing causes material harm to the reserve.

22 Maximum penalty: 1 000 penalty units, imprisonment for 2 years or

23 both.

- 1 (3) A person commits an offence if—
2 (a) the person clears native vegetation in a native vegetation area;
3 and
4 (b) the native vegetation area is in a reserve; and
5 (c) the clearing causes material harm to the reserve; and
6 (d) the person is negligent about whether—
7 (i) the vegetation is native vegetation; and
8 (ii) the area cleared is in a reserve; and
9 (iii) the clearing causes material harm to the reserve.

10 Maximum penalty: 750 penalty units, imprisonment for 1 year or
11 both.

- 12 (4) A person has the benefit of the chapter 9 exceptions for an offence
13 against this section.

14 *Note* The chapter 9 exceptions are set out in s 250.

15 **236 Offence—clear vegetation**

- 16 (1) A person commits an offence if—
17 (a) the person clears native vegetation in a native vegetation area;
18 and
19 (b) the native vegetation area is in a reserve.

20 Maximum penalty: 100 penalty units.

- 21 (2) An offence against this section is a strict liability offence.

- 22 (3) A person has the benefit of the chapter 9 exceptions for an offence
23 against this section.

24 *Note* The chapter 9 exceptions are set out in s 250.

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- 1 (4) It is a defence to a prosecution for an offence against this section if
2 the defendant proves that the defendant took all reasonable steps to
3 avoid committing the offence.

4 *Note* The defendant has a legal burden in relation to the matters mentioned in
5 s (4) (see [Criminal Code](#), s 59).

6 **237 Defence of appropriate diligence for offences—pt 9.4**

7 It is a defence to a prosecution for an offence against this part if the
8 defendant proves that the defendant took all reasonable precautions
9 and exercised all appropriate diligence to prevent the commission of
10 the offence.

11 **238 Alternative verdicts for offences—pt 9.4**

- 12 (1) This section applies if, in a prosecution for a relevant offence, the
13 trier of fact—

14 (a) is not satisfied beyond reasonable doubt that the defendant is
15 guilty of the relevant offence; but

16 (b) is satisfied beyond reasonable doubt that the defendant is guilty
17 of an alternative offence.

- 18 (2) The trier of fact may find the defendant guilty of the alternative
19 offence, but only if the defendant has been given procedural fairness
20 in relation to that finding of guilt.

- 21 (3) In this section:

22 *alternative offence*, for a relevant offence, means an offence
23 mentioned in table 238, column 3, for the offence.

24 *relevant offence* means an offence mentioned in table 238,
25 column 2.

Table 238 Alternative verdicts for offences—pt 9.4

column 1 item	column 2 relevant offence	column 3 alternative offence
1	s 234 (1) (knowingly clear vegetation—serious harm)	s 234 (2) (recklessly clear vegetation—serious harm) s 234 (3) (negligently clear vegetation—serious harm)
2	s 234 (2) (recklessly clear vegetation—serious harm)	s 234 (3) (negligently clear vegetation—serious harm)
3	s 235 (1) (knowingly clear vegetation—material harm)	s 235 (2) (recklessly clear vegetation—material harm) s 235 (3) (negligently clear vegetation—material harm)
4	s 235 (2) (recklessly clear vegetation—material harm)	s 235 (3) (negligently clear vegetation—material harm)

- 1 **239 Order to restore cleared vegetation etc**
- 2 (1) This section applies if a court convicts a person, or finds a person
- 3 guilty, of an offence against this part.
- 4 (2) The court may order the person to—
- 5 (a) take any action the court considers appropriate, including
- 6 action to—
- 7 (i) mitigate the effect of the clearing; or
- 8 (ii) restore native vegetation in the area cleared; or
- 9 (b) pay an amount to the Territory for reasonable costs incurred, or
- 10 to be incurred, by the Territory in taking action—
- 11 (i) mentioned in paragraph (a); or
- 12 (ii) to monitor the outcome of action ordered under
- 13 paragraph (a).
- 14 (3) The court may also order the person to provide security for the
- 15 performance of any obligation under the order.

- 1 (4) The court may take action under this section—
2 (a) on its own initiative or on the application of the conservator;
3 and
4 (b) in addition to, or instead of, any other penalty it may impose
5 for the offence.

6 **240 Order to publicise conviction or finding of guilt—pt 9.4**

- 7 (1) This section applies if a court convicts a person, or finds a person
8 guilty, of an offence against this part.
- 9 (2) The court may order the person to take stated action to publicise—
10 (a) the conviction or finding of guilt; and
11 (b) the environmental and other consequences of the offence; and
12 (c) any order made by the court under section 239 (2) (a); and
13 (d) any action taken by the person—
14 (i) to mitigate the effect of the clearing; or
15 (ii) to restore native vegetation in the area cleared.
- 16 (3) The court may take action under this section—
17 (a) on its own initiative or on the application of the conservator;
18 and
19 (b) in addition to, or instead of, any other penalty it may impose
20 for the offence.

1 **Part 9.5** **Reserves—offences about**
2 **damaging land**

3 **241** **What is *damage* to land?—pt 9.5**

4 In this part:

5 *damage*, to land, includes the destruction on the land, or removal
6 from the land, of any of the following:

- 7 (a) clay;
8 (b) gravel;
9 (c) rock;
10 (d) sand;
11 (e) soil;
12 (f) stone.

13 **Examples—damage to land**

- 14 • crushing rocks
15 • contaminating soil
16 • heaping rocks, stones, gravel, sand, clay or soil
17 • altering the soil profile

18 *Note* An example is part of the Act, is not exhaustive and may extend, but
19 does not limit, the meaning of the provision in which it appears (see
20 [Legislation Act](#), s 126 and s 132).

21 **242** **When does damage to land *cause serious harm* or**
22 ***material harm* to a reserve?—pt 9.5**

23 In this part:

24 *cause* serious or material harm, means substantially contribute
25 directly or indirectly to the harm.

1 **material harm**—damage to land in a reserve causes **material harm**
2 to the reserve if the cost of action needed to rehabilitate the area
3 damaged is within the range of \$5 000 to \$50 000.

4 **serious harm**—damage to land in a reserve causes **serious harm** to
5 the reserve if—

6 (a) it causes the loss of, or the loss of part of—

7 (i) a critically endangered ecological community in the
8 reserve; or

9 (ii) an endangered ecological community in the reserve; or

10 (iii) a vulnerable ecological community in the reserve; or

11 *Note* Critically endangered, endangered and vulnerable ecological
12 communities are threatened ecological communities—see s 67.

13 (b) it causes a substantial loss of habitat of native plants or native
14 animals in the reserve; or

15 (c) the total area damaged in the reserve is more than 2ha; or

16 (d) the cost of action needed to rehabilitate the land damaged in
17 the reserve is more than \$50 000.

18 **243 Offence—damage land causing serious harm**

19 (1) A person commits an offence if—

20 (a) the person damages land; and

21 (b) the land is in a reserve; and

22 (c) the damage causes serious harm to the reserve; and

23 (d) the person knows that—

24 (i) the land damaged is in a reserve; and

- 1 (ii) the damage causes serious harm to the reserve.
- 2 Maximum penalty: 2 500 penalty units, imprisonment for 7 years or
3 both.
- 4 (2) A person commits an offence if—
- 5 (a) the person damages land; and
- 6 (b) the land is in a reserve; and
- 7 (c) the damage causes serious harm to the reserve; and
- 8 (d) the person is reckless about whether—
- 9 (i) the land damaged is in a reserve; and
- 10 (ii) the damage causes serious harm to the reserve.
- 11 Maximum penalty: 2 000 penalty units, imprisonment for 5 years or
12 both.
- 13 (3) A person commits an offence if—
- 14 (a) the person damages land; and
- 15 (b) the land is in a reserve; and
- 16 (c) the damage causes serious harm to the reserve; and
- 17 (d) the person is negligent about whether—
- 18 (i) the land damaged is in a reserve; and
- 19 (ii) the damage causes serious harm to the reserve.
- 20 Maximum penalty: 1 500 penalty units, imprisonment for 3 years or
21 both.
- 22 (4) A person has the benefit of the chapter 9 exceptions for an offence
23 against this section.
- 24 *Note* The chapter 9 exceptions are set out in s 250.

1 **244 Offence—damage land causing material harm**

- 2 (1) A person commits an offence if—
- 3 (a) the person damages land; and
- 4 (b) the land is in a reserve; and
- 5 (c) the damage causes material harm to the reserve; and
- 6 (d) the person knows that—
- 7 (i) the land damaged is in a reserve; and
- 8 (ii) the damage causes material harm to the reserve.

9 Maximum penalty: 1 500 penalty units, imprisonment for 5 years or
10 both.

- 11 (2) A person commits an offence if—
- 12 (a) the person damages land; and
- 13 (b) the land is in a reserve; and
- 14 (c) the damage causes material harm to the reserve; and
- 15 (d) the person is reckless about whether—
- 16 (i) the land damaged is in a reserve; and
- 17 (ii) the damage causes material harm to the reserve.

18 Maximum penalty: 1 000 penalty units, imprisonment for 2 years or
19 both.

- 20 (3) A person commits an offence if—
- 21 (a) the person damages land; and
- 22 (b) the land is in a reserve; and
- 23 (c) the damage causes material harm to the reserve; and

- 1 (d) the person is negligent about whether—
2 (i) the land damaged is in a reserve; and
3 (ii) the damage causes material harm to the reserve.

4 Maximum penalty: 750 penalty units, imprisonment for 1 year or
5 both.

- 6 (4) A person has the benefit of the chapter 9 exceptions for an offence
7 against this section.

8 *Note* The chapter 9 exceptions are set out in s 250.

9 **245 Offence—damage land causing harm**

- 10 (1) A person commits an offence if—
11 (a) the person damages land; and
12 (b) the land is in a reserve; and
13 (c) the damage causes harm to the reserve.

14 Maximum penalty: 100 penalty units.

- 15 (2) An offence against this section is a strict liability offence.

- 16 (3) A person has the benefit of the chapter 9 exceptions for an offence
17 against this section.

18 *Note* The chapter 9 exceptions are set out in s 250.

- 19 (4) It is a defence to a prosecution for an offence against this section if
20 the defendant proves that the defendant took all reasonable steps to
21 avoid committing the offence.

22 *Note* The defendant has a legal burden in relation to the matters mentioned in
23 s (4) (see [Criminal Code](#), s 59).

- 24 (5) In this section:

25 *harm*, to a reserve, includes any loss or disadvantage to the
26 environment in the reserve.

1 **246 Defence of appropriate diligence for offences—pt 9.5**

2 It is a defence to a prosecution for an offence against this part if the
3 defendant proves that the defendant took all reasonable precautions
4 and exercised all appropriate diligence to prevent the commission of
5 the offence.

6 **247 Alternative verdicts for offences—pt 9.5**

7 (1) This section applies if, in a prosecution for a relevant offence, the
8 trier of fact—

9 (a) is not satisfied beyond reasonable doubt that the defendant is
10 guilty of the relevant offence; but

11 (b) is satisfied beyond reasonable doubt that the defendant is guilty
12 of an alternative offence.

13 (2) The trier of fact may find the defendant guilty of the alternative
14 offence, but only if the defendant has been given procedural fairness
15 in relation to that finding of guilt.

16 (3) In this section:

17 *alternative offence*, for a relevant offence, means an offence
18 mentioned in table 247, column 3, for the offence.

19 *relevant offence* means an offence mentioned in table 247,
20 column 2.

Table 247 Alternative verdicts for offences—pt 9.5

column 1 item	column 2 relevant offence	column 3 alternative offence
1	s 243 (1) (knowingly damage land—serious harm)	s 243 (2) (recklessly damage land—serious harm) s 243 (3) (negligently damage land—serious harm)
2	s 243 (2) (recklessly damage land—serious harm)	s 243 (3) (negligently damage land—serious harm)

column 1 item	column 2 relevant offence	column 3 alternative offence
3	s 244 (1) (knowingly damage land—material harm)	s 244 (2) (recklessly damage land—material harm) s 244 (3) (negligently damage land—material harm)
4	s 244 (2) (recklessly damage land—material harm)	s 244 (3) (negligently damage land—material harm)

- 1 **248 Order to rehabilitate land etc**
- 2 (1) This section applies if a court convicts a person, or finds a person
- 3 guilty, of an offence against this part.
- 4 (2) The court may order the person to—
- 5 (a) take any action the court considers appropriate, including
- 6 action to—
- 7 (i) mitigate the effect of the damage; or
- 8 (ii) rehabilitate the land damaged as closely as possible to its
- 9 condition before the damage; or
- 10 (b) pay an amount to the Territory for reasonable costs incurred, or
- 11 to be incurred, by the Territory in taking action—
- 12 (i) mentioned in paragraph (a); or
- 13 (ii) to monitor the outcome of action ordered under
- 14 paragraph (a).
- 15 (3) The court may also order the person to provide security for the
- 16 performance of any obligation under the order.
- 17 (4) The court may take action under this section—
- 18 (a) on its own initiative or on the application of the conservator;
- 19 and

1 (b) in addition to, or instead of, any other penalty it may impose
2 for the offence.

3 **249 Order to publicise conviction or finding of guilt—pt 9.5**

4 (1) This section applies if a court convicts a person, or finds a person
5 guilty, of an offence against this part.

6 (2) The court may order the person to take stated action to publicise—

7 (a) the conviction or finding of guilt; and

8 (b) the environmental and other consequences of the offence; and

9 (c) any order made by the court under section 248 (2) (a); and

10 (d) any action taken by the person—

11 (i) to mitigate the effect of the damage; or

12 (ii) to rehabilitate the land damaged as closely as possible to
13 its condition before the damage.

14 (3) The court may take action under this section—

15 (a) on its own initiative or on the application of the conservator;
16 and

17 (b) in addition to, or instead of, any other penalty it may impose
18 for the offence.

1 Part 9.6 Exceptions to offences

2 250 Chapter 9 exceptions

3 (1) This section applies if a person has the benefit of the
4 chapter 9 exceptions for an offence.

5 (2) The offence does not apply to the person if—

6 (a) the conduct constituting the offence is—

7 (i) a restricted activity under an activities declaration and the
8 person is complying with the directions and requirements
9 stated in the declaration; or

10 *Note Activities declaration*—see s 254.

11 *Restricted activity*—see s 254.

12 (ii) undertaken in accordance with a management agreement;
13 or

14 *Note Management agreement*—see s 308.

15 (iii) undertaken in implementing a controlled native species
16 management plan under section 165 (Controlled native
17 species management plan—conservator etc to
18 implement); or

19 *Note Controlled native species management plan*—see s 156.

20 (b) the person is authorised to engage in the conduct constituting
21 the offence under—

22 (i) a nature conservation licence; or

23 *Note Nature conservation licence*—see s 260.

24 (ii) a strategic bushfire management plan under the
25 *Emergencies Act 2004*, section 72; or

26 (iii) a development approval under the *Planning and*
27 *Development Act 2007*, chapter 7 (Development
28 approvals); or

- 1 (iv) a public unleased land permit; or
2 (c) the person is a conservation officer exercising a function under
3 this Act.

4 *Note 1* The defendant has an evidential burden in relation to the matters
5 mentioned in s (2) (see [Criminal Code](#), s 58).

6 *Note 2* This Act does not apply to emergency services personnel exercising
7 functions under the [Emergencies Act 2004](#) for the purpose of protecting
8 life or property or controlling, extinguishing or preventing the spread of
9 a fire (see s 7).

1 **Chapter 10** **Reserves—prohibited and**
2 **restricted activities**

3 *Note* Because reserves are public unleased land, the provisions of the *Public*
4 *Unleased Land Act 2013* also apply. For example, a person wishing to
5 camp in a reserve may need a public unleased land permit if the
6 camping is not authorised under this Act.

7 **Part 10.1** **Resource protection areas**

8 **251** **What is a *resource protection area*?—ch 10**

9 In this chapter:

10 *resource protection area* means an area declared by the Minister to
11 be a resource protection area under section 252.

12 **252** **Resource protection area—declaration**

- 13 (1) The Minister may declare an area in a reserve to be a resource
14 protection area (a *resource protection area declaration*).

15 *Note* The power to make a declaration includes the power to amend or repeal
16 the declaration. The power to amend or repeal the declaration is
17 exercisable in the same way, and subject to the same conditions, as the
18 power to make the declaration (see [Legislation Act](#), s 46).

- 19 (2) A resource protection area declaration must—
20 (a) state the purpose of the declaration, including a description of
21 the environmental harm that the declaration is intended to
22 reduce; and
23 (b) identify the area to be declared as a resource protection area.

- 1 (3) In deciding whether to make a resource protection area declaration,
2 the Minister must consider—
- 3 (a) the purpose for which the area was reserved in the [territory](#)
4 [plan](#) under the *Planning and Development Act 2007*,
5 section 315 (Reserved areas—public land); and
- 6 (b) the planning and development management objectives for the
7 area; and
- 8 *Note* ***Planning and development management objectives***—see the
9 dictionary.
- 10 (c) for an area in a reserve that the conservator has assigned to an
11 IUCN category—the IUCN reserve management objectives
12 identified for the reserve.
- 13 *Note* ***IUCN category***—see s 169.
14 ***IUCN reserve management objectives***—see s 171.
- 15 (4) In deciding whether to make a resource protection area declaration,
16 the Minister must consult—
- 17 (a) the conservator; and
- 18 (b) the custodian of the area.
- 19 (5) A resource protection area declaration is a disallowable instrument.
- 20 *Note* A disallowable instrument must be notified, and presented to the
21 Legislative Assembly, under the [Legislation Act](#).
- 22 (6) In this section:
- 23 ***environmental harm***—see the *Environment Protection Act 1997*,
24 dictionary.

1 **253 Resource protection area—review**

2 (1) The conservator must review a resource protection area declaration
3 at least once every 3 years after the declaration commences.

4 (2) In reviewing a resource protection area declaration, the
5 conservator—

6 (a) must consider the effectiveness of the declaration in achieving
7 its stated purpose; and

8 (b) may make recommendations to the Minister about the
9 declaration.

1 **Part 10.2** **Prohibited and restricted**
2 **activities**

3 **254** **Conservator may make activities declarations**

4 (1) This section applies if the conservator reasonably believes that a
5 certain activity, if carried out in a reserve, may have a negative
6 impact on the reserve.

7 (2) The conservator may declare (an *activities declaration*) that a stated
8 activity—

9 (a) may be carried out in a stated reserve only if stated directions
10 or requirements are complied with (a *restricted activity*); or

11 (b) is prohibited in a stated reserve (a *prohibited activity*).

12 **Examples—activities in reserves**

- 13 • driving a motor vehicle
14 • parking a motor vehicle
15 • mooring a vessel
16 • taking an animal
17 • lighting, maintaining or using a fire
18 • camping
19 • swimming

20 *Note* An example is part of the Act, is not exhaustive and may extend, but
21 does not limit, the meaning of the provision in which it appears (see
22 [Legislation Act](#), s 126 and s 132).

23 (3) In deciding whether to make an activities declaration for a reserve,
24 the conservator must consider the reserve management plan for the
25 reserve.

26 *Note* **Reserve management plan**—see s 173.

27 (4) An activities declaration is a notifiable instrument.

28 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

1 (5) If the conservator makes an activities declaration for a reserve, the
2 conservator must—

3 (a) publish a notice about the declaration in a daily newspaper; and

4 (b) display a notice about the declaration in a conspicuous place at
5 the reserve.

6 *Note* The power to make a declaration includes the power to amend or repeal
7 the declaration (see [Legislation Act](#), s 46).

8 **255 Offence—carry on restricted activity in reserve**

9 (1) A person commits an offence if—

10 (a) an activities declaration is in force for a reserve; and

11 (b) the activities declaration states that an activity is a restricted
12 activity for the reserve; and

13 (c) the person carries on the restricted activity in the reserve in
14 contravention of the activities declaration.

15 Maximum penalty: 10 penalty units.

16 (2) A person commits an offence if—

17 (a) an activities declaration is in force for a resource protection
18 area in a reserve; and

19 (b) the activities declaration states that an activity is a restricted
20 activity for the resource protection area; and

21 (c) the person carries out the restricted activity in the resource
22 protection area in contravention of the activities declaration.

23 Maximum penalty: 30 penalty units.

24 *Note* **Resource protection area**—see s 251.

25 (3) An offence against this section is a strict liability offence.

1 (4) A person has the benefit of the part 10.2 exceptions for an offence
2 against this section.

3 *Note* The part 10.2 exceptions are set out in s 259.

4 **256 Offence—carry on prohibited activity in reserve**

5 (1) A person commits an offence if—

6 (a) an activities declaration is in force for a reserve; and

7 (b) the activities declaration states that an activity is a prohibited
8 activity for the reserve; and

9 (c) the person carries out the prohibited activity in the reserve.

10 Maximum penalty: 20 penalty units.

11 (2) A person commits an offence if—

12 (a) an activities declaration is in force for a resource protection
13 area in a reserve; and

14 (b) the activities declaration states that an activity is a prohibited
15 activity for the resource protection area; and

16 (c) the person carries out the prohibited activity in the resource
17 protection area.

18 Maximum penalty: 50 penalty units.

19 *Note* **Resource protection area**—see s 251.

20 (3) An offence against this section is a strict liability offence.

21 (4) A person has the benefit of the part 10.2 exceptions for an offence
22 against this section.

23 *Note* The part 10.2 exceptions are set out in s 259.

1 **257 Conservator may close reserve**

2 (1) This section applies if the conservator reasonably believes that
3 public access to a reserve may—

4 (a) endanger public safety; or

5 (b) interfere with the management of the reserve.

6 (2) The conservator may declare (a *closed reserve declaration*) that—

7 (a) access to a reserve is restricted to stated people or a stated class
8 of people; or

9 (b) public access to a reserve is prohibited.

10 (3) A closed reserve declaration is a notifiable instrument.

11 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

12 (4) If the conservator makes a closed reserve declaration, the
13 conservator must—

14 (a) publish a notice about the declaration in a daily newspaper; and

15 (b) display a notice about the declaration in a conspicuous place at
16 the reserve.

17 *Note* The power to make a declaration includes the power to amend or repeal
18 the declaration (see [Legislation Act](#), s 46).

19 **258 Offence—enter closed reserve**

20 (1) A person commits an offence if—

21 (a) a closed reserve declaration is in force for a reserve; and

22 (b) the person enters the reserve in contravention of the
23 declaration.

24 Maximum penalty: 50 penalty units.

25 (2) An offence against this section is a strict liability offence.

1 (3) It is a defence to a prosecution for an offence against this section if
2 the defendant proves that the defendant took reasonable steps to
3 ensure that the contravention did not happen.

4 *Note* The defendant has a legal burden in relation to the matters mentioned in
5 s (3) (see [Criminal Code](#), s 59).

6 **259 Part 10.2 exceptions**

7 (1) This section applies if a person has the benefit of the part 10.2
8 exceptions for an offence.

9 (2) The offence does not apply to the person if—

10 (a) the person is authorised to engage in the conduct constituting
11 the offence under—

12 (i) a nature conservation licence; or

13 *Note* *Nature conservation licence*—see s 260.

14 (ii) a licence to occupy or use the land under the *Planning*
15 *and Development Act 2007*, section 303; or

16 (iii) a development approval under the *Planning and*
17 *Development Act 2007*, chapter 7; or

18 (iv) a work approval under the *Public Unleased Land*
19 *Act 2013*, section 19; or

20 (v) a public unleased land permit; or

21 (vi) a licence to park and use a vehicle on the land to sell
22 goods or services under the *Hawkers Act 2003*; or

23 (vii) another law of the Territory; or

24 (b) the person is a conservation officer exercising a function under
25 this Act.

26 *Note* The defendant has an evidential burden in relation to the matters
27 mentioned in s (2) (see [Criminal Code](#), s 58).

1 (3) It is a defence to a prosecution for an offence against this section if
2 the defendant proves that the defendant took reasonable steps to
3 ensure that the contravention did not happen.

4 *Note 1* The defendant has a legal burden in relation to the matters mentioned in
5 s (3) (see [Criminal Code](#), s 59).

6 *Note 2* This Act does not apply to emergency services personnel exercising
7 functions under the [Emergencies Act 2004](#) for the purpose of protecting
8 life or property or controlling, extinguishing or preventing the spread of
9 a fire (see s 7).

1 **Chapter 11 Nature conservation licences**

2 **Part 11.1 Licences—preliminary**

3 **260 What is a *nature conservation licence*?**

4 In this Act:

5 *nature conservation licence* means a licence that authorises the
6 licensee to carry on 1 or more activities (the *licensed activity*) that
7 would otherwise be an offence under this Act.

8 *Note* Some activities are unsuitable for a licence (see s 266 (1) (b)).

9 **261 Offence—fail to comply with condition of licence**

10 (1) A person commits an offence if—

- 11 (a) the person holds a licence; and
12 (b) the licence is subject to a condition; and
13 (c) the person fails to comply with the condition.

14 Maximum penalty: 20 penalty units.

15 (2) A person commits an offence if—

- 16 (a) the person holds a licence; and
17 (b) the licence is subject to a financial assurance condition; and
18 (c) the person fails to comply with the financial assurance
19 condition.

20 Maximum penalty: 30 penalty units.

21 *Note* *Financial assurance condition*, on a licence—see s 276.

22 (3) An offence against this section is a strict liability offence.

1 **Part 11.2 Licences—application and**
2 **suitability**

3 **262 Licence—application**

- 4 (1) A person may apply to the conservator for a licence.
5 (2) The application must—
6 (a) be in writing; and
7 (b) state the activity for the licence; and
8 (c) include complete details of suitability information about—
9 (i) the applicant; and
10 (ii) if the applicant is a corporation—each influential person
11 for the applicant; and
12 (iii) if someone other than the applicant is to have
13 management or control of the activity for the licence—
14 each person who is to have management or control; and
15 (iv) the activity for the licence.

16 *Note 1* **Suitability information**, about a person—see s 264.
17 **Suitability information**, about an activity—see s 267.

18 *Note 2* Giving false or misleading information is an offence against the
19 [Criminal Code](#), s 338.

20 *Note 3* If a form is approved under s 363 for this provision, the form must be
21 used.

22 *Note 4* A fee may be determined under s 362 for this provision.

23 **263 Who is a *suitable person* to hold a licence?—ch 11**

- 24 (1) In this chapter:
25 ***suitable person***, to hold a licence, means a person who the
26 conservator is satisfied is a suitable person to hold the licence.

- 1 (2) In deciding whether a person is a suitable person to hold a licence,
2 the conservator must consider each of the following:
- 3 (a) suitability information about the person;
- 4 (b) any information given to the conservator under section 265
5 (Suitability of people—further information about people).

6 **264 What is *suitability information* about a person?—ch 11**

7 In this chapter:

8 *suitability information*, about a person, means information about—

- 9 (a) any conviction of, or finding of guilt against, the person for an
10 offence against the following:
- 11 (i) this Act;
- 12 (ii) the *Animal Welfare Act 1992*;
- 13 (iii) the *Domestic Animals Act 2000*;
- 14 (iv) the *Environment Protection Act 1997*;
- 15 (v) the *Fisheries Act 2000*;
- 16 (vi) the *Water Resources Act 2007*;
- 17 (vii) a law of another jurisdiction corresponding, or
18 substantially corresponding, to this Act or an Act
19 mentioned in subparagraphs (ii) to (vi); and

20 **Examples—subpar (vii)**

- 21 1 *Environment Protection and Biodiversity Conservation Act 1999*
22 (Cwlth)
- 23 2 *National Parks and Wildlife Act 1974* (NSW)
- 24 3 *Threatened Species Conservation Act 1995* (NSW)

25 *Note 1* A reference to an Act includes a reference to the statutory
26 instruments made or in force under the Act, including any
27 regulation (see [Legislation Act](#), s 104).

1 **266** **What is a *suitable activity* for a licence?**

2 (1) In this Act:

3 *suitable activity*, for a licence—

4 (a) means an activity that the conservator is satisfied is suitable for
5 the licence; but

6 (b) does not include an activity prescribed by regulation as an
7 unsuitable activity.

8 (2) In deciding whether an activity is suitable for a licence, the
9 conservator must consider each of the following:

10 (a) suitability information about the activity;

11 (b) any information about the activity given to the conservator
12 under section 268 (*Suitability of activities—further*
13 *information about activity*);

14 (c) any risk management plan given to the conservator under
15 section 269 (*Suitability of activities—risk management plan*);

16 (d) the results of any inspection of a place by the conservator
17 under section 270 (*Suitability of activities—inspection of*
18 *place*);

19 (e) if the activity involves a relevant species, relevant ecological
20 community or key threatening process for which an action plan
21 is in force—the action plan;

22 *Note* **Action plan**—see s 97.

23 **Key threatening process**—see s 72.

24 **Relevant ecological community** and **relevant species**—see s 96.

1 (f) if the activity involves a species for which a native species
2 conservation plan is in force—the native species conservation
3 plan;

4 *Note* **Native species conservation plan**—see s 113.

5 (g) if the activity involves a native species and a controlled native
6 species management plan is in force for the native species—the
7 controlled native species management plan;

8 (h) if the activity is to be carried out in a reserve—

9 (i) the planning and development management objectives for
10 the reserve; and

11 *Note* **Planning and development management objectives**—see
12 the dictionary.

13 (ii) for a reserve assigned to an IUCN category under
14 section 170—the IUCN reserve management objectives
15 identified for the reserve or area;

16 *Note* **IUCN category**—see s 169.
17 **IUCN reserve management objectives**—see s 171.

18 (i) if the activity is to be carried out in a resource protection
19 area—the purpose of the resource protection area declaration,
20 including the environmental harm that the declaration is
21 intended to reduce.

22 *Note* **Resource protection area declaration**—see s 252.

23 (3) In deciding whether an activity to be carried out in a reserve is
24 suitable for a licence, the conservator must consult the custodian of
25 the reserve.

1 **267 What is *suitability information* about an activity?**

2 In this Act:

3 *suitability information*, about an activity, means information
4 about—

5 (a) the impact of the activity on the animal, plant or land; and

6 **Examples**

- 7 • ecological survey
8 • action plan
9 • species conservation plan

10 *Note* An example is part of the Act, is not exhaustive and may extend,
11 but does not limit, the meaning of the provision in which it
12 appears (see [Legislation Act](#), s 126 and s 132).

13 (b) the purpose of the activity; and

14 **Examples**

- 15 • scientific research
16 • education
17 • commercial trade

18 (c) the place where the activity is to be carried out; and

19 (d) if the activity involves a native species—the number and
20 species of each native species involved in the activity; and

21 (e) any other matter prescribed by regulation.

22 *Note* The conservator must also consider suitability information for an
23 activity when deciding to amend or renew a licence (see s 284, s 286
24 and s 290).

- 1 **268 Suitability of activities—further information about activity**
- 2 (1) This section applies if the conservator is making a decision about
3 whether an activity is a suitable activity for a licence.
- 4 (2) The conservator may, by written notice given to the applicant (an
5 *activity information notice*), require the applicant to give the
6 conservator stated information about the activity, not later than a
7 stated reasonable time.
- 8 (3) The conservator need not decide whether an activity is a suitable
9 activity for a licence if—
- 10 (a) the conservator has given the applicant an activity information
11 notice; and
- 12 (b) the applicant does not comply with the notice.
- 13 **269 Suitability of activities—risk management plan**
- 14 (1) This section applies if the conservator is—
- 15 (a) making a decision about whether an activity is a suitable
16 activity for a licence; and
- 17 (b) satisfied that carrying on the activity in accordance with the
18 licence is likely to cause undue risk to people or property.
- 19 (2) The conservator may, by written notice given to the applicant (a *risk*
20 *management plan notice*), require the applicant to prepare a risk
21 management plan for the licence.
- 22 (3) The risk management plan must—
- 23 (a) identify the risks to people and property; and
- 24 (b) set out the procedures, practices and arrangements for
25 eliminating or minimising the risks.

- 1 (4) The conservator need not decide an application for a licence if—
2 (a) the conservator has given the applicant a risk management plan
3 notice; and
4 (b) the applicant does not comply with the notice.

5 **270 Suitability of activities—inspection of place**

- 6 (1) This section applies if—
7 (a) the conservator is making a decision about whether an activity
8 is suitable for a licence; and
9 (b) the activity involves keeping an animal.
10 (2) The conservator may, by written notice given to the applicant (an
11 *inspection notice*), require the applicant to allow the conservator to
12 inspect the place where the animal is to be kept within a stated
13 reasonable time.
14 (3) The conservator need not decide whether an activity is a suitable
15 activity for a licence if—
16 (a) the conservator has given the applicant an inspection notice;
17 and
18 (b) the applicant does not comply with the notice.

1 **Part 11.3 Licences—decision**

2 **271 Licence—decision on application**

- 3 (1) This section applies if the conservator receives an application for a
4 licence.
- 5 (2) The conservator may issue the licence to the applicant only if
6 reasonably satisfied that—
- 7 (a) the applicant is a suitable person to hold the licence; and
- 8 (b) if the applicant is a corporation—each influential person for
9 the applicant is a suitable person to hold the licence; and
- 10 (c) if someone other than the applicant is to have management or
11 control of the activity for the licence—each person who is to
12 have management or control of the activity is a suitable person
13 to hold the licence; and
- 14 (d) the activity is a suitable activity for the licence.

15 *Note* **Suitable activity**, for a licence—see s 266.
16 **Suitable person**, to hold a licence—see s 263.

- 17 (3) The conservator must, not later than the required time—
- 18 (a) decide the application; and
- 19 (b) tell the applicant about the decision on the application.
- 20 (4) In this section:

21 **required time** means the latest of the following:

- 22 (a) if the conservator gives the applicant a personal information
23 notice under section 265—28 days after the day the
24 conservator receives the stated information;

- 1 (b) if the conservator gives the applicant an activity information
2 notice under section 268—28 days after the day the
3 conservator receives the information;
- 4 (c) if the conservator gives the applicant a risk management plan
5 notice under section 269—28 days after the day the
6 conservator receives the risk management plan;
- 7 (d) if the conservator gives the applicant an inspection notice
8 under section 270—28 days after the day the conservator
9 inspects the place;
- 10 (e) 28 days after the day the conservator receives the application.

11 *Note* Failure to issue a licence within the required time is taken to be a
12 decision not to issue the licence (see *ACT Civil and Administrative*
13 *Tribunal Act 2008*, s 12).

14 **272 Licence—conditions generally**

15 A licence is subject to any condition—

- 16 (a) prescribed by regulation; and
- 17 (b) that the conservator reasonably believes is necessary to meet
18 the objects of this Act.

19 **Examples—par (b)**

- 20 1 that the licensee may carry on the activity only during a stated season
21 2 that the licensee may carry on the activity only for non-commercial purposes
22 3 a financial assurance condition (see s 276)

23 *Note* An example is part of the Act, is not exhaustive and may extend, but
24 does not limit, the meaning of the provision in which it appears (see
25 *Legislation Act*, s 126 and s 132).

1 **273** **Licence—conditions about native species conservation**
2 **plans etc**

- 3 (1) This section applies if—
4 (a) a licence is issued to carry out an activity on stated land; and
5 (b) the land is subject to a native species conservation plan.

6 *Note* *Native species conservation plan*, for a native species—see s 113.

- 7 (2) The licence is subject to the condition that the activity must be
8 carried out in accordance with the plan.

9 **274** **Licence—term**

- 10 (1) A licence starts on the day stated in the licence.
11 (2) The conservator must not issue a licence for longer than 5 years.
12 (3) A licence expires on the day stated in the licence.
13 (4) However, if the licensed activity involves keeping a native animal
14 and the animal escapes, the licence no longer applies in relation to
15 the animal.

16 **275** **Licence—form**

- 17 (1) A licence must—
18 (a) be in writing; and
19 (b) include the following information:
20 (i) the name of the licensee;
21 (ii) a unique identifying number (the *licence number*);
22 (iii) the licensed activity;
23 (iv) the animal, plant or land for the licence;

- 1 (v) the term of the licence;
- 2 (vi) the conditions on the licence;
- 3 (vii) anything else prescribed by regulation.
- 4 (2) A licence may include anything else the conservator considers
- 5 relevant.

1 **Part 11.4** **Licences—financial assurance**
2 **conditions**

3 **276** **What is a *financial assurance condition*?**

4 In this Act:

5 *financial assurance condition*, on a licence, means a condition
6 requiring the licensee to give the conservator a financial assurance
7 of a stated kind and amount.

8 **277** **Financial assurance condition—imposition**

9 (1) The conservator may impose a financial assurance condition on a
10 licence if satisfied that it is justified having regard to—

11 (a) the likelihood that the licensed activity will cause serious or
12 material damage to—

13 (i) a population of a species or ecological community; or

14 (ii) a habitat of a species or ecological community; or

15 (iii) an ecosystem; and

16 (b) the likelihood that action will need to be taken in the future to
17 repair the damage; and

18 (c) the financial assurance considerations (if any); and

19 *Note* *Financial assurance considerations*—see s (5).

20 (d) any other relevant matter.

21 (2) A financial assurance must be in the form of—

22 (a) a bank guarantee; or

23 (b) a bond; or

24 (c) an insurance policy; or

- 1 (d) if the conservator reasonably believes that, in the
2 circumstances, the forms of assurance in paragraphs (a), (b)
3 and (c) are not appropriate—another form of security that the
4 conservator considers appropriate.
- 5 (3) The conservator must not require financial assurance of an amount
6 greater than the total amount that the conservator reasonably
7 believes is needed to repair the damage that could result from the
8 activity.
- 9 (4) A financial assurance must be given for the period stated in the
10 financial assurance condition on the licence.
- 11 (5) The Minister may determine matters to be considered by the
12 conservator in deciding whether to impose a financial assurance
13 condition on a licence (*financial assurance considerations*).
- 14 (6) A determination is a disallowable instrument.
- 15 *Note* A disallowable instrument must be notified, and presented to the
16 Legislative Assembly, under the [Legislation Act](#).

17 **278 Financial assurance condition—show cause**

- 18 (1) If the conservator proposes to impose a financial assurance
19 condition on a licence, the conservator must give the applicant or
20 licensee written notice of the intention to impose the condition.
- 21 (2) The notice must state—
- 22 (a) the grounds for the proposed financial assurance condition; and
23 (b) the amount and form of the proposed financial assurance; and
24 (c) that the applicant or licensee may give a written submission to
25 the conservator showing cause why the proposed financial
26 assurance condition should not be imposed; and
27 (d) that submissions may be given to the conservator only during
28 the 20 working days after the day the notice is given to the
29 licensee (the *show cause period*).

- 1 (3) The conservator must, within 20 working days after the end of the
2 show cause period—
- 3 (a) consider any submissions received under subsection (2) (d);
4 and
- 5 (b) decide whether to impose the financial assurance condition;
6 and
- 7 (c) tell the applicant, or licensee, in writing (a *decision notice*)—
- 8 (i) about the decision; and
- 9 (ii) if the condition is to be imposed—when the financial
10 assurance must be provided (the *due date*).
- 11 (4) The conservator must not decide a due date that is earlier than
12 10 working days after the day the decision notice is given to the
13 licensee.

14 **279 Financial assurance condition—licence cancellation**

- 15 (1) This section applies if—
- 16 (a) the conservator imposes a financial assurance condition on a
17 licence; and
- 18 (b) the licensee does not provide the financial assurance—
- 19 (i) in accordance with the financial assurance condition; or
20 (ii) by the due date.
- 21 (2) The conservator must cancel the licence.

22 **280 Financial assurance condition—claim or realisation**

- 23 (1) This section applies if—
- 24 (a) a licence is subject to a financial assurance condition; and
- 25 (b) a population, habitat or ecosystem is seriously or materially
26 damaged because of the licensed activity; and

- 1 (c) the conservator incurs, or will incur, expenses in repairing the
2 damage; and
- 3 (d) the damage is the kind of harm for which the financial
4 assurance may be claimed or realised; and
- 5 (e) the damage was not licensed under this Act.
- 6 (2) The conservator may recover the reasonable expenses of repairing
7 the damage by making a claim on or realising the financial
8 assurance.
- 9 **281 Financial assurance condition—notice before claim or**
10 **realisation**
- 11 (1) Before acting under section 280, the conservator must give the
12 licensee, a written notice stating—
- 13 (a) the serious or material damage caused by the use of the
14 licensed place; and
- 15 (b) details of the action taken, or to be taken, to repair the damage;
16 and
- 17 (c) the amount of the financial assurance to be claimed or realised;
18 and
- 19 (d) that the licensee may give a written submission to the
20 conservator showing cause why the financial assurance should
21 not be claimed or realised as proposed; and
- 22 (e) that a submission may be given to the conservator only during
23 the 20 working days (the *show cause period*) after the day the
24 notice is given to the licensee.
- 25 (2) The conservator must, within 20 working days after the end of the
26 show cause period—
- 27 (a) consider any submission received under subsection (1) (e); and

1 (b) decide whether to make a claim on or realise the financial
2 assurance; and

3 (c) tell the licensee about the decision.

4 **282 Financial assurance condition—recovery of extra costs**

5 (1) This section applies if—

6 (a) the conservator makes a claim on or realises a financial
7 assurance under a licence; and

8 (b) the amount recovered by the conservator (the *realised*
9 *assurance*) is less than the reasonable expenses that the
10 conservator incurred, or will incur, in repairing the damage.

11 (2) The conservator may give the licensee written notice—

12 (a) requiring the licensee to pay the stated amount, being the
13 difference between the reasonable expenses and the realised
14 assurance; and

15 (b) stating when the stated amount is required to be paid (the *due*
16 *date*).

17 (3) The conservator must not decide a due date that is earlier than
18 20 working days after the day the notice is given to the licensee.

19 (4) If the licensee does not pay the stated amount on or before the due
20 date, the amount that remains unpaid, together with interest on the
21 unpaid amount, is a debt due to the Territory by the licensee.

22 *Note 1* A rate of interest may be determined under s 362 for this provision.

23 *Note 2* An amount owing under a law may be recovered as a debt in a court of
24 competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

- 1 **283 Financial assurance condition—money held by Territory**
- 2 (1) If an amount of money is held by the Territory as a financial
3 assurance, the following provisions apply:
- 4 (a) interest accrues on so much of the original amount as from
5 time to time remains unclaimed by the conservator under
6 section 280 (Financial assurance condition—claim or
7 realisation);
- 8 *Note* A rate of interest may be determined under s 362 for this
9 provision.
- 10 (b) for a claim made by the conservator under section 280—the
11 financial assurance is taken to include any accrued interest
12 other than interest to which the licensee is entitled to be paid
13 under paragraph (c);
- 14 (c) during the period for which the financial assurance is required,
15 on each anniversary of the payment of the original amount, the
16 licensee is entitled to be paid by the Territory so much of the
17 interest that accrued during the year that ended on the day
18 before that anniversary as remains unclaimed by the
19 conservator under section 280;
- 20 (d) the amount of the original amount and accrued interest that
21 remains unclaimed by the conservator under section 280 must
22 be paid by the Territory to the licensee if the financial
23 assurance is no longer required by the conservator.
- 24 (2) For this section, a financial assurance is *no longer required by the*
25 *conservator* if—
- 26 (a) the conservator is satisfied that a financial assurance condition
27 is no longer justified under section 277 (Financial assurance
28 condition—imposition); or
- 29 (b) the licence has ended and section 280 (Financial assurance
30 condition—claim or realisation) does not apply.

1 **Part 11.5 Licences—amendment, transfer**
2 **and renewal**

3 **284 Licence—amendment initiated by conservator**

4 (1) The conservator may, by written notice (an *amendment notice*)
5 given to a licensee, amend the licence if satisfied that—

6 (a) the licensee is a suitable person to hold the licence as amended;
7 and

8 (b) if the licensee is a corporation—each influential person for the
9 licensee is a suitable person to hold the licence as amended;
10 and

11 (c) the licensed activity is a suitable activity for the licence as
12 amended.

13 *Note* **Suitable activity**, for a licence—see s 266.
14 **Suitable person**, to hold a licence—see s 263.

15 (2) However, the conservator may amend the licence only if—

16 (a) the conservator has given the licensee written notice of the
17 proposed amendment (a *proposal notice*); and

18 (b) the proposal notice states that written submissions about the
19 proposal may be made to the conservator before the end of a
20 stated period of at least 14 days after the day the proposal
21 notice is given to the licensee; and

22 (c) after the end of the stated period, the conservator has
23 considered any submissions made in accordance with the
24 proposal notice.

25 (3) Subsection (2) does not apply to a person if the licensee applied for,
26 or agreed in writing to, the amendment.

27 (4) The amendment takes effect on the day the amendment notice is
28 given to the licensee or a later day stated in the notice.

1 **285 Licence—application to amend licence**

- 2 (1) A licensee may apply to the conservator to amend the licence.
- 3 (2) A licensee must apply to the conservator for amendment of the
4 licence if someone else (the *new person*) is to—
- 5 (a) have management or control of the licensed activity; or
- 6 (b) if the licensee is a corporation—become an influential person
7 for the licensee.
- 8 (3) The application must—
- 9 (a) be in writing; and
- 10 (b) if the application is under subsection (2)—include complete
11 details of suitability information about the new person.

12 *Note 1* *Suitability information*, about a person—see s 264.

13 *Note 2* Giving false or misleading information is an offence against the
14 [Criminal Code](#), s 338.

15 *Note 3* If a form is approved under s 363 for this provision, the form must be
16 used.

17 *Note 4* A fee may be determined under s 362 for this provision.

18 **286 Licence—decision on application to amend licence**

- 19 (1) This section applies if the conservator receives an application to
20 amend a licence under section 285.
- 21 (2) The conservator may amend the licence only if satisfied that—
- 22 (a) the licensee is a suitable person to hold the licence as amended;
23 and
- 24 (b) if the licensee is a corporation—each influential person for the
25 licensee is a suitable person to hold the licence as amended;
26 and

1 (c) if someone other than the proposed new licensee is to have
2 management or control of the activity for the licence—each
3 person who is to have management or control of the activity is
4 a suitable person to hold the licence as amended; and

5 (d) the licensed activity is a suitable activity for the licence as
6 amended.

7 *Note* **Suitable activity**, for a licence—see s 266.

8 **Suitable person**, to hold a licence—see s 263.

9 (3) If the conservator decides to amend the licence, the conservator may
10 impose or amend a condition on the licence.

11 (4) The conservator must, not later than the required time—

12 (a) decide the application for amendment; and

13 (b) tell the licensee about the decision.

14 (5) In this section:

15 **required time** means the latest of the following:

16 (a) if the conservator gives a person mentioned in section 285 (2) a
17 personal information notice under section 265—28 days after
18 the day the conservator receives the stated information;

19 (b) if the conservator gives the applicant an activity information
20 notice under section 268—28 days after the day the
21 conservator receives the information;

22 (c) if the conservator gives the applicant a risk management plan
23 notice under section 269—28 days after the day the
24 conservator receives the risk management plan;

25 (d) if the conservator gives the applicant an inspection notice
26 under section 270—28 days after the day the conservator
27 inspects the place;

1 (e) 28 days after the day the conservator receives the application.

2 *Note* Failure to amend a licence within the required time is taken to be a
3 decision not to amend the licence (see *ACT Civil and Administrative*
4 *Tribunal Act 2008*, s 12).

5 **287 Licence—application to transfer licence**

6 (1) A licensee may apply to the conservator to transfer the licence to
7 someone else (the *proposed new licensee*).

8 (2) The application must—

9 (a) be in writing; and

10 (b) include complete details of suitability information about—

11 (i) the proposed new licensee; and

12 (ii) if the proposed new licensee is a corporation—each
13 influential person for the proposed new licensee; and

14 (iii) if someone other than the proposed new licensee is to
15 have management or control of the activity for the
16 licence—each person who is to have management or
17 control of the activity.

18 *Note 1* *Suitability information*, about a person—see s 264.

19 *Note 2* Giving false or misleading information is an offence against the
20 *Criminal Code*, s 338.

21 *Note 3* If a form is approved under s 363 for this provision, the form must be
22 used.

23 *Note 4* A fee may be determined under s 362 for this provision.

- 1 **288 Licence—decision on application to transfer licence**
- 2 (1) This section applies if the conservator receives an application to
- 3 transfer a licence under section 287.
- 4 (2) The conservator may transfer the licence to the proposed new
- 5 licensee only if satisfied that each of the following people is a
- 6 suitable person to hold the licence:
- 7 (a) the proposed new licensee;
- 8 (b) if the proposed new licensee is a corporation—each influential
- 9 person for the proposed new licensee;
- 10 (c) if someone other than the proposed new licensee is to have
- 11 management or control of the activity for the licence—each
- 12 person who is to have management or control of the activity.
- 13 *Note Suitable person*, to hold a licence—see s 263.
- 14 (3) If the conservator decides to transfer the licence, the conservator
- 15 may impose or amend a condition on the licence.
- 16 (4) The conservator must, not later than the required time—
- 17 (a) decide the application for transfer; and
- 18 (b) tell the old licensee and new licensee about the decision.
- 19 (5) In this section:
- 20 *required time* means the latest of the following:
- 21 (a) if the conservator gives a person mentioned in
- 22 section 287 (2) (b) a personal information notice under
- 23 section 265—28 days after the day the conservator receives the
- 24 stated information;
- 25 (b) 28 days after the day the conservator receives the application.
- 26 *Note Failure to transfer a licence within the required time is taken to be a*
- 27 *decision not to transfer the licence (see [ACT Civil and Administrative](#)*
- 28 *Tribunal Act 2008*, s 12).
-

- 1 **289 Licence—application for renewal of licence**
- 2 (1) A licensee may apply to the conservator to renew the licence for a
3 period not longer than 5 years.
- 4 *Note 1* If a form is approved under s 363 for an application, the form must be
5 used.
- 6 *Note 2* A fee may be determined under s 362 for this provision.
- 7 (2) The application must be—
- 8 (a) in writing; and
- 9 (b) received by the conservator at least 30 days before the licence
10 expires.
- 11 (3) However, the conservator may extend the time for making an
12 application.
- 13 *Note* A licensee may apply to the conservator for the time to be extended, and
14 the conservator may extend the time, even though the time has ended
15 (see [Legislation Act](#), s 151C).
- 16 (4) If a licensee applies to renew a licence under this section, the licence
17 remains in force until the application is decided.
- 18 **290 Licence—decision on application for renewal of licence**
- 19 (1) This section applies if the conservator receives an application for
20 renewal of a licence under section 289.
- 21 (2) The conservator may renew the licence only if satisfied that—
- 22 (a) the licensee continues to be a suitable person to hold the
23 licence; and
- 24 (b) if the licensee is a corporation—each influential person for the
25 licensee continues to be a suitable person to hold the licence;
26 and

1 (c) if someone other than the licensee has management or control
2 of the licensed activity—each person who is to have
3 management or control of the activity continues to be a suitable
4 person to hold the licence; and

5 (d) the licensed activity continues to be a suitable activity for the
6 licence.

7 *Note* **Suitable activity**, for a licence—see s 266.

8 **Suitable person**, to hold a licence—see s 263.

9 (3) If the conservator decides to renew the licence, the conservator may
10 impose or amend a condition on the licence.

11 (4) The conservator must, not later than the required time—

12 (a) decide the application for renewal; and

13 (b) tell the licensee about the decision.

14 (5) In this section:

15 **required time** means the latest of the following:

16 (a) if the conservator gives the applicant a personal information
17 notice under section 265—28 days after the day the
18 conservator receives the stated information;

19 (b) if the conservator gives the applicant an activity information
20 notice under section 268—28 days after the day the
21 conservator receives the information;

22 (c) if the conservator gives the applicant a risk management plan
23 notice under section 269—28 days after the day the
24 conservator receives the risk management plan;

25 (d) if the conservator gives the applicant an inspection notice
26 under section 270—28 days after the day the conservator
27 inspects the place;

1 (e) 28 days after the day the conservator receives the application.

2 *Note* Failure to renew a licence within the required time is taken to be a
3 decision not to renew the licence (see *ACT Civil and Administrative*
4 *Tribunal Act 2008*, s 12).

5 **291 Licence—replacing when lost, stolen or destroyed**

6 (1) The conservator may issue a replacement licence to a licensee if
7 satisfied that the licensee's original licence has been lost, stolen or
8 destroyed.

9 (2) For subsection (1), the conservator may require the licensee to give
10 the conservator a statutory declaration signed by the licensee, stating
11 that the original licence has been lost, stolen or destroyed.

12 *Note 1* A fee may be determined under s 362 for this provision.

13 *Note 2* It is an offence to make a false or misleading statement, give false or
14 misleading information or produce a false or misleading document (see
15 *Criminal Code*, pt 3.4).

16 *Note 3* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of
17 statutory declarations under ACT laws.

18 **292 Licence—surrender**

19 (1) A licensee may surrender the licence by giving written notice of the
20 surrender (a *surrender notice*) to the conservator.

21 *Note* If a form is approved under s 363 for this provision, the form must be
22 used.

23 (2) The surrender notice must be accompanied by—

24 (a) the licence; or

25 (b) if the licence has been lost, stolen or destroyed—a statutory
26 declaration signed by the licensee stating that the licence has
27 been lost, stolen or destroyed.

28 *Note* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of
29 statutory declarations under ACT laws.

1 **293 Offence—fail to notify change of name or address**

- 2 (1) A person commits an offence if—
- 3 (a) the person is a licensee; and
- 4 (b) the person's name or address changes; and
- 5 (c) the person does not, within 30 days after the change, give the
- 6 conservator—
- 7 (i) written notice of the change; and
- 8 (ii) the licence.

9 Maximum penalty: 1 penalty unit.

- 10 (2) An offence against this section is a strict liability offence.

11 **294 Licence—conservator to change name and address**

- 12 (1) This section applies if a licensee gives the conservator—
- 13 (a) written notice of a change to the person's name or address; and
- 14 (b) the licence.
- 15 (2) The conservator must enter the changed details on the licence and
- 16 return it to the licensee.

1 **Part 11.6 Licences—regulatory action**

2 **295 Licence—grounds for regulatory action**

3 (1) Each of the following is a *ground for regulatory action* against a
4 licensee:

5 (a) the licensee has contravened, or is contravening, a provision of
6 this Act;

7 *Note* A reference to an Act includes a reference to the statutory
8 instruments made or in force under the Act, including any
9 regulation (see [Legislation Act](#), s 104).

10 (b) the licensee has contravened a condition of the licence.

11 (2) In this section:

12 *licensee* includes, if the person is a corporation, each executive
13 officer of the corporation.

14 **296 Licence—regulatory action**

15 Each of the following is *regulatory action* when taken against a
16 licensee:

17 (a) imposing a condition on, or amending a condition on, the
18 licence;

19 (b) suspending the licence for a stated period or until a stated thing
20 happens;

21 (c) cancelling the licence;

22 (d) cancelling the licence and disqualifying the person from
23 applying for a licence of that kind for a stated period or until a
24 stated thing happens.

- 1 **297 Licence—taking regulatory action**
- 2 (1) If the conservator proposes to take regulatory action in relation to a
3 licensee, the conservator must give the licensee a written notice
4 (a *show cause notice*) stating—
- 5 (a) details of the proposed regulatory action; and
- 6 (b) the grounds for the proposed regulatory action; and
- 7 (c) that the licensee may, not later than 14 days after the day the
8 licensee is given the notice, give a written submission to the
9 conservator about the proposed regulatory action.
- 10 (2) In deciding whether to take the proposed regulatory action, the
11 conservator must consider any submission given to the conservator
12 in accordance with the show cause notice.
- 13 (3) If the conservator believes on reasonable grounds that a ground for
14 regulatory action has been established in relation to the licensee, the
15 conservator may—
- 16 (a) take the regulatory action stated in the show cause notice; or
- 17 (b) if the proposed regulatory action is cancelling the licence and
18 disqualifying the person from applying for a licence—
- 19 (i) cancel the licence; or
- 20 (ii) suspend the licence; or
- 21 (iii) impose a condition on, or amend a condition on, the
22 licence; or
- 23 (c) if the proposed regulatory action is cancelling the licence—
- 24 (i) suspend the licence; or
- 25 (ii) impose a condition on, or amend a condition on, the
26 licence; or

- 1 (d) if the proposed regulatory action is suspending the licence—
2 (i) suspend the licence for a shorter period; or
3 (ii) impose a condition on, or amend a condition on, the
4 licence.
- 5 (4) Regulatory action under this section takes effect on—
6 (a) the day the licensee is given written notice of the decision; or
7 (b) if the written notice states a later date of effect—that date.

8 **298 Licence—immediate suspension**

- 9 (1) This section applies if—
10 (a) the conservator gives a show cause notice to a licensee; and
11 (b) having regard to the grounds stated in the notice, the
12 conservator believes on reasonable grounds that the person's
13 licence should be suspended immediately because of a risk
14 to—
15 (i) public safety; or
16 (ii) the safety of an animal or plant.
- 17 (2) The conservator must give the licensee a written notice
18 (an *immediate suspension notice*) suspending the person's licence.
- 19 (3) The suspension of a licence under this section takes effect when the
20 immediate suspension notice is given to the licensee.
- 21 (4) The suspension of a licence under this section ends—
22 (a) if regulatory action is taken against the person—at the earlier
23 of the following times:
24 (i) when the regulatory action takes effect;
25 (ii) 30 days after the day the immediate suspension notice is
26 given to the person; or

- 1 (b) if regulatory action is not taken against the person—at the
2 earlier of the following times:
- 3 (i) when the person is given written notice of the
4 conservator’s decision not to take regulatory action;
- 5 (ii) 30 days after the day the immediate suspension notice is
6 given to the person.

7 **299 Licence—effect of suspension**

- 8 (1) A suspended licence does not authorise the carrying on of any
9 activity under the licence during the suspension.
- 10 (2) If the conservator suspends a licence, the licensee is, during the
11 suspension—
- 12 (a) taken not to hold the licence; and
13 (b) disqualified from applying for a licence.

14 **300 Offence—fail to return amended, suspended or cancelled**
15 **licences**

- 16 (1) A person commits an offence if—
- 17 (a) the person is a licensee; and
18 (b) the licence is amended, suspended or cancelled under this
19 division; and
20 (c) the person fails to return the licence to the conservator as soon
21 as practicable (but not later than 7 days) after the day the
22 person is given a reviewable decision notice under section 355.
- 23 Maximum penalty: 10 penalty units.
- 24 (2) An offence against this section is a strict liability offence.

- 1 **301 Action by conservator in relation to amended or**
2 **suspended licence**
- 3 (1) This section applies if—
- 4 (a) a licence is amended or suspended under this part; and
- 5 (b) the licence is returned to the conservator.
- 6 (2) For an amended licence, the conservator must—
- 7 (a) return the amended licence to the licensee; or
- 8 (b) give the licensee a replacement licence that includes the
- 9 amendment.
- 10 (3) If a licence is suspended under this part and the suspension ends
- 11 before the end of the term of the licence, the conservator must return
- 12 the licence to the licensee when the suspension ends.

1 **Part 11.7** **Licence—register, records and**
2 **royalties**

3 **302 Licence register**

- 4 (1) The conservator must keep a register of licences (the *licence*
5 *register*).
- 6 (2) The licence register must include the following details for each
7 licence:
- 8 (a) the name of the licensee;
- 9 (b) the licence number;
- 10 (c) the licensed activity;
- 11 (d) the term of the licence;
- 12 (e) the conditions on the licence;
- 13 (f) anything else prescribed by regulation.
- 14 (3) The licence register may include anything else the conservator
15 considers relevant.
- 16 (4) The licence register may be kept in any form, including
17 electronically, that the conservator decides.

18 **303 Licence register—correction and keeping up to date**

- 19 (1) The conservator may correct a mistake, error or omission in the
20 licence register.
- 21 (2) The conservator may change a detail included in the register to keep
22 the register up to date.

1 **304 Offence—fail to keep records**

2 (1) A person commits an offence if—

3 (a) the person is a licensee; and

4 (b) the licence authorises the person to carry on an activity
5 involving an animal or plant; and

6 (c) the person does not keep the records required by regulation for
7 the licence.

8 Maximum penalty: 10 penalty units.

9 (2) A person commits an offence if—

10 (a) the person is a licensee; and

11 (b) the licence authorises the person to carry on an activity
12 involving an animal, or plant, that has special protection status;
13 and

14 (c) the person does not keep the records required by regulation for
15 the licence.

16 Maximum penalty: 20 penalty units.

17 *Note* *Special protection status*—see s 107.

18 (3) An offence against this section is a strict liability offence.

19 *Note* A conservation officer may direct a licensee to produce records required
20 to be kept under this Act (see s 315). It is an offence to fail to comply
21 with the direction (see s 316).

1 **305 Royalty**

2 (1) This section applies if a licence authorises a licensee to—

3 (a) take a native animal; or

4 (b) take a native plant; or

5 (c) take native timber.

6 *Note* **Native timber**—see s 137.

7 (2) If the licensee sells or otherwise disposes of an animal, plant or
8 timber taken under the licence, the licensee must pay royalty for the
9 animal, plant or timber to the Territory at the rate prescribed by
10 regulation.

11 *Note* Power to make a statutory instrument (including a regulation) includes
12 power to make different provision in relation to different matters or
13 different classes of matters, and to make a regulation that applies
14 differently by reference to stated exceptions or factors (see [Legislation](#)
15 [Act](#), s 48).

1 **Chapter 12 Management agreements with**
2 **utility suppliers, land**
3 **developers and others**

4 **306 What are *agencies* and *activities* of agencies?—ch 12**

5 (1) In this chapter:

6 ***agency***—

7 (a) means an entity that is—

8 (i) a supplier of gas, electricity, water or sewerage services;
9 or

10 (ii) responsible for the construction, repair and maintenance
11 of navigation serving beacons and telecommunications
12 facilities; or

13 (iii) responsible for a development of land; and

14 (b) includes the Territory to the extent to which the Territory is an
15 entity mentioned in paragraph (a).

16 *Note* ***Entity*** includes a person (see [Legislation Act](#), dict, pt 1).

17 (2) In this chapter:

18 ***activities***, of an agency means—

19 (a) for an entity that supplies gas, electricity, water or sewerage
20 services—construction, repair or maintenance carried out by
21 the entity in association with the supply of the services; or

22 (b) for an entity responsible for the construction, repair and
23 maintenance of navigation serving beacons and
24 telecommunications facilities—the construction, repair and
25 maintenance of navigation serving beacons and
26 telecommunications facilities carried out by the entity; or

1 (c) for an entity responsible for the development of land—the
2 entity’s development activities.

3 (3) In this section:

4 *development*, of land—see the *Planning and Development Act 2007*,
5 section 7 (Meaning of *development*).

6 *telecommunications facility*—see the *Utilities (Telecommunications*
7 *Installations) Act 2001*, dictionary.

8 **307 What are *management objectives*?—ch 12**

9 (1) In this chapter:

10 *management objectives*, for public land or unleased territory land—

11 (a) means the objective of conserving the qualities of the natural
12 environment on and near the land; and

13 (b) includes—

14 (i) any objectives, policies or purposes stated in the Territory
15 plan for the land; and

16 (ii) for public land—the planning and development
17 management objectives for the land.

18 *Note* *Planning and development management objectives*—
19 see the dictionary.

20 (2) In this section:

21 *natural environment* means all biological, physical and visual
22 elements of the earth and its atmosphere, whether natural or
23 modified.

- 1 **308** **What is a *management agreement*?—ch 12**
- 2 In this chapter:
- 3 *management agreement* means an agreement between the
- 4 conservator and an agency, in relation to public land or unleased
- 5 territory land, that—
- 6 (a) sets out standards and conditions for avoiding or minimising
- 7 any conflict with the management objectives for the land
- 8 which may arise as a result of the agency’s activities; and
- 9 (b) may deal with the following matters:
- 10 (i) access to the public land or unleased territory land;
- 11 (ii) fire management on the public land or unleased territory
- 12 land;
- 13 (iii) drainage on the public land or unleased territory land;
- 14 (iv) management and maintenance of public or private
- 15 facilities on the public land or unleased territory land;
- 16 (v) rehabilitation of the public land or unleased territory land
- 17 or public or private facilities on the land;
- 18 (vi) indemnities;
- 19 (vii) emergency procedures to be used on the public land or
- 20 unleased territory land;
- 21 (viii) internal stockpiling on the public land or unleased
- 22 territory land;
- 23 (ix) fencing on the public land or unleased territory land;
- 24 (x) feral animals and weed control on the public land or
- 25 unleased territory land; but
- 26 (c) does not conflict with a development approval given under the
- 27 *Planning and Development Act 2007*, chapter 7.

- 1 **309 Management agreement—conservator may propose**
- 2 (1) The conservator may propose a management agreement to an
- 3 agency if—
- 4 (a) the agency’s activities affect, or may affect, public land or
- 5 unleased territory land; and
- 6 (b) the conservator reasonably believes the activities may conflict
- 7 with the management objectives for the land.
- 8 (2) If the conservator intends to propose a management agreement to an
- 9 agency, the conservator must—
- 10 (a) consult the agency in developing the agreement; and
- 11 (b) consider any representations made by the agency about the
- 12 agreement.
- 13 (3) After consulting and considering any representations under
- 14 subsection (2), the conservator must give the agreement
- 15 (the *proposed agreement*) to the agency together with a notice
- 16 stating—
- 17 (a) that the agency may—
- 18 (i) enter into the proposed agreement by signing the
- 19 agreement and returning it to the conservator within
- 20 28 days after the date of the notice (the *due date*); or
- 21 (ii) refuse to enter into the proposed agreement by telling the
- 22 conservator, in writing, of the refusal before the due date;
- 23 and
- 24 (b) that if the agency does not act under paragraph (a) before the
- 25 due date, that the agency will be taken to have refused to enter
- 26 into the proposed agreement; and
- 27 (c) the consequences under this part for the agency of—
- 28 (i) refusing to enter into the proposed agreement; and

- 1 (ii) if the agency enters the agreement—breaching a term of
2 the agreement.

3 **310 Management agreement—agency may enter or refuse**

- 4 (1) If the conservator has given a proposed agreement to an agency
5 under section 309, the agency may—
6 (a) enter into the proposed agreement by signing the agreement
7 and returning it to the conservator before the due date; or
8 (b) refuse to enter into the agreement by telling the conservator, in
9 writing, of the refusal before the due date.
10 (2) If an agency does not act under subsection (1), the agency is taken
11 to have refused to enter into the proposed agreement.

12 **311 Management agreement—refusal and repairing damage**

- 13 (1) This section applies if—
14 (a) an agency refuses to enter into a proposed agreement for public
15 land or unleased territory land; and
16 (b) the agency's activities damage the land.
17 (2) The conservator may—
18 (a) repair the damage; and
19 (b) recover from the agency the reasonable costs of repairing the
20 damage.

21 *Note* An amount owing under a law may be recovered as a debt in a
22 court of competent jurisdiction or the ACAT (see [Legislation Act](#),
23 s 177).

- 1 **312 Management agreement—breach of agreement and**
2 **repairing damage**
- 3 (1) This section applies if—
- 4 (a) an agency enters into a management agreement for public land
5 or unleased territory land; and
- 6 (b) the agency carries on activities on the land that are inconsistent
7 with the agreement; and
- 8 (c) the activities damage the land.
- 9 (2) The conservator may—
- 10 (a) repair the damage; and
- 11 (b) recover from the agency the reasonable costs of repairing the
12 damage.
- 13 *Note* An amount owing under a law may be recovered as a debt in a
14 court of competent jurisdiction or the ACAT (see [Legislation Act](#),
15 s 177).

1 **Chapter 13 Enforcement**

2 **Part 13.1 Directions**

3 **313 Direction to give name and address**

4 (1) This section applies if a conservation officer believes on reasonable
5 grounds that a person—

6 (a) has committed, is committing or is about to commit an offence
7 against this Act; or

8 (b) may be able to assist in the investigation of an offence against
9 this Act.

10 *Note* A reference to an Act includes a reference to the statutory instruments
11 made or in force under the Act, including any regulation (see
12 [Legislation Act](#), s 104).

13 (2) The conservation officer may direct the person to give the
14 conservation officer, immediately, any of the following personal
15 details (a *name and address direction*):

16 (a) the person's full name;

17 (b) the person's home address.

18 *Note 1* The conservation officer must first show the person the conservation
19 officer's identity card (see s 30).

20 *Note 2* The power to make a direction includes the power to amend or repeal
21 the direction. The power to amend or repeal the direction is exercisable
22 in the same way, and subject to the same conditions, as the power to
23 make the direction (see [Legislation Act](#), s 46).

24 (3) If the conservation officer believes on reasonable grounds that a
25 personal detail given by a person in response to a name and address
26 direction is false or misleading, the conservation officer may direct
27 the person to produce evidence immediately of the correctness of
28 the detail (an *evidence direction*).

- 1 (4) If a conservation officer gives a direction to a person, the officer
2 must tell the person that it is an offence if the person fails to comply
3 with the direction.

4 **314 Offence—fail to comply with direction to give name and**
5 **address**

- 6 (1) A person commits an offence if the person—

7 (a) is subject to—

8 (i) a name and address direction; or

9 (ii) an evidence direction; and

10 (b) fails to comply with the direction.

11 Maximum penalty: 5 penalty units.

12 *Note* It is an offence to make a false or misleading statement or give false or
13 misleading information (see [Criminal Code](#), pt 3.4).

14 (2) An offence against this section is a strict liability offence.

15 (3) This section does not apply to a person if the conservation officer
16 did not—

17 (a) produce the conservation officer's identity card for inspection
18 by the person before giving the direction; or

19 (b) before giving the direction, warn the person that failure to
20 comply with the direction is an offence.

21 *Note* The defendant has an evidential burden in relation to the matters
22 mentioned in s (3) (see [Criminal Code](#), s 58).

1 **315 Direction to produce licence or records**

2 (1) A conservation officer may direct a licensee to produce—

3 (a) the licensee’s nature conservation licence; or

4 (b) a record required to be kept by the licensee under this Act.

5 *Note 1* A reference to an Act includes a reference to the statutory instruments
6 made or in force under the Act, including any regulation (see
7 [Legislation Act](#), s 104).

8 *Note 2* It is an offence to make a false or misleading statement or give false or
9 misleading information (see [Criminal Code](#), pt 3.4).

10 *Note 3* The power to make a direction includes the power to amend or repeal
11 the direction. The power to amend or repeal the direction is exercisable
12 in the same way, and subject to the same conditions, as the power to
13 make the direction (see [Legislation Act](#), s 46).

14 (2) The direction must be in writing and state—

15 (a) the licence or record to be produced; and

16 (b) where and to whom the licence or record is to be produced; and

17 (c) when the direction must be complied with (the *due date*), being
18 a day at least 2 days after the day the direction is given to the
19 person; and

20 (d) that if the licence or record is not provided by the due date, the
21 person may be committing an offence under section 316.

22 (3) The conservation officer may do 1 or more of the following:

23 (a) inspect the licence or record produced;

24 (b) make copies of, or take extracts from the licence or record
25 produced;

26 (c) seize and remove the licence or record produced if the officer
27 believes on reasonable grounds that it may provide evidence of
28 an offence against this Act.

1 **316** **Offence—fail to comply with direction to produce licence**
2 **or record**

- 3 (1) A person commits an offence if the person—
4 (a) is subject to a direction under section 315; and
5 (b) fails to comply with the direction.
6 Maximum penalty: 10 penalty units.
7 (2) An offence against this section is a strict liability offence.
8 (3) This section does not apply to a person if the person has a
9 reasonable excuse for failing to comply with the direction.

10 *Note* The defendant has an evidential burden in relation to the matters
11 mentioned in s (3) (see [Criminal Code](#), s 58).

12 **317** **Direction to provide information**

- 13 (1) This section applies if a conservation officer suspects on reasonable
14 grounds that a person has information or documents reasonably
15 required by the conservation officer for the administration or
16 enforcement of this Act.
17 (2) The conservation officer may direct the person to provide the
18 information or documents to the conservation officer (an
19 *information direction*).
20 (3) The direction must be in writing and state—
21 (a) the name of the person to whom it is directed; and
22 (b) the information or documents required to be provided; and
23 (c) why the information or documents are required; and
24 (d) when the direction must be complied with (the *due date*), being
25 a day at least 2 days after the day the direction is given to the
26 person; and

1 (e) that if the information is not provided by the due date the
2 person may be committing an offence under section 318.

3 *Note* The power to make a direction includes the power to amend or repeal
4 the direction. The power to amend or repeal the direction is exercisable
5 in the same way, and subject to the same conditions, as the power to
6 make the direction (see [Legislation Act](#), s 46).

7 **318 Offence—fail to comply with information direction**

8 (1) A person commits an offence if the person—

9 (a) is subject to an information direction; and

10 (b) fails to comply with the direction.

11 Maximum penalty: 50 penalty units.

12 *Note* It is an offence to make a false or misleading statement or give false or
13 misleading information (see [Criminal Code](#), pt 3.4).

14 (2) An offence against this section is a strict liability offence.

15 (3) This section does not apply to a person if the person—

16 (a) did not know, and could not reasonably be expected to know or
17 find out, the information required under the direction; or

18 (b) did not have reasonable access to the documents required
19 under the direction.

20 *Note* The defendant has an evidential burden in relation to the matters
21 mentioned in s (3) (see [Criminal Code](#), s 58).

1 **319 Direction to leave reserve**

2 (1) This section applies if a conservation officer believes on reasonable
3 grounds that a person—

4 (a) is in a reserve; and

5 (b) either—

6 (i) has acted in—

7 (A) an offensive way; or

8 (B) a way that creates a public nuisance; or

9 (ii) has committed, is committing or is about to commit an
10 offence against this Act.

11 *Note* A reference to an Act includes a reference to the statutory instruments
12 made or in force under the Act, including any regulation (see
13 [Legislation Act](#), s 104).

14 (2) The conservation officer may direct the person to immediately leave
15 the reserve (a ***leave reserve direction***).

16 *Note* The conservation officer must first show the person the conservation
17 officer's identity card (see s 30).

18 (3) A leave reserve direction must state—

19 (a) the location of the reserve; and

20 (b) when the person may return to the reserve, being a time not
21 more than 24 hours after the direction is given to the person.

22 (4) If a conservation officer gives a direction to a person, the officer
23 must tell the person that it is an offence if the person fails to comply
24 with the direction.

25 *Note* The power to make a direction includes the power to amend or repeal
26 the direction. The power to amend or repeal the direction is exercisable
27 in the same way, and subject to the same conditions, as the power to
28 make the direction (see [Legislation Act](#), s 46).

1 **320 Offence—fail to comply with direction to leave reserve**

2 (1) A person commits an offence if the person—

3 (a) is subject to a leave reserve direction; and

4 (b) fails to comply with the direction.

5 Maximum penalty: 10 penalty units.

6 (2) An offence against this section is a strict liability offence.

7 (3) This section does not apply to a person if the conservation officer
8 did not—

9 (a) produce the conservation officer’s identity card for inspection
10 by the person before giving the direction; or

11 (b) before giving the direction, warn the person that failure to
12 comply with the direction is an offence.

13 *Note* The defendant has an evidential burden in relation to the matters
14 mentioned in s (3) (see [Criminal Code](#), s 58).

15 **321 Direction to stop vehicle containing animal or plant**

16 (1) This section applies if a conservation officer suspects on reasonable
17 grounds that an animal or plant is in a vehicle in contravention of
18 this Act.

19 *Note* *In*, a vehicle, includes on the vehicle (see dict).
20 *Vehicle* includes vessel (see dict).

21 (2) The conservation officer may, to exercise a function under
22 division 13.2.2 (Powers of conservation officers), direct the driver
23 of the vehicle to stop the vehicle (a *stop vehicle direction*)—

24 (a) without delay; or

1 (b) at the nearest place that the vehicle can be safely stopped as
2 indicated by the conservation officer.

3 *Note* A conservation officer can enter a vehicle stopped under this
4 section (see s 332 (1) (g)) and inspect or examine, etc anything in the
5 vehicle (see s 335).

6 (3) A direction may be given to a driver orally or by means of a sign or
7 signal (electronic or otherwise) or in any other way.

8 (4) A direction to a driver ceases to be operative to the extent that a
9 conservation officer—

10 (a) gives the driver or other person a later inconsistent direction; or

11 (b) indicates to the driver that the direction is no longer operative.

12 (5) However, a conservation officer may direct a vehicle to be stopped
13 only for the amount of time necessary for the conservation officer to
14 exercise the function.

15 *Note* The power to make a direction includes the power to amend or repeal
16 the direction. The power to amend or repeal the direction is exercisable
17 in the same way, and subject to the same conditions, as the power to
18 make the direction (see [Legislation Act](#), s 46).

19 **322 Offence—fail to comply with stop vehicle direction**

20 (1) A person commits an offence if the person—

21 (a) is subject to a stop vehicle direction under section 321; and

22 (b) fails to comply with the direction.

23 Maximum penalty: 10 penalty units.

24 (2) An offence against this section is a strict liability offence.

1 (3) This section does not apply to a person if the conservation officer
2 did not produce the conservation officer's identity card for
3 inspection by the person as soon as practicable after giving the
4 direction.

5 *Note* The defendant has an evidential burden in relation to the matters
6 mentioned in s (3) (see [Criminal Code](#), s 58).

7 **323 Urgent directions**

8 (1) This section applies if the conservator reasonably believes that a
9 person—

10 (a) has breached, is breaching or is about to breach a nature
11 conservation licence; or

12 (b) has contravened, is contravening or is about to contravene a
13 provision of this Act; or

14 **Examples—contravention of provision of Act**

15 1 contravention of an action plan

16 2 contravention of a native species conservation plan

17 3 contravention of a controlled native species management plan

18 *Note 1* A reference to an Act includes a reference to the statutory
19 instruments made or in force under the Act, including any
20 regulation (see [Legislation Act](#), s 104).

21 *Note 2* An example is part of the Act, is not exhaustive and may extend,
22 but does not limit, the meaning of the provision in which it
23 appears (see [Legislation Act](#), s 126 and s 132).

24 (c) has engaged in, is engaging in or is about to engage in conduct
25 that may threaten—

26 (i) a native species that has special protection status; or

27 *Note* **Special protection status**—see s 107.

28 (ii) a threatened ecological community; or

29 *Note* **Threatened ecological community**—see s 65.

- 1 (iii) the habitat of—
2 (A) a native species that has protection status; or
3 (B) a threatened ecological community; or
4 (iv) a Ramsar wetland.

5 *Note* **Ramsar wetland**—see s 188.

- 6 (2) The conservator may direct (an **urgent direction**) the person to—
7 (a) take action to stop the breach, contravention or threat; or
8 (b) cease conduct causing the breach, contravention or threat.

- 9 (3) An urgent direction must either—
10 (a) state—
11 (i) the action to be taken; and
12 (ii) when the direction must be complied with; or
13 (b) state—
14 (i) the conduct not to be undertaken; and
15 (ii) how long the direction is in force.

- 16 (4) An urgent direction must not state a day or time for compliance that
17 is earlier than the day or time the person is given the direction.

18 *Note* The power to make a direction includes the power to amend or repeal
19 the direction. The power to amend or repeal the direction is exercisable
20 in the same way, and subject to the same conditions, as the power to
21 make the direction (see [Legislation Act](#), s 46).

22 **324 Offence—fail to comply with urgent direction**

- 23 (1) A person commits an offence if the person—
24 (a) is subject to an urgent direction; and

1 (b) fails to take reasonable steps to comply with the direction.

2 Maximum penalty: 50 penalty units.

3 (2) An offence against this section is a strict liability offence.

4 (3) This section does not apply to a person if the conservation officer
5 did not produce the conservation officer's identity card for
6 inspection by the person before giving the direction.

7 *Note* The defendant has an evidential burden in relation to the matters
8 mentioned in s (3) (see [Criminal Code](#), s 58).

9 **325 Conservator's directions**

10 (1) This section applies if—

11 (a) 1 or more of the following is on occupied land:

12 (i) a native species;

13 *Note* *Native species*—see s 16.

14 (ii) an ecological community;

15 *Note* *Ecological community*—see s 17.

16 (iii) the habitat of a native species or ecological community;
17 and

18 (b) the conservator reasonably believes that there is conduct that
19 the occupier—

20 (i) may engage in that may threaten the native species,
21 community or habitat; or

22 (ii) could engage in that would promote the protection or
23 conservation of the native species, community or habitat.

24 (2) The conservator may give the occupier a direction about the
25 protection or conservation of the species, community or habitat on
26 the land (a *conservator's direction*).

1 (3) A conservator's direction must be consistent with each of the
2 following (if any) that applies to the species, community or habitat:

3 (a) a conservation advice;

4 *Note* **Conservation advice**—see s 90 (2).

5 (b) an action plan;

6 *Note* **Action plan**, for a relevant species, relevant ecological
7 community or key threatening process—see s 97.

8 (c) a native species conservation plan;

9 *Note* **Native species conservation plan**, for a native species—see s 113.

10 (d) a controlled native species management plan.

11 *Note* **Controlled native species management plan**, for a controlled
12 native species—see s 156.

13 (4) A conservator's direction must—

14 (a) be in writing; and

15 (b) state when the direction must be complied with, being a day at
16 least 14 days after the day the direction is given to the
17 occupier.

18 *Note* The power to make a direction includes the power to amend or repeal
19 the direction (see [Legislation Act](#), s 46).

20 **326 Offence—fail to comply with conservator's direction**

21 (1) A person commits an offence if the person—

22 (a) is subject to a conservator's direction; and

23 (b) fails to comply with the direction.

24 Maximum penalty: 50 penalty units.

25 (2) A person commits an offence if—

26 (a) the person is subject to a conservator's direction; and

- 1 (b) the direction relates to—
- 2 (i) a native species that has special protection status; or
- 3 (ii) a threatened ecological community; or
- 4 (iii) the habitat of—
- 5 (A) a native species that has special protection status; or
- 6 (B) a threatened ecological community; or
- 7 (iv) a Ramsar wetland; and
- 8 (c) the person fails to comply with the direction.

9 Maximum penalty: 100 penalty units.

10 *Note* **Ramsar wetland**—see s 188.
11 **Special protection status**—see s 107.
12 **Threatened ecological community**—see s 65.

- 13 (3) An offence against this section is a strict liability offence.
- 14 (4) This section does not apply to a person if the person took reasonable
15 steps to comply with the conservator’s direction.

16 *Note* The defendant has an evidential burden in relation to the matters
17 mentioned in s (4) (see [Criminal Code](#), s 58).

18 **327 Treatment directions**

- 19 (1) This section applies if the conservator reasonably believes that—
- 20 (a) a person is keeping a native animal or native plant; and
- 21 (b) the animal or plant is suffering from a disease; and
- 22 (c) it is necessary or desirable for a particular kind of treatment to
23 be carried out in connection with the disease.
- 24 (2) The conservator may direct the keeper of the native animal or native
25 plant to carry out a stated treatment on the animal or plant (a
26 ***treatment direction***).

- 1 (3) In deciding whether to make a treatment direction, the conservator
2 must consider the following matters:
- 3 (a) the likelihood of the disease infecting other animals or plants;
4 (b) the impact of the disease if it were to infect other animals or
5 plants;
6 (c) any matter prescribed by regulation;
7 (d) any other matter relevant to the protection or conservation of
8 native animals and native plants.
- 9 (4) A treatment direction must be in writing and state the following:
- 10 (a) the native animal or native plant to which it relates;
11 (b) the disease to which it relates;
12 (c) the treatment to be carried out;
13 (d) when the direction must be complied with.
- 14 *Note* The power to make a direction includes the power to amend or repeal
15 the direction. The power to amend or repeal the direction is exercisable
16 in the same way, and subject to the same conditions, as the power to
17 make the direction (see [Legislation Act](#), s 46).

18 **328 Offence—fail to comply with treatment direction**

- 19 (1) A person commits an offence if the person—
20 (a) is subject to a treatment direction; and
21 (b) fails to comply with the direction.

22 Maximum penalty: 50 penalty units.

- 23 (2) An offence against this section is a strict liability offence.

24 **329 Treatment of animal or plant by Territory**

- 25 (1) This section applies if a person—
26 (a) is subject to a treatment direction; and

- 1 (b) either—
2 (i) fails to comply with the direction; or
3 (ii) complies with the direction but the native animal or native
4 plant does not respond satisfactorily to the treatment
5 within a reasonable time.

6 (2) The conservator may direct the person to—

- 7 (a) give the native animal or native plant to the conservator; or
8 (b) destroy the native animal or native plant.

9 *Note* The power to make a direction includes the power to amend or repeal
10 the direction. The power to amend or repeal the direction is exercisable
11 in the same way, and subject to the same conditions, as the power to
12 make the direction (see [Legislation Act](#), s 46).

13 (3) If the person fails to comply with the direction under subsection (2),
14 the conservator may—

- 15 (a) enter the premises where the native animal or native plant is
16 kept, with the assistance that the conservator considers
17 necessary; and
18 (b) seize the native animal or native plant.

19 *Note* **Premises** includes land (whether vacant or occupied), a vessel and a
20 vehicle (see dict).

21 (4) If the conservator seizes a native animal or native plant under
22 subsection (3), the conservator may—

- 23 (a) carry out the treatment, and dispose of the animal or plant in
24 the way, that the conservator considers appropriate; and
25 (b) recover the reasonable costs of treating and disposing of the
26 animal or plant from the person.

27 *Note 1* General powers of entry and seizure are in pt 13.2.

28 *Note 2* An amount owing under a law may be recovered as a debt in a court of
29 competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

1 **330 Injunctions to restrain contravention of urgent directions**
2 **and conservator's directions**

3 (1) This section applies if a person (the *relevant person*) has engaged, is
4 engaging, or proposes to engage, in conduct that was, is, or would
5 be, a contravention of—

6 (a) an urgent direction; or

7 *Note Urgent direction*—see s 323 (2).

8 (b) a conservator's direction.

9 *Note Conservator's direction*—see s 325 (2).

10 (2) The conservator or anyone else may apply to the Supreme Court for
11 an injunction.

12 (3) On application under subsection (2), the Supreme Court may grant
13 an injunction—

14 (a) restraining the relevant person from engaging in the conduct;
15 and

16 (b) if satisfied that it is desirable to do so—requiring the relevant
17 person to do anything.

18 (4) The Supreme Court may grant an injunction restraining a relevant
19 person from engaging in conduct of a particular kind—

20 (a) if satisfied that the person has engaged in conduct of that kind,
21 whether or not it appears to the court that the person intends to
22 engage again, or to continue to engage, in conduct of that kind;
23 or

24 (b) if it appears to the court that, if an injunction is not granted, it
25 is likely the person will engage in conduct of that kind,
26 whether or not the person has previously engaged in conduct of
27 that kind and whether or not there is an imminent danger of
28 substantial damage to someone else if the person engages in
29 conduct of that kind.

- 1 (5) This section applies whether or not a proceeding for an offence
2 against this chapter has begun or is about to begin.

1 **Part 13.2** **Enforcement by conservation**
2 **officers**

3 **Division 13.2.1** **Definitions—pt 13.2**

4 **331** **Definitions—pt 13.2**

5 In this part:

6 ***connected***—a thing is ***connected*** with an offence if—

- 7 (a) the offence has been committed in relation to it; or
8 (b) it will provide evidence of the commission of the offence; or
9 (c) it was used, is being used, or is intended to be used, to commit
10 the offence.

11 ***occupier***, of premises, includes—

- 12 (a) a person believed on reasonable grounds to be an occupier of
13 the premises; and
14 (b) a person apparently in charge of the premises; and
15 (c) for a vehicle—the driver of the vehicle.

16 ***offence*** includes an offence that there are reasonable grounds for
17 believing has been, is being, or will be, committed.

18 ***warrant*** means a warrant issued under division 13.2.3 (Search
19 warrants).

1 **Division 13.2.2 Powers of conservation officers**

2 **332 Power to enter premises**

3 (1) For this Act, a conservation officer may—

4 (a) at any reasonable time, enter premises that the public is entitled
5 to use or that are open to the public (whether or not on
6 payment of money); or

7 *Note Premises* includes land (whether vacant or occupied), a vehicle, a
8 vessel and an aircraft (see dict).

9 (b) at any time, enter premises with the occupier's consent; or

10 (c) at any reasonable time, enter premises where an animal or
11 plant is kept under a nature conservation licence; or

12 (d) at any reasonable time, enter premises if the conservation
13 officer suspects that—

14 (i) an animal that is not an exempt animal is on the premises;
15 or

16 (ii) a native plant is on the premises; or

17 (e) enter premises in accordance with a search warrant; or

18 (f) at any time, enter premises if the conservation officer believes
19 on reasonable grounds that the circumstances are so serious
20 and urgent that immediate entry to the premises without the
21 authority of a search warrant is necessary; or

22 (g) if a vehicle is stopped under section 321—enter the vehicle.

23 (2) However, subsection (1) (a) and (c) do not authorise entry into a part
24 of premises that is being used only for residential purposes.

25 (3) For subsection (1) (f), the conservation officer may enter the
26 premises with any necessary and reasonable assistance and force.

- 1 (4) A conservation officer may, without the consent of the occupier of
2 premises, enter land around the premises to ask for consent to enter
3 the premises.
- 4 (5) To remove any doubt, a conservation officer may enter premises
5 under subsection (1) without payment of an entry fee or other
6 charge.
- 7 (6) In this section:
- 8 *at any reasonable time* includes at any time when the public is
9 entitled to use the premises or when the premises are open to or used
10 by the public (whether or not on payment of money).

11 **333 Production of identity card**

12 A conservation officer must not remain at premises entered under
13 this part if the conservation officer does not produce his or her
14 identity card when asked by the occupier.

15 *Note Premises* includes land (whether vacant or occupied), a vehicle, a vessel
16 and an aircraft (see dict).

17 **334 Consent to entry**

- 18 (1) When seeking the consent of an occupier of premises to enter
19 premises under section 332 (1) (b), a conservation officer must—
- 20 (a) produce his or her identity card; and
- 21 (b) tell the occupier—
- 22 (i) the purpose of the entry; and
- 23 (ii) that anything found and seized under this part may be
24 used in evidence in court; and
- 25 (iii) that consent may be refused.

- 1 (2) If the occupier consents, the conservation officer must ask the
2 occupier to sign a written acknowledgment (an *acknowledgment of*
3 *consent*)—
- 4 (a) that the occupier was told—
- 5 (i) the purpose of the entry; and
- 6 (ii) that anything found and seized under this part may be
7 used in evidence in court; and
- 8 (iii) that consent may be refused; and
- 9 (b) that the occupier consented to the entry; and
- 10 (c) stating the time and date when consent was given.
- 11 (3) If the occupier signs an acknowledgment of consent, the
12 conservation officer must immediately give a copy to the occupier.
- 13 (4) A court must find that the occupier did not consent to entry to the
14 premises by the conservation officer under this part if—
- 15 (a) the question arises in a proceeding in the court whether the
16 occupier consented to the entry; and
- 17 (b) an acknowledgment of consent is not produced in evidence;
18 and
- 19 (c) it is not proved that the occupier consented to the entry.

20 **335 General powers on entry to premises**

- 21 (1) A conservation officer who enters premises under this part may, for
22 this Act, do 1 or more of the following in relation to the premises or
23 anything on the premises:
- 24 (a) inspect or examine;
- 25 (b) take measurements or conduct tests;
- 26 (c) take samples;

- 1 (d) take photographs, films or audio, video or other recordings;
2 (e) require the occupier, or anyone at the premises, to give the
3 conservation officer reasonable help to exercise a power under
4 this part.

5 *Note 1* **Premises** includes land (whether vacant or occupied), a vehicle, a vessel
6 and an aircraft (see dict).

7 *Note 2* The [Legislation Act](#), s 170 and s 171 deal with the application of the
8 privilege against self-incrimination and client legal privilege.

- 9 (2) A person must take reasonable steps to comply with a requirement
10 made of the person under subsection (1) (e).

11 Maximum penalty: 20 penalty units.

12 **336 Power to seize things**

- 13 (1) A conservation officer who enters premises under this part with the
14 occupier's consent may seize anything at the premises if—

15 (a) the conservation officer is satisfied on reasonable grounds that
16 the thing is connected with an offence against this Act; and

17 (b) seizure of the thing is consistent with the purpose of the entry
18 told to the occupier when seeking the occupier's consent.

- 19 (2) A conservation officer who enters premises under a warrant under
20 this part may seize anything at the premises that the conservation
21 officer is authorised to seize under the warrant.

- 22 (3) A conservation officer who enters premises under this part (whether
23 with the occupier's consent, under a warrant or otherwise) may seize
24 anything at the premises if satisfied on reasonable grounds that—

25 (a) the thing is connected with an offence against this Act; and

26 (b) the seizure is necessary to prevent the thing from being—

27 (i) concealed, lost or destroyed; or

28 (ii) used to commit, continue or repeat the offence.

- 1 (4) Also, a conservation officer who enters premises under this part
2 (whether with the occupier’s consent, under a warrant or otherwise)
3 may seize anything at the premises if satisfied on reasonable
4 grounds that the thing poses a risk to the health or safety of people
5 or of damage to property or the environment.
- 6 (5) The powers of a conservation officer under subsections (3) and (4)
7 are additional to any powers of the conservation officer under
8 subsection (1) or (2) or any other territory law.
- 9 (6) Having seized a thing, a conservation officer may—
- 10 (a) remove the thing from the premises where it was seized (the
11 *place of seizure*) to another place; or
- 12 (b) leave the thing at the place of seizure but restrict access to it.
- 13 (7) A person commits an offence if—
- 14 (a) the person interferes with a seized thing, or anything
15 containing a seized thing, to which access has been restricted
16 under subsection (6); and
- 17 (b) the person does not have a conservation officer’s approval to
18 interfere with the thing.
- 19 Maximum penalty: 20 penalty units.
- 20 (8) An offence against this section is a strict liability offence.

21 **337 Seizure and release of distressed native birds**

- 22 (1) This section applies if—
- 23 (a) a conservation officer suspects on reasonable grounds that—
- 24 (i) a person is in possession of a native bird; and
- 25 (ii) the bird is connected with the commission of an offence
26 against this Act; and

1 (b) the person does not, when asked by the conservation officer,
2 produce for inspection by the conservation officer a nature
3 conservation licence authorising the possession of the bird; and

4 *Note* **Nature conservation licence**—see s 260.

5 (c) the conservation officer believes on reasonable grounds that—

6 (i) the bird is suffering pain or is in a state of distress; or

7 (ii) the keeping of the bird in captivity, or in the kind of
8 captivity in which it is being kept by the person, is likely
9 to endanger the life of, or cause distress or otherwise be
10 harmful to, the bird.

11 (2) The conservation officer may—

12 (a) seize the bird; and

13 (b) if the conservation officer believes on reasonable grounds that
14 the welfare of the bird is best provided for by releasing the
15 bird—release the bird.

16 *Note* The Territory may be required to pay the owner of the animal
17 reasonable compensation for its loss (see s 351).

18 (3) However, a conservation officer must not seize or release a bird
19 under subsection (2) if the conservation officer does not produce the
20 conservation officer's identity card for inspection if asked by the
21 person.

22 (4) In this section:

23 **native bird** means a bird that is—

24 (a) a native animal; but

25 *Note* **Native animal**—see s 12.

26 (b) not an exempt animal.

27 *Note* **Exempt animal**—see s 152.

1 **338 Release of distressed animals—court orders**

- 2 (1) If the conservator considers that an animal seized under section 336
3 (Power to seize things) is likely to die or suffer pain or be subjected
4 to distress unless it is released from captivity, the conservator may
5 apply to the Magistrates Court for an order that the animal be
6 released from captivity.
- 7 (2) An application must clearly state the reasons for seeking the order.
- 8 (3) An application may only be made before a prosecution is begun for
9 an offence against this Act in relation to the animal or during the
10 prosecution.
- 11 (4) The court may, before deciding an application, require notice of the
12 application to be given to anyone that the court considers
13 appropriate.
- 14 (5) On deciding an application, the court may—
15 (a) order that the animal be released from captivity; or
16 (b) dismiss the application.
- 17 (6) If the court makes an order for the release of an animal—
18 (a) the court may give the directions relating to observations to be
19 made, and records to be kept, about the animal that the court
20 considers appropriate; and
21 (b) the animal must not be released until the directions have been
22 complied with.

23 *Note* The Territory may be required to pay the owner of the animal
24 reasonable compensation for its loss (see s 351).

1 **Division 13.2.3 Search warrants**

2 **339 Warrants generally**

- 3 (1) A conservation officer may apply to a magistrate for a warrant to
4 enter premises.
- 5 (2) The application must be sworn and state the grounds on which the
6 warrant is sought.
- 7 (3) The magistrate may refuse to consider the application until the
8 conservation officer gives the magistrate all the information the
9 magistrate requires about the application in the way the magistrate
10 requires.
- 11 (4) The magistrate may issue a warrant only if satisfied there are
12 reasonable grounds for suspecting—
- 13 (a) there is a particular thing or activity connected with an offence
14 against this Act; and
- 15 (b) the thing or activity—
- 16 (i) is, or is being engaged in, at the premises; or
- 17 (ii) may be, or may be engaged in, at the premises within the
18 next 7 days.
- 19 (5) The warrant must state—
- 20 (a) that a conservation officer may, with any necessary assistance
21 and force, enter the premises and exercise the conservation
22 officer's powers under this part; and
- 23 (b) the offence for which the warrant is issued; and
- 24 (c) the things that may be seized under the warrant; and
- 25 (d) the hours when the premises may be entered; and
- 26 (e) the date, within 7 days after the day of the warrant's issue, the
27 warrant ends.

- 1 **340 Warrants—application made other than in person**
- 2 (1) A conservation officer may apply for a warrant by phone, fax,
3 email, radio or other form of communication if the conservation
4 officer considers it necessary because of—
- 5 (a) urgent circumstances; or
- 6 (b) other special circumstances.
- 7 (2) Before applying for the warrant, the conservation officer must
8 prepare an application stating the grounds on which the warrant is
9 sought.
- 10 (3) The conservation officer may apply for the warrant before the
11 application is sworn.
- 12 (4) After issuing the warrant, the magistrate must immediately fax a
13 copy to the conservation officer if it is practicable to do so.
- 14 (5) If it is not practicable to fax a copy to the conservation officer—
- 15 (a) the magistrate must tell the conservation officer—
- 16 (i) the terms of the warrant; and
- 17 (ii) the date and time the warrant was issued; and
- 18 (b) the conservation officer must complete a form of warrant (the
19 *warrant form*) and write on it—
- 20 (i) the magistrate’s name; and
- 21 (ii) the date and time the magistrate issued the warrant; and
- 22 (iii) the warrant’s terms.
- 23 (6) The faxed copy of the warrant, or the warrant form properly
24 completed by the conservation officer, authorises the entry and the
25 exercise of the conservation officer’s powers under this part.

- 1 (7) The conservation officer must, at the first reasonable opportunity,
2 send to the magistrate—
- 3 (a) the sworn application; and
- 4 (b) if the conservation officer completed a warrant form—the
5 completed warrant form.
- 6 (8) On receiving the documents, the magistrate must attach them to the
7 warrant.
- 8 (9) A court must find that a power exercised by the conservation officer
9 was not authorised by a warrant under this section if—
- 10 (a) the question arises in a proceeding in the court whether the
11 exercise of power was authorised by a warrant; and
- 12 (b) the warrant is not produced in evidence; and
- 13 (c) it is not proved that the exercise of power was authorised by a
14 warrant under this section.

15 **341 Search warrants—announcement before entry**

- 16 (1) A conservation officer must, before anyone enters premises under a
17 search warrant—
- 18 (a) announce that the conservation officer is authorised to enter the
19 premises; and
- 20 (b) give anyone at the premises an opportunity to allow entry to
21 the premises; and
- 22 (c) if the occupier of the premises, or someone else who
23 apparently represents the occupier, is present at the premises—
24 identify himself or herself to the person.

- 1 (2) The conservation officer is not required to comply with
2 subsection (1) if the conservation officer believes on reasonable
3 grounds that immediate entry to the premises is required to ensure—
4 (a) the safety of anyone (including the conservation officer or any
5 person assisting); or
6 (b) that the effective execution of the warrant is not frustrated.

7 **342 Details of search warrant to be given to occupier etc**

8 If the occupier of premises, or someone else who apparently
9 represents the occupier, is present at the premises while a search
10 warrant is being executed, the conservation officer or a person
11 assisting must make available to the person—

- 12 (a) a copy of the warrant; and
13 (b) a document setting out the rights and obligations of the person.

14 **343 Occupier entitled to be present during search etc**

- 15 (1) If the occupier of premises, or someone else who apparently
16 represents the occupier, is present at the premises while a search
17 warrant is being executed, the person is entitled to observe the
18 search being conducted.
19 (2) However, the person is not entitled to observe the search if—
20 (a) to do so would impede the search; or
21 (b) the person is under arrest, and allowing the person to observe
22 the search being conducted would interfere with the objectives
23 of the search.
24 (3) This section does not prevent 2 or more areas of the premises being
25 searched at the same time.

1 **Division 13.2.4 Return and forfeiture of things seized**

2 **344 Receipt for things seized**

- 3 (1) As soon as practicable after a conservation officer seizes a thing
4 under this part, the conservation officer must give a receipt for it to
5 the person from whom it was seized.
- 6 (2) If, for any reason, it is not practicable to comply with subsection (1),
7 the conservation officer must leave the receipt, secured
8 conspicuously, at the place of seizure under section 336 (Power to
9 seize things).
- 10 (3) A receipt under this section must include the following:
- 11 (a) a description of the thing seized;
- 12 (b) an explanation of why the thing was seized;
- 13 (c) the conservation officer's name, and how to contact the
14 conservation officer;
- 15 (d) if the thing is moved from the premises where it is seized—
- 16 (i) where the thing is to be taken; or
- 17 (ii) if the thing seized is an animal—how the animal is to be
18 kept.

19 **345 Moving things to another place for examination or**
20 **processing under search warrant**

- 21 (1) A thing found at premises entered under a search warrant may be
22 moved to another place for examination or processing to decide
23 whether it may be seized under the warrant if—
- 24 (a) both of the following apply:
- 25 (i) there are reasonable grounds for believing that the thing is
26 or contains something to which the warrant relates;

- 1 (ii) it is significantly more practicable to do so having regard
2 to the timeliness and cost of examining the thing at
3 another place and the availability of expert assistance; or
4 (b) the occupier of the premises agrees in writing.
- 5 (2) The thing may be moved to another place for examination for
6 not longer than 72 hours.
- 7 (3) A conservation officer may apply to a magistrate for an extension of
8 time if the conservation officer believes on reasonable grounds that
9 the thing cannot be examined within 72 hours.
- 10 (4) The conservation officer must give notice of the application to the
11 occupier of the premises, and the occupier is entitled to be heard on
12 the application.
- 13 (5) If a thing is moved to another place under this section, the
14 conservation officer must, if practicable—
- 15 (a) tell the occupier of the premises the address of the place where,
16 and time when, the examination or processing will be carried
17 out; and
- 18 (b) allow the occupier or the occupier's representative to be
19 present during the examination or processing.
- 20 (6) The provisions of this part relating to the issue of search warrants
21 apply, with any necessary changes, to the giving of an extension
22 under this section.

23 **346 Access to things seized**

- 24 A person who would, apart from the seizure, be entitled to inspect a
25 thing seized under this part may—
- 26 (a) inspect it; and
27 (b) if it is a document—take extracts from it or make copies of it.

1 **347 Return of things seized**

2 (1) A thing seized under this part must be returned to its owner, or
3 reasonable compensation must be paid to the owner by the Territory
4 for the loss of the thing, unless—

5 (a) a prosecution for an offence against a territory law in
6 connection with the thing is begun within 1 year after the day
7 the seizure is made and the thing is required to be produced in
8 evidence in the prosecution; or

9 (b) an application for the forfeiture of the seized thing is made to a
10 court under the *Confiscation of Criminal Assets Act 2003* or
11 another territory law within 1 year after the day the seizure is
12 made; or

13 (c) all proceedings in relation to the offence with which the seizure
14 was connected have ended and the court has not made an order
15 about the thing.

16 (2) However, this section does not apply to a thing—

17 (a) if the conservator believes on reasonable grounds that the only
18 practical use of the thing in relation to the premises where it
19 was seized would be an offence against this Act; or

20 (b) if possession of it by its owner would be an offence.

21 **348 Forfeiture of things seized**

22 (1) This section applies if—

23 (a) a thing seized under this part has not been—

24 (i) released under—

25 (A) section 337 (Seizure and release of distressed native
26 birds); or

27 (B) section 338 (Release of distressed animals—court
28 orders); or

- 1 (ii) returned under section 347; and
2 (b) an application for disallowance of the seizure under
3 section 350—
4 (i) has not been made within 10 days after the day of the
5 seizure; or
6 (ii) has been made within the 10-day period, but the
7 application has been refused or withdrawn before a
8 decision in relation to the application had been made.
9 (2) The thing seized—
10 (a) is forfeited to the Territory; and
11 (b) may be sold, destroyed or otherwise disposed of as the
12 conservator directs.

13 **349 Power to destroy unsafe things**

- 14 (1) This section applies to anything inspected or seized under this part
15 by a conservation officer if the conservation officer is satisfied on
16 reasonable grounds that the thing poses a risk to the health or safety
17 of people or of damage to property or the environment.
18 (2) The conservation officer may direct a person in charge of the
19 premises where the thing is to destroy or otherwise dispose of the
20 thing.
21 *Note* The power to make a direction includes the power to amend or repeal
22 the direction. The power to amend or repeal the direction is exercisable
23 in the same way, and subject to the same conditions, as the power to
24 make the direction (see [Legislation Act](#), s 46).
25 (3) The direction may state 1 or more of the following:
26 (a) how the thing must be destroyed or otherwise disposed of;
27 (b) how the thing must be kept until it is destroyed or otherwise
28 disposed of;

- 1 (c) the period within which the thing must be destroyed or
2 otherwise disposed of.
- 3 (4) A person in charge of the premises where the thing is commits an
4 offence if the person contravenes a direction given to the person
5 under subsection (2).
- 6 Maximum penalty: 20 penalty units.
- 7 (5) Alternatively, if the thing has been seized under this part, the
8 conservation officer may destroy or otherwise dispose of the thing.
- 9 (6) Costs incurred by the Territory in relation to the disposal of a thing
10 under subsection (5) are a debt owing to the Territory by, and are
11 recoverable together and separately from, the following people:
- 12 (a) the person who owned the thing;
- 13 (b) each person in control of the premises where the thing was.
- 14 *Note* An amount owing under a law may be recovered as a debt in a court of
15 competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).
- 16 (7) An offence against this section is a strict liability offence.

17 **350 Application for order disallowing seizure**

- 18 (1) A person claiming to be entitled to anything seized under this part
19 may apply to the Magistrates Court within 10 days after the day of
20 the seizure for an order disallowing the seizure.
- 21 (2) The application may be heard only if the applicant has served a copy
22 of the application on the conservator.
- 23 (3) The conservator is entitled to appear as respondent at the hearing of
24 the application.

- 1 **351 Order for return of things seized**
- 2 (1) This section applies if a person claiming to be entitled to anything
- 3 seized under this part applies to the Magistrates Court under
- 4 section 350 for an order disallowing the seizure.
- 5 (2) The Magistrates Court must make an order disallowing the seizure if
- 6 satisfied that—
- 7 (a) the applicant would, apart from the seizure, be entitled to the
- 8 return of the thing seized; and
- 9 (b) the thing is not connected with an offence against this Act; and
- 10 (c) possession of the thing by the person would not be an offence.
- 11 (3) The Magistrates Court may also make an order disallowing the
- 12 seizure if satisfied there are exceptional circumstances justifying the
- 13 making of the order.
- 14 (4) If the Magistrates Court makes an order disallowing the seizure, the
- 15 court may make 1 or more of the following ancillary orders:
- 16 (a) an order directing the conservator to return the thing to the
- 17 applicant or to someone else who appears to be entitled to it;
- 18 (b) if the thing cannot be returned or has depreciated in value
- 19 because of the seizure—an order directing the Territory to pay
- 20 reasonable compensation;
- 21 (c) an order about the payment of costs in relation to the
- 22 application.

1 **Division 13.2.5 Enforcement—damage and**
2 **compensation**

3 **352 Damage etc to be minimised**

- 4 (1) In the exercise, or purported exercise, of a function under this part, a
5 conservation officer must take all reasonable steps to ensure that the
6 officer causes as little inconvenience, detriment and damage as
7 practicable.
- 8 (2) If a conservation officer damages anything in the exercise or
9 purported exercise of a function under this part, the conservation
10 officer must give written notice of the particulars of the damage to
11 the person the conservation officer believes on reasonable grounds
12 is the owner of the thing.
- 13 (3) The notice must state that—
- 14 (a) the person may claim compensation from the Territory if the
15 person suffers loss or expense because of the damage; and
- 16 (b) compensation may be claimed and ordered in a proceeding for
17 compensation brought in a court of competent jurisdiction; and
- 18 (c) the court may order the payment of reasonable compensation
19 for the loss or expense only if satisfied it is just to make the
20 order in the circumstances of the particular case.
- 21 (4) If the damage happens at premises entered under this part in the
22 absence of the occupier, the notice may be given by leaving it,
23 secured conspicuously, at the premises.

- 1 **353 Compensation for exercise of enforcement powers**
- 2 (1) A person may claim compensation from the Territory if the person
- 3 suffers loss or expense because of the exercise, or purported
- 4 exercise, of a function under this part by a conservation officer.
- 5 (2) Compensation may be claimed and ordered in a proceeding for—
- 6 (a) compensation brought in a court of competent jurisdiction; or
- 7 (b) an offence against this Act brought against the person making
- 8 the claim for compensation.
- 9 (3) A court may order the payment of reasonable compensation for the
- 10 loss or expense only if satisfied it is just to make the order in the
- 11 circumstances of the particular case.
- 12 (4) A regulation may prescribe matters that may, must or must not be
- 13 taken into account by the court in considering whether it is just to
- 14 make the order.

1 Chapter 14 Notification and review of 2 decisions

3 354 Meaning of *reviewable decision*—ch 14

4 In this chapter:

5 *reviewable decision* means a decision mentioned in schedule 1,
6 column 3 under a provision of this Act mentioned in column 2 in
7 relation to the decision.

8 355 Reviewable decision notices

9 If the conservator makes a reviewable decision, the conservator
10 must give a reviewable decision notice to each entity mentioned in
11 schedule 1, column 4 in relation to the decision.

12 *Note 1* The conservator must also take reasonable steps to give a reviewable
13 decision notice to any other person whose interests are affected by the
14 decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

15 *Note 2* The requirements for a reviewable decision notice are prescribed under
16 the *ACT Civil and Administrative Tribunal Act 2008*.

17 356 Applications for review

18 The following may apply to the ACAT for review of a reviewable
19 decision:

- 20 (a) an entity mentioned in schedule 1, column 4 in relation to the
21 decision;
- 22 (b) any other person whose interests are affected by the decision.

23 *Note* If a form is approved under the *ACT Civil and Administrative Tribunal*
24 *Act 2008* for the application, the form must be used.

1 **Chapter 15 Miscellaneous**

2 **357 Certain information may be kept confidential**

- 3 (1) This section applies if a relevant person—
- 4 (a) is preparing a document under this Act; and
- 5 (b) considers that the survival of a native species or ecological
- 6 community may be threatened by the disclosure of the precise
- 7 location of—
- 8 (i) the species, or community, in the wild; or
- 9 (ii) if the species or community has a known critical habitat—
- 10 the critical habitat for the species or community.
- 11 (2) It is sufficient compliance with this Act if only a general description
- 12 of the location of the species, community or habitat is included in
- 13 the document.
- 14 (3) In this section:
- 15 *relevant person* means—
- 16 (a) the Minister; or
- 17 (b) the conservator; or
- 18 (c) the scientific committee.

19 **358 Offences—use or divulge protected information**

- 20 (1) A person to whom this section applies commits an offence if—
- 21 (a) the person uses information; and
- 22 (b) the information is protected information about someone else;
- 23 and

1 (c) the person is reckless about whether the information is
2 protected information about someone else.

3 Maximum penalty: 50 penalty units, imprisonment for 6 months or
4 both.

5 (2) A person to whom this section applies commits an offence if—

6 (a) the person does something that divulges information; and

7 (b) the information is protected information about someone else;
8 and

9 (c) the person is reckless about whether—

10 (i) the information is protected information about someone
11 else; and

12 (ii) doing the thing would result in the information being
13 divulged to someone else.

14 Maximum penalty: 50 penalty units, imprisonment for 6 months or
15 both.

16 (3) Subsections (1) and (2) do not apply to a person if the information is
17 used or divulged—

18 (a) under this Act or another territory law; or

19 (b) in relation to the exercise of a function, as a person to whom
20 this section applies, under this Act or another territory law; or

21 (c) in a court proceeding.

22 (4) Subsections (1) and (2) do not apply to the using or divulging of
23 protected information about a person with the person's consent.

24 *Note* The defendant has an evidential burden in relation to the matters
25 mentioned in s (3) and s (4) (see [Criminal Code](#), s 58).

- 1 (5) A person to whom this section applies need not divulge protected
2 information to a court, or produce a document containing protected
3 information to a court, unless it is necessary to do so for this Act or
4 another law applying in the territory.
- 5 (6) In this section:
- 6 *court* includes a tribunal, authority or person having power to
7 require the production of documents or the answering of questions.
- 8 *divulge* includes—
- 9 (a) communicate; or
- 10 (b) publish.
- 11 *person to whom this section applies* means—
- 12 (a) a person who is or has been the conservator; or
- 13 (b) a person who is or has been a conservation officer; or
- 14 (c) anyone else who has exercised a function under this Act.
- 15 *produce* includes allow access to.
- 16 *protected information* means information about a person that is
17 disclosed to, or obtained by, a person to whom this section applies
18 because of the exercise of a function under this Act by the person or
19 someone else.
- 20 *use information* includes make a record of the information.

- 1 **359 Acts and omissions of representatives**
- 2 (1) This section applies to a prosecution for any offence against this
3 Act.
- 4 (2) If it is relevant to prove a person's state of mind about an act or
5 omission, it is enough to show—
- 6 (a) the act was done or omission made by a representative of the
7 person within the scope of the representative's actual or
8 apparent authority; and
- 9 (b) the representative had the state of mind.
- 10 (3) An act done or omitted to be done on behalf of a person by a
11 representative of the person within the scope of the representative's
12 actual or apparent authority is also taken to have been done or
13 omitted to be done by the person.
- 14 (4) However, subsection (3) does not apply to a person if the person
15 establishes that reasonable precautions were taken and appropriate
16 diligence was exercised to avoid the act or omission.
- 17 (5) A person who is convicted of an offence cannot be punished by
18 imprisonment for the offence if the person would not have been
19 convicted of the offence without subsection (2) or (3).
- 20 (6) In this section:
- 21 ***person*** means an individual.
- 22 *Note* See the [Criminal Code](#), pt 2.5 for provisions about corporate criminal
23 responsibility.
- 24 ***representative***, of a person, means an employee or agent of the
25 person.
- 26 ***state of mind***, of a person, includes—
- 27 (a) the person's knowledge, intention, opinion, belief or purpose;
28 and

1 (b) the person's reasons for the intention, opinion, belief or
2 purpose.

3 **360 Criminal liability of executive officers**

4 (1) An executive officer of a corporation commits an offence if—

- 5 (a) the corporation contravenes a provision of this Act; and
6 (b) the contravention is an offence against this Act (a *relevant*
7 *offence*); and
8 (c) the officer was reckless about whether the contravention would
9 happen; and
10 (d) the officer was in a position to influence the conduct of the
11 corporation in relation to the contravention; and
12 (e) the officer failed to take all reasonable steps to prevent the
13 contravention.

14 Maximum penalty: The maximum penalty that may be imposed for
15 the commission of the relevant offence by an individual.

16 (2) This section applies whether or not the corporation is prosecuted for,
17 or convicted of, the relevant offence.

18 (3) In deciding whether the executive officer took (or failed to take)
19 reasonable steps to prevent the contravention, a court must have
20 regard to the following:

- 21 (a) any action the officer took directed towards ensuring the
22 following (to the extent that the action is relevant to the act or
23 omission):
24 (i) that the corporation arranges regular professional
25 assessments of the corporation's compliance with the
26 contravened provision;
27 (ii) that the corporation implements any appropriate
28 recommendation arising from such an assessment;

- 1 (iii) that the corporation's employees, agents and contractors
2 have a reasonable knowledge and understanding of the
3 requirement to comply with the contravened provision;
- 4 (b) any action the officer took when the officer became aware that
5 the contravention was, or might be, about to happen.
- 6 (4) Subsection (3) does not limit the matters to which the court may
7 have regard.
- 8 (5) This section does not apply if the corporation would have a defence
9 to a prosecution for the relevant offence.
- 10 (6) In this section:
- 11 *executive officer*, of a corporation, means a person, however
12 described and whether or not the person is a director of the
13 corporation, who is concerned with, or takes part in, the
14 corporation's management.
- 15 **361 Evidentiary certificates**
- 16 (1) The conservator may give a signed certificate—
- 17 (a) stating that on a stated date, or during a stated period, a stated
18 person was or was not a licensee; and
- 19 (b) if the person was a licensee—including details of the person's
20 nature conservation licence.
- 21 (2) A certificate under this section is evidence of the matters stated in it.
- 22 (3) Unless the contrary is proved, a document that purports to be a
23 certificate under this section is taken to be a certificate.

1 **362 Determination of fees etc**

- 2 (1) The Minister may determine—
- 3 (a) fees for this Act; and
- 4 (b) the annual percentage rate at which interest payable under
- 5 section 282 (4) (Financial assurance condition—recovery of
- 6 extra costs) is to be calculated; and
- 7 (c) the annual percentage rate at which interest accruing under
- 8 section 283 (a) (Financial assurance condition—money held by
- 9 Territory) is to be calculated.

10 *Note* The [Legislation Act](#) contains provisions about the making of

11 determinations and regulations relating to fees, charges and other

12 amounts (see pt 6.3).

- 13 (2) A determination is a disallowable instrument.

14 *Note* A disallowable instrument must be notified, and presented to the

15 Legislative Assembly, under the [Legislation Act](#).

16 **363 Approved forms**

- 17 (1) The director-general may approve forms for this Act.
- 18 (2) If the director-general approves a form for a particular purpose, the
- 19 approved form must be used for that purpose.

20 *Note* For other provisions about forms, see the [Legislation Act](#), s 255.

- 21 (3) An approved form is a notifiable instrument.

22 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

1 **364** **Regulation-making power**

2 (1) The Executive may make regulations for this Act.

3 *Note* A regulation must be notified, and presented to the Legislative
4 Assembly, under the [Legislation Act](#).

5 (2) A regulation may create offences and fix maximum penalties of not
6 more than 30 penalty units for the offences.

1 **Chapter 16 Repeals and consequential**
2 **amendments**

3 **365 Legislation repealed**

4 (1) The following legislation is repealed:

- 5 • *Nature Conservation Act 1980* (A1980-20)
- 6 • *Nature Conservation Regulation 1982* (SL1982-11)
- 7 • *Magistrates Court (Nature Conservation Infringement Notices)*
8 *Regulation 2005* (SL2005-33).

9 (2) All other legislative instruments, other than the following
10 instruments, under the *Nature Conservation Act 1980* are repealed:

11 (a) a nature conservation strategy under the *Nature Conservation*
12 *Act 1980*, division 3.1 (Nature conservation strategy);

13 *Note* Section 401 (Nature conservation strategy) provides that a nature
14 conservation strategy made under the *Nature Conservation*
15 *Act 1980* is taken to be made under this Act and continues in
16 force.

17 (b) an action plan under the *Nature Conservation Act 1980*,
18 section 42 (Preparation of action plan);

19 *Note* Section 406 (Action plans) provides that an action plan made
20 under the *Nature Conservation Act 1980* is taken to be made
21 under this Act and continues in force.

22 (c) a management agreement under the *Nature Conservation*
23 *Act 1980*, part 10 (Management agreements).

24 *Note* Section 413 (Management agreements) provides that a
25 management agreement made under the *Nature Conservation*
26 *Act 1980* is taken to be made under this Act and continues in
27 force.

28 **366 Legislation amended—sch 2**

29 This Act amends the legislation mentioned in schedule 2.

1 Chapter 20 Transitional

2 400 Meaning of *commencement day*—ch 20

3 In this chapter:

4 *commencement day* means the day section 3 commences.

5 401 Nature conservation strategy

6 (1) This section applies if, immediately before the commencement day,
7 a nature conservation strategy for the ACT is in force under the
8 *Nature Conservation Act 1980* (an *old nature conservation*
9 *strategy*).

10 (2) The old nature conservation strategy is, on the commencement day,
11 taken to be a nature conservation strategy (a *new nature*
12 *conservation strategy*).

13 *Note* *Nature conservation strategy*, for the ACT—see s 46.

14 (3) A new nature conservation strategy is, for section 58 (Nature
15 conservation strategy—monitoring and review), taken to have
16 commenced on the day the old nature conservation strategy
17 commenced.

18 402 Endangered species

19 (1) This section applies if, immediately before the commencement day,
20 a species is declared to be an endangered species under the *Nature*
21 *Conservation Act 1980*, section 38 (Declaration of species,
22 community or process).

23 (2) The species is, on the commencement day, taken to be eligible to be
24 included in the endangered category on the threatened native species
25 list under section 62 (4) (Threatened native species list—eligibility
26 for categories).

27 *Note* The Minister must make a threatened native species list that includes an
28 endangered category (see s 61).

1 **403 Vulnerable species**

2 (1) This section applies if, immediately before the commencement day,
3 a species is declared to be a vulnerable species under the *Nature*
4 *Conservation Act 1980*, section 38 (Declaration of species,
5 community or process).

6 (2) The species is, on the commencement day, taken to be eligible to be
7 included in the vulnerable category on the threatened native species
8 list under section 62 (5) (Threatened native species list—eligibility
9 for categories).

10 *Note* The Minister must make a threatened native species list that includes a
11 vulnerable category (see s 61).

12 **404 Endangered ecological communities**

13 (1) This section applies if, immediately before the commencement day,
14 an ecological community is declared to be an endangered ecological
15 community under the *Nature Conservation Act 1980*, section 38
16 (Declaration of species, community or process).

17 (2) The ecological community is, on the commencement day, taken to
18 be eligible to be included in the endangered category on the
19 threatened ecological communities list under section 68 (2)
20 (Threatened ecological communities list—eligibility for categories).

21 *Note* The Minister must make a threatened ecological communities list that
22 includes an endangered category (see s 67).

1 **405 Threatening processes to be key threatening processes**

2 (1) This section applies if, immediately before the commencement day,
3 a process is declared to be a threatening process under the *Nature*
4 *Conservation Act 1980*, section 38 (Declaration of species,
5 community or process).

6 (2) The process is, on the commencement day, taken to be eligible to be
7 included on the key threatening processes list under section 75 (Key
8 threatening processes list—eligibility).

9 *Note* The Minister must make a key threatening processes list (see s 74).

10 **406 Action plans**

11 (1) This section applies if, immediately before the commencement day,
12 an action plan for a species, ecological community or process (an
13 *old action plan*) is in force under the *Nature Conservation Act 1980*,
14 section 42 (Preparation of action plan).

15 (2) The old action plan is, on the commencement day, taken to be an
16 action plan (a *new action plan*).

17 *Note* *Action plan*, for a relevant species, relevant ecological community or
18 key threatening process—see s 97.

19 (3) A new action plan is, for section 106 (Action plan—monitoring and
20 review), taken to have commenced on the day the old action plan
21 commenced.

22 **407 Protected fish, invertebrates, native plants and native**
23 **animals to be protected species**

24 (1) This section applies if, immediately before the commencement day,
25 under the *Nature Conservation Act 1980*, section 34 (Declaration of
26 protected and exempt flora and fauna)—

27 (a) a fish is declared to be a protected fish; or

28 (b) an invertebrate is declared to be a protected invertebrate; or

- 1 (c) a native plant is declared to be a protected native plant; or
2 (d) a native animal is declared to be a protected native animal.
3 (2) The fish, invertebrate, native plant or native animal is, on the
4 commencement day, taken to be eligible to be included in the
5 restricted trade category on the protected native species list under
6 section 110 (Protected native species list—eligibility).

7 *Note* The Minister must make a protected native species list that includes a
8 rare category (see s 109).

9 **408 Exempt animals**

- 10 (1) This section applies if, immediately before the commencement day,
11 an animal is declared to be an exempt animal under the *Nature*
12 *Conservation Act 1980*, section 34 (1) (b) (Declaration of protected
13 and exempt flora and fauna).
14 (2) The animal is, on the commencement day, taken to be eligible to be
15 declared as an exempt animal under section 153 (Declarations—
16 exempt animals).

17 **409 Plans of management for reserves to be reserve**
18 **management plans**

- 19 (1) This section applies if, immediately before the commencement day,
20 a plan of management for a reserve (an *old plan of management*) is
21 in force under the *Planning and Development Act 2007*, part 10.4
22 (Plans of management for public land).
23 (2) The old plan of management is, on the commencement day, taken to
24 be a reserve management plan (a *new reserve management plan*).

25 *Note* **Reserve management plan**, for a reserve—see s 173.

1 (3) A new reserve management plan is, for section 187 (Reserve
2 management plan—review), taken to have commenced on the day
3 the old plan of management commenced under the *Planning and*
4 *Development Act 2007*.

5 *Note* An old plan of management for an area of land that is not a reserve is
6 taken to be a land management plan under the *Planning and*
7 *Development Act 2007*, s 328 (see *Planning and Development Act 2007*,
8 s 474).

9 **410 Draft plans of management for reserves—public**
10 **consultation stage**

11 (1) This section applies if, immediately before the commencement day,
12 the proponent of a draft plan of management for a reserve (an *old*
13 *draft plan*)—

14 (a) has made copies of the old draft plan available for public
15 inspection under the *Planning and Development Act 2007*,
16 section 323 (Public consultation about draft plans of
17 management); but

18 (b) has not given the old draft plan to the Minister under the
19 *Planning and Development Act 2007*, section 325 (Giving draft
20 plans of management to Minister).

21 (2) The old draft plan is, on the commencement day, taken to be a draft
22 reserve management plan for the reserve (a *new draft plan*) notified
23 under section 177 (Draft reserve management plan—public
24 consultation).

25 (3) The period stated in the public inspection notice for the old draft
26 plan under the *Planning and Development Act 2007*, section 323 (3)
27 is, on the commencement day, taken to be the public consultation
28 period for the new draft plan under section 177 (2) (a) (ii).

- 1 **411 Draft plans of management for reserves—submission to**
2 **Minister stage**
- 3 (1) This section applies if, immediately before the commencement
4 day—
- 5 (a) the proponent of a draft plan of management for a reserve
6 (an *old draft plan*) has given the old draft plan to the Minister
7 under the *Planning and Development Act 2007*, section 325
8 (Giving draft plans of management to Minister); but
- 9 (b) the Minister has not made a decision about the old draft plan
10 under the *Planning and Development Act 2007*, section 327
11 (Minister’s powers on receiving draft plans of management).
- 12 (2) The old draft plan is, on the commencement day, taken to be a draft
13 reserve management plan (a *new draft plan*) given to the Minister
14 under section 178 (Draft reserve management plan—revision and
15 submission to Minister).
- 16 (3) The report for the old draft plan under the *Planning and*
17 *Development Act 2007*, section 325 (a) is, on the commencement
18 day, taken to be the report for the new draft plan under
19 section 178 (3) (a).
- 20 (4) An explanation for the old draft plan under the *Planning and*
21 *Development Act 2007*, section 325 (b) is, on the commencement
22 day, taken to be a report for the new draft plan under
23 section 178 (3) (b).

1 **412 Licences**

- 2 (1) This section applies if, immediately before the commencement day,
3 a person holds a licence (an *old licence*) under the *Nature*
4 *Conservation Act 1980*, section 104 (Grant of licence).
- 5 (2) The old licence is, on the commencement day, taken to be a nature
6 conservation licence under section 260 (What is a *nature*
7 *conservation licence*)—
- 8 (a) in the same terms as the old licence; and
- 9 (b) subject to the same conditions as the old licence.
- 10 (3) The nature conservation licence—
- 11 (a) is taken to expire on the day stated in the old licence; and
- 12 (b) must not be amended, transferred or renewed.

13 **413 Management agreements**

- 14 (1) This section applies if, immediately before the commencement day,
15 a management agreement between the conservator and an agency
16 (an *old management agreement*), in relation to controlled land, is in
17 force under the *Nature Conservation Act 1980*.
- 18 (2) The old management agreement is, on the commencement day,
19 taken to be a management agreement between the conservator and
20 the agency, in relation to the land, under section 308 (What is a
21 *management agreement*?—ch 12).

1 **414 Transitional regulations**

- 2 (1) A regulation may prescribe transitional matters necessary or
3 convenient to be prescribed because of the enactment of this Act.
- 4 (2) A regulation may modify this chapter (including in relation to
5 another territory law) to make provision in relation to anything that,
6 in the Executive's opinion, is not, or is not adequately or
7 appropriately, dealt with in this chapter.
- 8 (3) A regulation under subsection (2) has effect despite anything
9 elsewhere in this Act or another territory law.

10 **415 Expiry—ch 20**

11 This chapter expires 2 years after the day it commences.

12 *Note* Transitional provisions are kept in the Act for a limited time.
13 A transitional provision is repealed on its expiry but continues to have
14 effect after its repeal (see [Legislation Act](#), s 88).

Schedule 1 Reviewable decisions

(see ch 14)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	224 (2)	issue restore excavation direction	person directed
2	227 (2)	issue repair damage direction	person directed
3	271 (2)	issue nature conservation licence	
4	271 (2)	refuse to issue nature conservation licence	applicant for licence
5	272 (b)	issue nature conservation licence—impose condition	licensee
6	277	impose financial assurance condition on nature conservation licence	licensee
7	280	claim a financial assurance	licensee
8	284 (1)	amend nature conservation licence	licensee
9	286 (2)	refuse to amend nature conservation licence	licensee
10	286 (3)	amend nature conservation licence—impose or amend condition	licensee
11	288 (2)	refuse to transfer nature conservation licence	licensee proposed new licensee
12	288 (3)	transfer nature conservation licence—impose or amend condition	new licensee
13	290(2)	refuse to renew nature conservation licence	licensee
14	290 (3)	renew nature conservation licence—impose or amend condition	licensee
15	297 (3)	take regulatory action	licensee
16	298	immediately suspend nature conservation licence	licensee
17	325 (2)	issue conservator's direction	person directed

Schedule 1 Reviewable decisions

column 1 item	column 2 section	column 3 decision	column 4 entity
18	327 (2)	issue treatment direction	person directed
19	329 (2) (a)	issue direction to give animal or plant to conservator	person directed
20	329 (2) (b)	issue direction to destroy animal or plant	person directed
21	349 (2)	issue direction to destroy or otherwise dispose of a thing	person directed

1 **Schedule 2** **Consequential amendments**

2 (see s 352)

3 **Part 2.1** **Animal Welfare Act 1992**

4 **[2.1] Section 2, note 1**

5 *substitute*

6 *Note 1* The dictionary at the end of this Act defines certain terms used in this
7 Act, and includes references (*signpost definitions*) to other terms
8 defined elsewhere.

9 For example, the signpost definition '*native animal*—see the *Nature*
10 *Conservation Act 2014*, section 12.' means that the term 'native animal'
11 is defined in that section and the definition applies to this Act.

12 **[2.2] Section 27 (2) (e)**

13 *omit*

14 *Nature Conservation Act 1980*

15 *substitute*

16 *Nature Conservation Act 2014*

17 **[2.3] Section 38 (2) (c)**

18 *omit*

19 *Nature Conservation Act 1980*

20 *substitute*

21 *Nature Conservation Act 2014*

1 **[2.4] Section 55 (4) (e)**

2 *omit*

3 *Nature Conservation Act 1980*

4 *substitute*

5 *Nature Conservation Act 2014*

6 **[2.5] Dictionary, definition of *native animal***

7 *substitute*

8 *native animal*—see the *Nature Conservation Act 2014*, section 12.

9 **Part 2.2 Common Boundaries Act 1981**

10 **[2.6] Section 2B (b)**

11 *substitute*

12 (b) the land is a reserve; or

13 **[2.7] New section 2B (2)**

14 *insert*

15 (2) In this section:

16 *reserve*—see the *Nature Conservation Act 2014*, section 167.

17 *Note* Reserves include wilderness areas, national parks, nature reserves,
18 catchment areas and other areas of public land.

1 **Part 2.3** **Emergencies Act 2004**

2 **[2.8] Section 77 (3)**

3 *omit*

4 plan of management in force under the *Planning and Development*
5 *Act 2007*, part 10.4 (Plans of management for public land)

6 *substitute*

7 public land management plan in force under the under the *Planning*
8 *and Development Act 2007*, section 318 (What is a *public land*
9 *management plan* for an area of public land?)

10 **Part 2.4** **Environment Protection**
11 **Regulation 2005**

12 **[2.9] Schedule 2, section 2.2 (1), new definition of reserve**

13 *insert*

14 *reserve*—see the *Nature Conservation Act 2014*, section 167.

15 *Note* Reserves include wilderness areas, national parks, nature reserves,
16 catchment areas and other areas of public land.

17 **[2.10] Schedule 2, section 2.2 (1), definition of reserved area**
18 **and note**

19 *omit*

20 **[2.11] Schedule 2, section 2.2, table 2.3, item 2, column 2**

21 *omit*

22 reserved area

23 *substitute*

24 reserve

1 **[2.12] Dictionary, new definition of *reserve***

2 *insert*

3 *reserve*—for schedule 2, part 2.3 (Noise conditions)—see the
4 *Nature Conservation Act 2014*, section 167.

5 *Note* Reserves include wilderness areas, national parks, nature reserves,
6 catchment areas and other areas of public land.

7 **[2.13] Dictionary, definition of *reserved area***

8 *omit*

9 **Part 2.5 Firearms Act 1996**

10 **[2.14] New section 61 (4)**

11 *before the table, insert*

12 (4) In this section:

13 *nature conservation licence*—see the *Nature Conservation*
14 *Act 2014*, section 260.

15 *public unleased land permit*—see the *Public Unleased Land*
16 *Act 2013*, section 40.

17 *reserve*—see the *Nature Conservation Act 2014*, section 167.

18 *Note* Reserves include wilderness areas, national parks, nature reserves,
19 catchment areas and other areas of public land.

20 **[2.15] Table 61, column 3, requirement 2.2**

21 *substitute*

2.2 For vermin control in a reserve—the applicant holds a nature conservation licence, or a public unleased land permit, authorising the applicant to use a firearm in a reserve to kill animals.

1 Part 2.6 Firearms Regulation 2008

2 [2.16] Section 3, note 1

3 *substitute*

4 *Note 1* The dictionary at the end of this regulation defines certain terms used in
5 this regulation, and includes references (*signpost definitions*) to other
6 terms defined elsewhere.

7 For example, the signpost definition '*reserve*—see the *Nature*
8 *Conservation Act 2014*, section 167.' means that the term '*reserve*' is
9 defined in that section and the definition applies to this regulation.

10 [2.17] Table 15, item 3, column 2

11 *omit*

12 on land within a reserved area

13 *substitute*

14 in a reserve

15 [2.18] Table 15, item 3, column 3

16 *omit*

17 on land within a stated reserved area

18 *substitute*

19 in a stated reserve

20 [2.19] Dictionary, new definition of *reserve*

21 *insert*

22 *reserve*—see the *Nature Conservation Act 2014*, section 167.

23 *Note* Reserves include wilderness areas, national parks, nature reserves,
24 catchment areas and other areas of public land.

1 **[2.20] Dictionary, definition of *reserved area***

2 *omit*

3 **Part 2.7 Fisheries Act 2000**

4 **[2.21] Section 26 (1) (a)**

5 *substitute*

6 (a) whether the applicant has been convicted, or found guilty, of
7 an offence against—

8 (i) this Act; or

9 (ii) the *Nature Conservation Act 2014*, division 6.1.2 (Native
10 animals); or

11 (iii) a law of another jurisdiction corresponding, or
12 substantially corresponding, to this Act or that division;
13 and

14 **[2.22] Section 28 (1) (a)**

15 *substitute*

16 (a) whether the applicant has been convicted, or found guilty, of
17 an offence against—

18 (i) this Act; or

19 (ii) the *Nature Conservation Act 2014*, division 6.1.2 (Native
20 animals); or

21 (iii) a law of another jurisdiction corresponding, or
22 substantially corresponding, to this Act or that division;
23 and

1 **[2.23] Section 28 (1) (d)**

2 *substitute*

3 (d) whether fish that may be imported or exported under the
4 licence—

5 (i) are an endangered species; or

6 (ii) are a vulnerable species; or

7 (iii) have special protection status; or

8 (iv) are a protected native species; or

9 (v) are exempt animals; and

10 **[2.24] New section 28 (3)**

11 *insert*

12 (3) In this section:

13 *endangered species*—see the *Nature Conservation Act 2014*,
14 dictionary.

15 *exempt animal*—see the *Nature Conservation Act 2014*,
16 section 152.

17 *protected native species*—see the *Nature Conservation Act 2014*,
18 section 108.

19 *special protection status*—see the *Nature Conservation Act 2014*,
20 section 107.

21 *vulnerable species*—see the *Nature Conservation Act 2014*,
22 dictionary.

- 1 **[2.25] Section 28A (1) (a)**
- 2 *substitute*
- 3 (a) whether the applicant has been convicted, or found guilty, of
- 4 an offence against—
- 5 (i) this Act; or
- 6 (ii) the *Nature Conservation Act 2014*, division 6.1.2 (Native
- 7 animals); or
- 8 (iii) a law of another jurisdiction corresponding, or
- 9 substantially corresponding, to this Act or that division;
- 10 and

- 11 **[2.26] Section 34 (1) (b)**
- 12 *substitute*
- 13 (b) the licensee is convicted, or found guilty, of an offence
- 14 against—
- 15 (i) this Act; or
- 16 (ii) the *Nature Conservation Act 2014*, division 6.1.2 (Native
- 17 animals); or
- 18 (iii) a law of another jurisdiction corresponding, or
- 19 substantially corresponding, to this Act or that division;
- 20 or

- 21 **[2.27] Dictionary, definition of *conservation officer***
- 22 *substitute*
- 23 *conservation officer*—see the *Nature Conservation Act 2014*,
- 24 dictionary.

1 **Part 2.8** **Heritage Act 2004**

2 **[2.28]** **Section 76 (1), definition of *conservation officer***

3 *substitute*

4 *conservation officer*—see the *Nature Conservation Act 2014*,
5 dictionary.

6 **Part 2.9** **Legislation Act 2001**

7 **[2.29]** **Dictionary, part 1, definition of *conservator of flora and***
8 ***fauna***

9 *omit*

10 *Nature Conservation Act 1980*

11 *substitute*

12 *Nature Conservation Act 2014*

13 **Part 2.10** **Magistrates Court (Fisheries**
14 **Infringement Notices) Regulation**
15 **2004**

16 **[2.30]** **Section 12**

17 *omit*

18 under the *Nature Conservation Act 1980*, section 8

1 **[2.31] New section 12 (2)**

2 *insert*

3 (2) In this section:

4 *conservation officer*—see the *Nature Conservation Act 2014*,
5 dictionary.

6 **Part 2.11 Planning and Development**
7 **Act 2007**

8 **[2.32] Section 120 (e)**

9 *omit*

10 plan of management

11 *substitute*

12 public land management plan

13 **[2.33] Section 129 (f)**

14 *omit*

15 plan of management

16 *substitute*

17 public land management plan

18 **[2.34] Part 10.1**

19 *omit*

1 **[2.35] Section 316 (b)**

2 *omit*

3 any plan of management

4 *substitute*

5 the public land management plan

6 **[2.36] Part 10.4**

7 *substitute*

8 **Part 10.4 Public land management plans**
9 **for public land**

10 **Division 10.4.1 Public land management plans**

11 **318 What is a *public land management plan* for an area of**
12 **public land?**

13 (1) In this Act:

14 *public land management plan*, for an area of public land, means—

15 (a) if the area is a reserve—a reserve management plan for the
16 area; or

17 (b) if the area is not a reserve—a land management plan for the
18 area.

19 *Note 1* Reserves include wilderness areas, national parks, nature reserves,
20 catchment areas and other prescribed areas of public land.

21 *Note 2* Public land that is not a reserve may include special purpose reserves,
22 urban open spaces, cemeteries, lakes, sport and recreation reserves and
23 heritage areas.

- 1 (2) In this section:
2 *reserve*—see the *Nature Conservation Act 2014*, section 167.
3 *reserve management plan*, for a reserve—see the *Nature*
4 *Conservation Act 2014*, section 173.

5 Division 10.4.2 Land management plans

6 319 What is a *land management plan*?—pt 10.4

7 In this part:

8 *land management plan*, for an area of public land, means a
9 management plan for the area, notified under section 328 (Land
10 management plan—Minister’s approval and notification).

11 *Note* Power to make a statutory instrument includes power to make different
12 provision in relation to different matters or different classes of matters,
13 and to make an instrument that applies differently by reference to stated
14 exceptions or factors (see [Legislation Act](#), s 48).

15 320 What is a *draft land management plan*?—div 10.4.2

16 In this division:

17 *draft land management plan*, for an area of public land, means a
18 draft management plan for the area that—

- 19 (a) identifies the area; and
20 (b) describes how the management objectives for the area are to be
21 implemented or promoted in the area.

- 1 **321 Draft land management plan—custodian to prepare**
- 2 (1) The custodian of an area of public land must prepare a draft land
3 management plan for the area.
- 4 *Note 1* The power to make an instrument includes the power to amend or repeal
5 the instrument. The power to amend or repeal the instrument is
6 exercisable in the same way, and subject to the same conditions, as the
7 power to make the instrument (see [Legislation Act](#), s 46).
- 8 *Note 2* Under the *Nature Conservation Act 2014*, s 175, the custodian of a
9 reserve must prepare a draft reserve management plan for the reserve.
- 10 (2) In preparing a draft land management plan, the custodian must
11 consult—
- 12 (a) the conservator; and
- 13 (b) the planning and land authority.
- 14 **322 Draft land management plan—planning reports and**
15 **strategic environmental assessments**
- 16 (1) At any time before a draft land management plan for an area of
17 public land is approved by the Minister under section 327 (3) (a),
18 the Minister may direct the planning and land authority to prepare—
- 19 (a) a planning report for the draft plan; or
- 20 (b) a strategic environmental assessment for the draft plan.
- 21 (2) If a planning report or strategic environmental assessment is
22 prepared under subsection (1), the custodian of the area of public
23 land must consider the report or assessment in preparing the draft
24 land management plan for the area.
- 25 **323 Draft land management plan—public consultation**
- 26 (1) If the custodian of an area of public land prepares a draft land
27 management plan for the area, the custodian must also prepare a
28 notice (*a public consultation notice*) about the draft land
29 management plan.

- 1 (2) A public consultation notice must—
2 (a) state that—
3 (i) anyone may give a written submission to the custodian
4 about the draft land management plan; and
5 (ii) submissions may be given to the custodian only during
6 the period starting on the day the public consultation
7 notice is notified under the [Legislation Act](#) and ending on
8 a stated day, being a day at least 6 weeks after the day it
9 is notified (the *public consultation period*); and
10 (b) include the draft land management plan.
11 (3) A public consultation notice is a notifiable instrument.
12 *Note* A notifiable instrument must be notified under the [Legislation Act](#).
13 (4) If the custodian notifies a public consultation notice for a draft land
14 management plan—
15 (a) anyone may give a written submission to the custodian about
16 the draft plan; and
17 (b) the submission may be given to the custodian only during the
18 public consultation period for the draft plan; and
19 (c) the person making the submission may, in writing, withdraw
20 the submission at any time.
21 (5) The custodian may make arrangements for people with particular
22 communication needs to ensure they have adequate opportunity to
23 comment on the draft land management plan.

- 1 **324 Draft land management plan—revision and submission to**
2 **Minister**
- 3 (1) If the public consultation period for a draft land management plan
4 has ended, the custodian of the area of public land must—
- 5 (a) consider any submissions received during the public
6 consultation period; and
- 7 (b) make any revisions to the draft plan that the custodian
8 considers appropriate.
- 9 (2) The custodian of the area must then submit the draft plan to the
10 Minister for approval.
- 11 (3) The submission must be accompanied by a report—
- 12 (a) setting out the issues raised in any submissions given to the
13 custodian during the public consultation period for the draft
14 plan; and
- 15 (b) if the conservator or the planning and land authority made a
16 submission during the public consultation period
17 recommending a change to the draft plan and the custodian did
18 not revise the draft plan to incorporate the change—explaining
19 why the custodian did not make the recommended change.
- 20 **325 Draft land management plan—referral to Legislative**
21 **Assembly committee**
- 22 (1) This section applies if the custodian of an area of public land
23 submits a draft land management plan to the Minister for approval.
- 24 (2) The Minister must, not later than 5 working days after the day the
25 Minister receives the draft plan, refer the following to an appropriate
26 committee of the Legislative Assembly:
- 27 (a) the draft plan;
- 28 (b) the report mentioned in section 324 (3).

- 1 (3) The committee must consider the draft plan and report and either—
2 (a) recommend that the Minister approves the draft plan; or
3 (b) make another recommendation about the draft plan.
4 (4) The committee must tell the Minister about the recommendation and
5 refer the matter back to the Minister.

6 **326 Draft land management plan—committee to report**

- 7 (1) This section applies if the Minister has referred a draft plan to a
8 committee of the Legislative Assembly under section 325.
9 (2) The Minister must not take action under section 327 in relation to
10 the draft plan until—
11 (a) the committee has referred the draft plan back to the Minister
12 under section 325 (4); or
13 (b) 6 months after the day the draft plan was given to the
14 committee.
15 (3) If the committee has not referred the draft plan back to the Minister
16 6 months after the day the draft plan was given to the committee, the
17 Minister may take action under section 327 in relation to the draft
18 plan.
19 (4) After the committee refers the draft plan back to the Minister, the
20 Minister must take action under section 327 in relation to the draft
21 plan.

22 **327 Draft land management plan—Minister to approve, return
23 or reject**

- 24 (1) This section applies if—
25 (a) a Legislative Assembly committee refers a draft plan back to
26 the Minister under section 325 (4); or
27 (b) the Minister may take action under section 326 (3); or

- 1 (c) a custodian resubmits a draft plan to the Minister under
2 section 329 (Draft land management plan—Minister’s
3 direction to revise etc).
- 4 (2) If the Legislative Assembly committee has made a recommendation
5 about the draft plan, the Minister must consider the
6 recommendation.
- 7 (3) The Minister must, not later than the required time—
8 (a) approve the draft plan; or
9 (b) return the draft plan to the custodian and direct the custodian to
10 take 1 or more of the following actions in relation to it:
11 (i) if the Legislative Assembly committee has made a
12 recommendation about the draft plan—consider the
13 recommendation;
14 (ii) carry out stated further consultation;
15 (iii) consider a revision suggested by the Minister;
16 (iv) revise the draft plan in a stated way; or
17 (c) reject the draft plan.
- 18 (4) In this section:
19 ***required time*** means 45 working days after—
20 (a) if subsection (1) (a) applies—the day the committee tells the
21 Minister about the recommendation under section 325 (4); or
22 (b) if subsection (1) (b) applies—the end of the 6-month period
23 mentioned in section 326 (3); or
24 (c) if subsection (1) (c) applies—the day the custodian resubmits
25 the plan to the Minister.

- 1 **328** **Land management plan—Minister’s approval and**
2 **notification**
- 3 (1) A draft land management plan approved by the Minister under
4 section 327 (3) (a) or section 331 (3) (a) is a land management plan.
- 5 (2) A land management plan is a disallowable instrument.
- 6 *Note 1* A disallowable instrument must be notified, and presented to the
7 Legislative Assembly, under the [Legislation Act](#).
- 8 *Note 2* The power to make a land management plan includes the power to
9 amend or repeal the plan. The power to amend or repeal the plan is
10 exercisable in the same way, and subject to the same conditions, as the
11 power to make the plan (see [Legislation Act](#), s 46).
- 12 *Note 3* Minor amendments may be made to the land management plan under
13 s 331.
- 14 **329** **Draft land management plan—Minister’s direction to**
15 **revise etc**
- 16 (1) This section applies if the Minister gives the custodian of an area of
17 public land a direction under section 327 (3) (b).
- 18 (2) The custodian must—
- 19 (a) give effect to the direction; and
- 20 (b) resubmit the draft plan to the Minister for approval.
- 21 (3) The Minister must decide, under section 327, what to do with the
22 resubmitted draft plan.
- 23 **330** **Draft land management plan—Minister’s rejection**
- 24 (1) If the Minister rejects a draft land management plan under
25 section 327 (3) (c), the Minister must prepare a notice (a *rejection*
26 *notice*) stating that the draft plan is rejected.
- 27 (2) A rejection notice is a notifiable instrument.
- 28 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

- 1 **331 Land management plan—minor amendments**
- 2 (1) This section applies if—
- 3 (a) a land management plan for an area of public land is in force
- 4 (the *existing plan*); and
- 5 (b) the custodian considers that minor amendments to the existing
- 6 plan are appropriate.
- 7 (2) The custodian—
- 8 (a) may prepare a new draft land management plan for the area,
- 9 incorporating the minor amendments into the existing plan; and
- 10 (b) need not comply with the requirements in this part; and
- 11 (c) may submit the new draft land management plan to the
- 12 Minister for approval.
- 13 (3) If the custodian submits a new draft land management plan to the
- 14 Minister for approval, the Minister must—
- 15 (a) approve the plan; or
- 16 (b) reject the plan.
- 17 *Note* The new draft land management plan is a land management plan and is
- 18 a disallowable instrument (see s 328).
- 19 (4) In this section:
- 20 *minor amendment*, of a land management plan for an area of public
- 21 land, means an amendment that will improve the effectiveness or
- 22 technical efficiency of the plan without changing the substance of
- 23 the plan.
- 24 **Examples**
- 25 1 minor correction to improve effectiveness
- 26 2 omission of something redundant

1 3 technical adjustment to improve efficiency

2 *Note* An example is part of the Act, is not exhaustive and may extend, but
3 does not limit, the meaning of the provision in which it appears (see
4 [Legislation Act](#), s 126 and s 132).

5 **332 Land management plan—custodian to implement**

6 If a land management plan is in force for an area of public land, the
7 custodian of the area of public land must take reasonable steps to
8 implement the plan.

9 **332A Land management plan—review**

- 10 (1) This section applies if a land management plan is in force for an
11 area of public land.
- 12 (2) The custodian of the area of public land must report to the Minister
13 about the implementation of the plan at least once every 5 years.
- 14 (3) The custodian of the area of public land must review the plan—
15 (a) every 10 years after the plan commences; and
16 (b) at any other time at the Minister's request.
- 17 (4) However, the Minister may extend the time for conducting a review
18 under subsection (3) (a).
- 19 (5) In carrying out a review, the custodian must consult the conservator.

1 **[2.37] New chapter 20**

2 *insert*

3 **Chapter 20 Transitional—Nature**
4 **Conservation Act 2014—plans**
5 **of management**

6 **473 Definitions—ch 20**

7 In this chapter:

8 *commencement day* means the day the *Nature Conservation*
9 *Act 2014*, section 3 commences.

10 **474 Certain plans of management to be land management**
11 **plans**

12 (1) This section applies if, immediately before the commencement day,
13 a plan of management for an area of land that is not a reserve (an *old*
14 *plan of management*) is in force under part 10.4 (Plans of
15 management for public land).

16 (2) The old plan of management is, on the commencement day, taken to
17 be a land management plan (a *new land management plan*).

18 *Note* *Land management plan*, for an area of public land—see s 319.

19 (3) A new land management plan is, for section 332A (Land
20 management plan—review), taken to have commenced on the day
21 the old plan of management commenced.

- 1 (4) In this section:
2 **reserve**—see the *Nature Conservation Act 2014*, section 167.
3 *Note 1* Reserves include wilderness areas, national parks, nature reserves,
4 catchment areas and other areas of public land.
5 *Note 2* A plan of management for an area of land that is a reserve is taken to be
6 a reserve management plan under the *Nature Conservation Act 2014*,
7 s 409.
- 8 **475 Draft plans of management—public consultation stage**
- 9 (1) This section applies if, immediately before the commencement day,
10 the proponent of a draft plan of management for public land that is
11 not a reserve (an **old draft plan**)—
12 (a) has made copies of the old draft plan available for public
13 inspection under section 323 (Public consultation about draft
14 plans of management); but
15 (b) has not given the old draft plan to the Minister under
16 section 325 (Giving draft plans of management to Minister).
- 17 (2) The old draft plan is, on the commencement day, taken to be a draft
18 land management plan for the land (a **new draft plan**) notified under
19 section 323 (Draft land management plan—public consultation).
- 20 (3) The period stated in the public inspection notice for the old draft
21 plan under section 323 (3) (Public consultation about draft plans of
22 management) is, on the commencement day, taken to be the public
23 consultation period for the new draft plan under
24 section 323 (2) (a) (ii) (Draft land management plan—public
25 consultation).

- 1 **476 Draft plans of management—submission to Minister**
2 **stage**
- 3 (1) This section applies if, immediately before the commencement
4 day—
- 5 (a) the proponent of a draft plan of management for public land
6 that is not a reserve (an *old draft plan*) has given the old draft
7 plan to the Minister under section 325 (Giving draft plans of
8 management to Minister); but
- 9 (b) the Minister has not made a decision about the old draft plan
10 under section 327 (Minister’s powers on receiving draft plans
11 of management).
- 12 (2) The old draft plan is, on the commencement day, taken to be a draft
13 land management plan for the land (a *new draft plan*) given to the
14 Minister under section 324 (Draft land management plan—revision
15 and submission to Minister).
- 16 (3) The report for the old draft plan under section 325 (a) (Giving draft
17 plans of management to Minister) is, on the commencement day,
18 taken to be the report for the new draft plan under
19 section 324 (3) (a) (Draft land management plan—revision and
20 submission to Minister).
- 21 (4) An explanation for the old draft plan under section 325 (b) (Giving
22 draft plans of management to Minister) is, on the commencement
23 day, taken to be a report for the new draft plan under
24 section 324 (3) (b) (Draft land management plan—revision and
25 submission to Minister).

1 **477 Transitional regulations**

- 2 (1) A regulation may prescribe transitional matters necessary or
3 convenient to be prescribed because of the enactment of the *Nature*
4 *Conservation Act 2014*.
- 5 (2) A regulation may modify this chapter (including in relation to
6 another territory law) to make provision in relation to anything that,
7 in the Executive's opinion, is not, or is not adequately or
8 appropriately, dealt with in this chapter.
- 9 (3) A regulation under subsection (2) has effect despite anything
10 elsewhere in this Act or another territory law.

11 **478 Expiry—ch 20**

12 This chapter expires 2 years after the day it commences.

13 *Note* Transitional provisions are kept in the Act for a limited time.
14 A transitional provision is repealed on its expiry but continues to have
15 effect after its repeal (see [Legislation Act](#), s 88).

16 **[2.38] Schedule 4, section 4.1, new definition of *action plan***

17 *insert*

18 *action plan*, for a relevant species, relevant ecological community
19 or key threatening process—see the *Nature Conservation Act 2014*,
20 section 97.

21 **[2.39] Schedule 4, section 4.1, definitions of *biodiversity***
22 ***corridor* and *clearing***

23 *substitute*

24 *biodiversity corridor* means a river corridor or wildlife corridor
25 identified in the [territory plan](#), the nature conservation strategy for
26 the ACT or an action plan.

27 *clearing* native vegetation—see the *Nature Conservation Act 2014*,
28 section 232.

1 **[2.40] Schedule 4, section 4.1, new definitions**

2 *insert*

3 *conservation dependent species*—see the *Nature Conservation*
4 *Act 2014*, dictionary.

5 *critically endangered species*—

6 (a) see the *Nature Conservation Act 2014*, dictionary; and

7 (b) includes a species included in the critically endangered
8 category of the list of threatened native species under the
9 *Environment Protection and Biodiversity Conservation*
10 *Act 1999* (Cwlth).

11 **[2.41] Schedule 4, section 4.1, definitions of *ecological***
12 ***community and endangered***

13 *omit*

14 **[2.42] Schedule 4, section 4.1, new definition of *endangered***
15 ***species***

16 *insert*

17 *endangered species*—

18 (a) see the *Nature Conservation Act 2014*, dictionary; and

19 (b) includes a species included in the endangered category of the
20 list of threatened native species under the *Environment*
21 *Protection and Biodiversity Conservation Act 1999* (Cwlth).

- 1 **[2.43] Schedule 4, section 4.1, definition of *flora and fauna***
2 ***committee***
- 3 *omit*
- 4 **[2.44] Schedule 4, section 4.1, new definitions**
- 5 *insert*
- 6 *listed migratory species*—see the *Environment Protection and*
7 *Biodiversity Conservation Act 1999* (Cwlth), section 528.
- 8 *listed threatened ecological community*—see the *Environment*
9 *Protection and Biodiversity Conservation Act 1999* (Cwlth),
10 section 528.
- 11 *native species conservation plan*, for a native species—see the
12 *Nature Conservation Act 2014*, section 113.
- 13 **[2.45] Schedule 4, section 4.1, definition of *native vegetation***
- 14 *substitute*
- 15 *native vegetation*, for an area—see the *Nature Conservation*
16 *Act 2014*, section 230.
- 17 **[2.46] Schedule 4, section 4.1, new definitions**
- 18 *insert*
- 19 *native vegetation area*—see the *Nature Conservation Act 2014*,
20 section 231.
- 21 *nature conservation strategy*, for the ACT—see the *Nature*
22 *Conservation Act 2014*, section 46.

1 **[2.47] Schedule 4, section 4.1, definition of *protected***

2 *omit*

3 **[2.48] Schedule 4, section 4.1, new definitions**

4 *insert*

5 *protected native species*—see the *Nature Conservation Act 2014*,
6 section 108.

7 *provisionally listed threatened species*—see the *Nature*
8 *Conservation Act 2014*, dictionary.

9 *Ramsar wetland*—see the *Nature Conservation Act 2014*,
10 section 188.

11 *Note* The *Nature Conservation Act 2014*, s 188 defines a Ramsar wetland to
12 be a declared Ramsar wetland under the *Environment Protection and*
13 *Biodiversity Conservation Act 1999* (Cwlth), s 17.

14 **[2.49] Schedule 4, section 4.1, definition of *special protection***
15 ***status***

16 *omit*

17 **[2.50] Schedule 4, section 4.1, new definition of *threatened***
18 ***ecological community***

19 *insert*

20 *threatened ecological community*—

21 (a) see the *Nature Conservation Act 2014*, section 65; and

1 (b) includes a listed threatened ecological community.

2 *Note* Threatened ecological communities are divided into the following
3 categories (see *Nature Conservation Act 2014*, s 67):

- 4 • critically endangered ecological communities;
5 • endangered ecological communities;
6 • vulnerable ecological communities;
7 • provisionally listed threatened ecological communities.

8 **[2.51] Schedule 4, section 4.1, definitions of *threatening***
9 ***process* and *vulnerable***

10 *omit*

11 **[2.52] Schedule 4, section 4.1, new definition of *vulnerable***
12 ***species***

13 *insert*

14 ***vulnerable species***—

15 (a) see the *Nature Conservation Act 2014*, dictionary; and

16 (b) includes a species included in the vulnerable category of the
17 list of threatened native species under the *Environment*
18 *Protection and Biodiversity Conservation Act 1999* (Cwlth).

1 **[2.53] Schedule 4, part 4.3, item 1**

2 *substitute*

1	proposal that is likely to have a significant adverse environmental impact on 1 or more of the following, unless the conservator of flora and fauna provides an environmental significance opinion indicating that the proposal is not likely to have a significant adverse environmental impact: (a) a critically endangered species; (b) an endangered species; (c) a vulnerable species; (d) a conservation dependent species; (e) a provisionally listed threatened species; (f) a listed migratory species; (g) a threatened ecological community; (h) a protected native species; (i) a Ramsar wetland
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3 **[2.54] Schedule 4, part 4.3, item 2, column 2, paragraph (a)**

4 *omit*

5 native vegetation other than on land that is designated as a future urban area under
6 the [territory plan](#)

7 *substitute*

8 native vegetation in a native vegetation area, other than on land that is designated
9 as a future urban area under the [territory plan](#),

10 **[2.55] Schedule 4, part 4.3, item 2, column 2, paragraph (b)**

11 *omit*

12 native vegetation on land that is designated as a future urban area under the
13 [territory plan](#)

14 *substitute*

15 native vegetation in a native vegetation area, on land that is designated as a future
16 urban area under the [territory plan](#),

1 **[2.56] Dictionary, new definition of *action plan***

2 *insert*

3 *action plan*, for schedule 4 (Development proposals in impact track
4 because of need for EIS)—see the *Nature Conservation Act 2014*,
5 section 97.

6 **[2.57] Dictionary, definition of *clearing***

7 *substitute*

8 *clearing* native vegetation, for schedule 4 (Development proposals
9 in impact track because of need for EIS)—see the *Nature*
10 *Conservation Act 2014*, section 232.

11 **[2.58] Dictionary, new definitions**

12 *insert*

13 *conservation dependent species*, for schedule 4 (Development
14 proposals in impact track because of need for EIS)—see the *Nature*
15 *Conservation Act 2014*, dictionary.

16 *critically endangered species*, for schedule 4 (Development
17 proposals in impact track because of need for EIS)—see schedule 4,
18 section 4.1.

19 *draft land management plan*, for an area of public land, for
20 division 10.4.2 (Land management plans)—see section 320.

21 **[2.59] Dictionary, definitions of *ecological community* and**
22 ***endangered***

23 *omit*

1 **[2.60] Dictionary, new definition of *endangered species***

2 *insert*

3 *endangered species*, for schedule 4 (Development proposals in
4 impact track because of need for EIS)—see schedule 4, section 4.1.

5 **[2.61] Dictionary, definition of *flora and fauna committee***

6 *omit*

7 **[2.62] Dictionary, new definitions**

8 *insert*

9 *land management plan*, for an area of public land, for part 10.4
10 (Public land management plans for public land)—see section 319.

11 *listed migratory species*, for schedule 4 (Development proposals in
12 impact track because of need for EIS)—see the [Environment
13 Protection and Biodiversity Conservation Act 1999](#) (Cwlth),
14 section 528.

15 *listed threatened ecological community*, for schedule 4
16 (Development proposals in impact track because of need for EIS)—
17 see the [Environment Protection and Biodiversity Conservation
18 Act 1999](#) (Cwlth), section 528.

19 *native species conservation plan*, for schedule 4 (Development
20 proposals in impact track because of need for EIS)—see the [Nature
21 Conservation Act 2014](#), section 113.

22 **[2.63] Dictionary, definition of *native vegetation***

23 *substitute*

24 *native vegetation*, for schedule 4 (Development proposals in impact
25 track because of need for EIS)—see the [Nature Conservation
26 Act 2014](#), section 230.

1 **[2.64] Dictionary, new definitions**

2 *insert*

3 *native vegetation area*, for schedule 4 (Development proposals in
4 impact track because of need for EIS)—see the *Nature Conservation*
5 *Act 2014*, section 231.

6 *nature conservation strategy*, for the ACT, for schedule 4
7 (Development proposals in impact track because of need for EIS)—
8 see the *Nature Conservation Act 2014*, section 46.

9 **[2.65] Dictionary, definition of *plan of management***

10 *omit*

11 **[2.66] Dictionary, definition of *proponent***

12 *substitute*

13 *proponent*, for a development proposal, for chapter 8
14 (Environmental impact statements and inquiries)—see section 206.

15 **[2.67] Dictionary, definition of *protected***

16 *omit*

17 **[2.68] Dictionary, new definitions**

18 *insert*

19 *protected native species*, for schedule 4 (Development proposals in
20 impact track because of need for EIS)—see the *Nature Conservation*
21 *Act 2014*, section 108.

22 *provisionally listed threatened species*, for schedule 4
23 (Development proposals in impact track because of need for EIS)—
24 see the *Nature Conservation Act 2014*, dictionary.

25 *public consultation period*, for a draft land management plan, for
26 division 10.4.2 (Land management plans)—see section 323.

1 *public land management plan*, for an area of public land—see
2 section 318.

3 *Ramsar wetland*, for schedule 4 (Development proposals in impact
4 track because of need for EIS)—see the *Nature Conservation*
5 *Act 2014*, section 188.

6 **[2.69] Dictionary, definitions of *special protection status* and**
7 ***technical variation***

8 *omit*

9 **[2.70] Dictionary, new definition of *threatened ecological***
10 ***community***

11 *insert*

12 *threatened ecological community*, for schedule 4 (Development
13 proposals in impact track because of need for EIS)—see schedule 4,
14 section 4.1.

15 **[2.71] Dictionary, definition of *threatening process***

16 *omit*

17 **[2.72] Dictionary, definition of *variation***

18 *substitute*

19 *variation*, of a lease—

20 (a) includes the surrender of the lease and the grant of a new lease
21 to the same lessee, subject to different provisions, over land
22 that—

23 (i) is all or part of the land comprised in the surrendered
24 lease; and

- 1 (ii) is not in an area identified in the [territory plan](#) as a future
2 urban area; and
- 3 (b) without limiting paragraph (a), includes the surrender of a
4 concessional lease and the grant of a new lease to the same
5 lessee as a market value lease; and
- 6 (c) includes the consolidation, or subdivision, of the lease; but
- 7 (d) does not include—
- 8 (i) the surrender of the lease and the grant of a further lease
9 under section 254 (Grant of further leases); or
- 10 (ii) a variation to a deed that is incorporated into, or referred
11 to in, the lease, if the deed is varied in a way that is
12 provided for in the deed.

13 *Note* The terms ‘vary’ a lease and ‘lease variation’ have meanings
14 corresponding to ‘variation of a lease’ (see [Legislation Act](#), s 157
15 (Defined terms—other parts of speech and grammatical forms)).

16 **[2.73] Dictionary, definition of *vulnerable***

17 *omit*

18 **[2.74] Dictionary, new definition of *vulnerable species***

19 *insert*

20 *vulnerable species*, for schedule 4 (Development proposals in
21 impact track because of need for EIS)—see schedule 4, section 4.1.

1 **Part 2.12** **Planning and Development**
2 **Regulation 2008**

3 **[2.75] Schedule 1, section 1.1, definitions of *clearing* and *native***
4 ***vegetation***

5 *substitute*

6 *clearing* native vegetation—see the *Nature Conservation Act 2014*,
7 section 232.

8 *native vegetation*—see the *Nature Conservation Act 2014*,
9 section 230.

10 **[2.76] Schedule 1, section 1.14 (1) (d)**

11 *substitute*

12 (d) the *Nature Conservation Act 2014*.

13 **[2.77] Schedule 1, section 1.85 (2) (b) and note**

14 *substitute*

15 (b) the development does not result in the clearing of more than
16 0.5ha of native vegetation in a native vegetation area; and

17 *Note* **Clearing** native vegetation—see the *Nature Conservation*
18 *Act 2014*, s 232.

19 **Native vegetation**—see the *Nature Conservation Act 2014*, s 230.

20 **Native vegetation area**—see the *Nature Conservation Act 2014*,
21 s 231.

1 **[2.78] Schedule 1, section 1.90 (2), definition of *landscaping*,**
2 **paragraph (a) and note**

3 *substitute*

- 4 (a) clearing more than 0.5ha of native vegetation in a native
5 vegetation area;

6 *Note* **Clearing** native vegetation—see the *Nature Conservation*
7 *Act 2014*, s 232.
8 **Native vegetation**—see the *Nature Conservation Act 2014*, s 230.
9 **Native vegetation area**—see the *Nature Conservation Act 2014*,
10 s 231.

11 **[2.79] Schedule 1, section 1.93 (1) (b) and note**

12 *substitute*

- 13 (b) the work does not result in the clearing of more than 0.5ha of
14 native vegetation in a native vegetation area; and

15 *Note* **Clearing** native vegetation—see the *Nature Conservation*
16 *Act 2014*, s 232.
17 **Native vegetation**—see the *Nature Conservation Act 2014*, s 230.
18 **Native vegetation area**—see the *Nature Conservation Act 2014*,
19 s 231.

20 **[2.80] Dictionary, definitions of *clearing* and *native vegetation***

21 *substitute*

22 **clearing** native vegetation, for schedule 1 (Exemptions from
23 requirement for development approval)—see the *Nature*
24 *Conservation Act 2014*, section 232.

25 **native vegetation**, for an area, for schedule 1 (Exemptions from
26 requirement for development approval)—see the *Nature*
27 *Conservation Act 2014*, section 230.

1 **[2.81] Dictionary, new definition of *native vegetation area***

2 *insert*

3 *native vegetation area*, for schedule 1 (Exemptions from
4 requirement for development approval)—see the *Nature*
5 *Conservation Act 2014*, section 231.

6 **Part 2.13 Public Unleased Land Act 2013**

7 **[2.82] New section 19 (2A)**

8 *insert*

9 (2A) If the public unleased land is a reserve, the director-general must
10 consult the conservator about the application.

11 **[2.83] Section 21 (1) (b)**

12 *substitute*

13 (b) the damage is not authorised under—

14 (i) an approval under this Act; or

15 **Examples—approvals that may authorise damage**

16 1 closed road approval

17 2 work approval

18 (ii) a public unleased land permit; or

19 (iii) a nature conservation licence under the *Nature*
20 *Conservation Act 2014*, section 260 (What is a *nature*
21 *conservation licence?*).

1 **[2.84] Section 43 (4) (a)**

2 *substitute*

3 (a) holds a licence under the—

4 (i) *Planning and Development Act 2007*, section 303
5 (Decision on licence applications for unleased land), to
6 occupy or use the public unleased land; or

7 (ii) *Nature Conservation Act 2014*, section 260 (What is a
8 *nature conservation licence?*), authorising the person to
9 carry on an activity on the land; and

10 **[2.85] New section 43 (4A)**

11 *insert*

12 (4A) This section does not apply to a person carrying out an activity in a
13 reserve if—

14 (a) an activities declaration under the *Nature Conservation*
15 *Act 2014* is in force for the reserve, providing that the activity
16 may be carried out in the reserve if stated directions or
17 requirements are complied with; and

18 (b) the person complies with the stated directions or requirements.

19 **[2.86] Section 45 (2) (b) (i), new note**

20 *insert*

21 *Note* Some activities are not permitted in wilderness areas
22 (see s 57 (2A)).

1 **[2.87] New section 52A**

2 *insert*

3 **52A Suitability of activities—consultation with conservator**

- 4 (1) This section applies if—
- 5 (a) the director-general is making a decision about whether an
- 6 activity is a suitable activity for a public unleased land permit;
- 7 and
- 8 (b) the public unleased land is a reserve.
- 9 (2) In making the decision, the director-general must consult the
- 10 conservator.

11 **[2.88] New section 57 (2A)**

12 *insert*

- 13 (2A) However, the director-general must not issue a public unleased land
- 14 permit to carry on any of the following activities in a wilderness
- 15 area:
- 16 (a) erect a building, booth, stall, post, sign or other structure;
- 17 (b) supply goods or services.

18 **[2.89] Dictionary, new definitions**

19 *insert*

20 **conservator**—see the *Nature Conservation Act 2014*, dictionary.

21 **reserve**—see the *Nature Conservation Act 2014*, section 167.

22 *Note* Reserves include wilderness areas, national parks, nature reserves,

23 catchment areas and other areas of public land.

24 **wilderness area**—see the *Nature Conservation Act 2014*,

25 section 168.

1 Dictionary

2 (see s 3)

3 *Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to
4 this Act.

5 *Note 2* For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- 6 • ACAT
- 7 • ACT legislation register
- 8 • ambulance service
- 9 • Australia
- 10 • chief officer (ambulance service)
- 11 • chief officer (fire and rescue)
- 12 • chief officer (rural fire service)
- 13 • chief officer (SES)
- 14 • commissioner for sustainability and the environment
- 15 • contravene
- 16 • daily newspaper
- 17 • director-general (see s 163)
- 18 • disallowable instrument (see s 9)
- 19 • Executive
- 20 • exercise
- 21 • external territory
- 22 • fire and rescue
- 23 • function
- 24 • notifiable instrument (see s 10)
- 25 • penalty unit (see s 133)
- 26 • police officer
- 27 • reviewable decision notice
- 28 • rural fire service
- 29 • SES
- 30 • the Territory
- 31 • working day.

- 1 **accessing biological resources**, for part 8.5 (Access to biological
2 resources in reserves)—see section 205.
- 3 **access provider**, for biological resources in a reserve, for part 8.5
4 (Access to biological resources in reserves)—see section 204.
- 5 **action plan**, for a relevant species, relevant ecological community
6 or key threatening process, for part 4.5 (Action plans)—see
7 section 97.
- 8 **activities**, of an agency, for chapter 12 (Management agreements
9 with utility suppliers, land developers and others)—see section 306.
- 10 **activities declaration**, for a reserve—see section 254.
- 11 **activity information notice**, for an activity—see section 268.
- 12 **ACT parks and conservation service** means the ACT parks and
13 conservation service established under section 27.
- 14 **agency**, for chapter 12 (Management agreements with utility
15 suppliers, land developers and others)—see section 306.
- 16 **animal**—see section 11.
- 17 **animal reproductive material** means—
- 18 (a) an embryo, an egg or sperm of an animal; or
- 19 (b) any other part, or product, of an animal from which another
20 animal could be produced.
- 21 **biodiversity**—see section 19.
- 22 **biodiversity research and monitoring program**, for part 2.1
23 (Conservator of flora and fauna)—see section 24.
- 24 **biodiversity research and monitoring program report**—see
25 section 26.
- 26 **biological resources**, for part 8.5 (Access to biological resources in
27 reserves)—see section 202.

- 1 ***built-up urban area***, for division 6.1.3 (Native plants)—see
2 section 137.
- 3 ***cause***, serious harm or material harm—
- 4 (a) for part 9.4 (Reserves—offences about clearing native
5 vegetation)—see section 233; and
- 6 (b) for part 9.5 (Reserves—offences about damaging land)—see
7 section 242.
- 8 ***clearing*** native vegetation, for part 9.4 (Reserves—offences about
9 clearing native vegetation)—see section 232.
- 10 ***closed reserve declaration***, for a reserve, for part 10.2 (Prohibited
11 and restricted activities)—see section 257.
- 12 ***connected***, for part 13.2 (Enforcement by conservation officers)—
13 see section 331.
- 14 ***conservation***—see section 10.
- 15 ***conservation advice***—see section 90.
- 16 ***conservation dependent species*** means a species included in the
17 conservation dependent category on the threatened native species
18 list.
- 19 ***conservation officer*** means a conservation officer mentioned in
20 section 28.
- 21 ***conservator***—see section 20.
- 22 ***conservator guidelines***—see section 23.
- 23 ***conservator’s direction***—see section 325 (2).
- 24 ***controlled native species***, for chapter 7 (Controlled native species
25 management plans)—see section 155.
- 26 ***controlled native species management plan***, for a controlled native
27 species—see section 156.

1 **critical habitat**, for a species or ecological community, means a
2 habitat that is critical to the survival of the species or ecological
3 community.

4 **critically endangered ecological community** means an ecological
5 community included in the critically endangered category on the
6 threatened ecological communities list.

7 **critically endangered species** means a species included in the
8 critically endangered category on the threatened native species list.

9 **custodian**, for an area of land—see the *Planning and Development*
10 *Act 2007*, section 333 (What is a *custodian*?).

11 *Note* *Custodian* only applies to land that is unleased land or public land.

12 **damage**—

13 (a) a tree, for division 6.1.3 (Native plants)—see section 137; and

14 (b) to land, for part 9.5 (Reserves—offences about damaging
15 land)—see section 241.

16 **data deficient species** means a species included in the data deficient
17 category on the protected native species list.

18 **draft action plan**, for a relevant species, relevant ecological
19 community or key threatening process, for part 4.5 (Action plans)—
20 see section 98.

21 **draft controlled native species management plan**, for a controlled
22 native species, for chapter 7 (Controlled native species management
23 plans)—see section 157.

24 **draft native species conservation plan**, for a native species on stated
25 land, for part 5.3 (Native species conservation plans)—see
26 section 114.

27 **draft nature conservation strategy**, for the ACT, for chapter 3
28 (Nature conservation strategy for the ACT)—see section 47.

29 **draft Ramsar wetland management plan**, for a Ramsar wetland, for
30 part 8.4 (Ramsar wetlands management plans)—see section 190.

1 ***draft reserve management plan***, for a reserve, for part 8.3 (Reserve
2 management plans)—see section 174.

3 ***due date***—

4 (a) for when the financial assurance must be provided—see
5 section 278; and

6 (b) for when a proposed management agreement is to be signed
7 and returned to the conservator—see section 309.

8 ***ecological community***—see section 17.

9 ***ecosystem*** means a dynamic complex of plant, animal and
10 micro-organism communities and their non-living environment
11 interacting as a functional unit.

12 ***eligible species***—see section 93 (1).

13 ***endangered ecological community*** means an ecological community
14 included in the endangered category on the threatened ecological
15 communities list.

16 ***endangered species*** means a species included in the endangered
17 category on the threatened native species list.

18 ***evidence direction***—see section 313 (3).

19 ***exempt animal***—see section 152.

20 ***export*** an item, means take the item to another place for any
21 purpose.

22 **Examples—purpose**

- 23 • sale or trade
24 • personal use
25 • gift

26 *Note* An example is part of the Act, is not exhaustive and may extend, but
27 does not limit, the meaning of the provision in which it appears (see
28 [Legislation Act](#), s 126 and s 132).

1 ***extinct in the wild species*** means a species included in the extinct in
2 the wild category on the threatened native species list.

3 ***extinct species*** means a species included in the extinct category on
4 the threatened native species list.

5 ***financial assurance condition***, on a licence—see section 276.

6 ***financial assurance considerations***—see section 277.

7 ***genetic resources***, for part 8.5 (Access to biological resources in
8 reserves)—see section 203.

9 ***ground for regulatory action***, against a licensee—see section 295.

10 ***habitat*** means an area—

11 (a) occupied (continuously, periodically or occasionally) by an
12 organism or group of organisms; or

13 (b) once occupied (continuously, periodically or occasionally) by
14 an organism, or group of organisms, and into which organisms
15 of that kind have the potential to be reintroduced.

16 ***import*** an item, means bring in the item from another place for any
17 purpose.

18 **Examples—purpose**

- 19 • sale or trade
20 • personal use
21 • gift

22 **Note** An example is part of the Act, is not exhaustive and may extend, but
23 does not limit, the meaning of the provision in which it appears (see
24 [Legislation Act](#), s 126 and s 132).

25 ***in***, a vehicle, includes on the vehicle.

26 ***ineligible species***—see section 93 (1).

27 ***information direction***—see section 317 (2).

28 ***inspection notice***, for a licence—see section 270.

- 1 ***interfere with*** an item, for division 6.1.2 (Native animals)—see
2 section 125.
- 3 ***item***, for part 4.4 (Including, transferring and omitting items in
4 list)—see section 78.
- 5 ***IUCN category***, for a reserve, for part 8.2 (IUCN categories for
6 reserves)—see section 169.
- 7 ***IUCN reserve management objectives***, for an IUCN category, for
8 part 8.2 (IUCN categories for reserves)—see section 171.
- 9 ***keep***, an animal, means have charge or possession of the animal,
10 either in captivity or in a domesticated state.
- 11 ***key threatening process***—see section 72.
- 12 ***key threatening processes list***—see section 73.
- 13 ***key threatening processes list criteria***—see section 76.
- 14 ***lease***—see the [Planning and Development Act 2007](#), section 235.
- 15 ***leave reserve direction***, for part 13.1 (Directions)—see
16 section 319 (2).
- 17 ***licence*** means a nature conservation licence.
- 18 ***licence number***, for a licence—see section 275.
- 19 ***licence register***—see section 302.
- 20 ***licensed activity***, for a licence—see section 260.
- 21 ***list***, for part 4.4 (Including, transferring and omitting items in list)—
22 see section 78.
- 23 ***listed migratory species***—see the [Environment Protection and
24 Biodiversity Conservation Act 1999](#) (Cwlth), section 528.
- 25 ***listing advice***—see section 84.
- 26 ***listing assessment***—see section 83.

- 1 **management agreement**, for public land or unleased territory land,
2 for chapter 12 (Management agreements with utility suppliers, land
3 developers and others)—see section 308.
- 4 **management objectives**, for public land or unleased territory land,
5 for chapter 12 (Management agreements with utility suppliers, land
6 developers and others)—see section 307.
- 7 **material harm**, to a reserve—
- 8 (a) for clearing native vegetation, for part 9.4 (Reserves—offences
9 about clearing native vegetation)—see section 233; or
- 10 (b) for damage to land, for part 9.5 (Reserves—offences about
11 damaging land)—see section 242.
- 12 **member**—
- 13 (a) for a species of animal—see section 18 (a); or
- 14 (b) for a species of plant—see section 18 (b); or
- 15 (c) for an ecological community—see section 18 (c).
- 16 **minor amendment**, of a list, for part 4.4 (Including, transferring and
17 omitting items in list)—see section 91.
- 18 **motor vehicle**—see the [Road Transport \(General\) Act 1999](#),
19 dictionary.
- 20 **name and address direction**—see section 313 (2).
- 21 **native animal**—see section 12.
- 22 **native plant**—see section 14.
- 23 **native species**—see section 16.
- 24 **native species conservation plan**, for a native species—see
25 section 113.
- 26 **native timber**, for division 6.1.3 (Native plants)—see section 137.
- 27 **native tree**, for division 6.1.3 (Native plants)—see section 137.

- 1 **native vegetation**, for an area, for part 9.4 (Reserves—offences
2 about clearing native vegetation)—see section 230.
- 3 **native vegetation area**, for part 9.4 (Reserves—offences about
4 clearing native vegetation)—see section 231.
- 5 **nature**—see section 9.
- 6 **nature conservation licence**—see section 260.
- 7 **nature conservation strategy**, for the ACT—see section 46.
- 8 **nest**, of an animal, for division 6.1.2 (Native animals)—see
9 section 125.
- 10 **nomination**, for part 4.4 (Including, transferring and omitting items
11 in list)—see section 78.
- 12 **occupier**, of premises, for part 13.2 (Enforcement by conservation
13 officers)—see section 331.
- 14 **offence**, for part 13.2 (Enforcement by conservation officers)—see
15 section 331.
- 16 **organism** includes—
- 17 (a) a virus; and
- 18 (b) the reproductive material of an organism; and
- 19 (c) an organism that has died.
- 20 **personal information notice**—see section 265.
- 21 **pest animal**—see the *Pest Plants and Animals Act 2005*, dictionary.
- 22 **pest plant**—see the *Pest Plants and Animals Act 2005*, dictionary.

1 ***planning and development management objectives***, for an area of
2 public land, means the management objectives under the *Planning*
3 *and Development Act 2007*, section 317 (Management objectives for
4 areas of public land).

5 *Note* The management objectives are stated in the following:

- 6 • the *Planning and Development Act 2007*, sch 3;
- 7 • determinations made by the conservator under the *Planning and*
8 *Development Act 2007*, s 317 (2).

9 ***plant***—see section 13.

10 ***plant reproductive material*** means—

- 11 (a) a seed or spore of a plant; or
- 12 (b) a cutting from a plant; or
- 13 (c) any other part, or product, of a plant from which another plant
14 can be produced.

15 ***plant tag***, for a plant, for division 6.1.3 (Native plants)—see
16 section 137.

17 ***population***, of a species or ecological community, means an
18 occurrence of the species or community in a particular area.

19 ***premises*** includes—

- 20 (a) land (whether vacant or occupied); and
- 21 (b) a vehicle; and
- 22 (c) a vessel; and
- 23 (d) an aircraft.

24 ***prohibited activity***, for a reserve—see section 254.

25 ***proposed agreement***—see section 309.

26 ***proposed new licensee***, for a licence—see section 287.

27 ***protected native species***—see section 108.

- 1 ***protected native species list***—see section 109 (1).
- 2 ***protected native species list criteria***—see section 112 (1).
- 3 ***provisionally listed threatened ecological community*** means an
4 ecological community included in the provisional category on the
5 threatened ecological communities list.
- 6 ***provisionally listed threatened species*** means a species included in
7 the provisional category on the threatened native species list.
- 8 ***public consultation notice***—for a nomination, for part 4.4
9 (Including, transferring and omitting items in list)—see
10 section 82 (2).
- 11 ***public consultation period***—
- 12 (a) for a draft action plan, for part 4.5 (Action plans)—see
13 section 101 (2); and
- 14 (b) for a draft controlled native animal management plan, for
15 chapter 7 (Controlled native species management plans)—see
16 section 160 (2); and
- 17 (c) for a draft native species conservation plan, for part 5.3 (Native
18 species conservation plans)—see section 118 (2); and
- 19 (d) for a draft nature conservation strategy, for chapter 3 (Nature
20 conservation strategy for the ACT)—see section 50 (2); and
- 21 (e) for a draft Ramsar wetland management plan, for part 8.4
22 (Ramsar wetlands management plans)—see section 193 (2);
23 and
- 24 (f) for a draft reserve management plan, for part 8.3 (Reserve
25 management plans)—see section 177 (2); and
- 26 (g) for a nomination, for part 4.4 (Including, transferring and
27 omitting items in list)—see section 82 (2).
- 28 ***public land***—see the [Planning and Development Act 2007](#),
29 dictionary.

- 1 **public unleased land permit**—see the *Public Unleased Land*
2 *Act 2013*, section 40.
- 3 **Ramsar wetland**—see section 188.
- 4 **Ramsar wetland management plan**, for a Ramsar wetland—see
5 section 189.
- 6 **rare species** means a species included in the rare category on the
7 protected native species list.
- 8 **regular migratory species**—see section 96.
- 9 **regulatory action**, against a licensee—see section 296.
- 10 **relevant ecological community**—see section 96.
- 11 **relevant species**—see section 96.
- 12 **repair damage direction**, for part 9.3 (Reserves—repairing
13 damage)—see section 227 (2).
- 14 **reserve**—see section 167.
- 15 **reserve management plan**, for a reserve, for part 8.3 (Reserve
16 management plans)—see section 173.
- 17 **resource protection area**, for chapter 10 (Reserves—prohibited and
18 restricted activities)—see section 251.
- 19 **resource protection area declaration**, for a resource protection
20 area—see section 252.
- 21 **restore excavation direction**, for part 9.2 (Reserves—offences in
22 wilderness areas)—see section 224 (2).
- 23 **restricted activity**, for a reserve—see section 254.
- 24 **restricted trade species** means a species included in the restricted
25 trade category on the protected native species list.
- 26 **reviewable decision**, for chapter 14 (Notification and review of
27 decisions)—see section 354.
- 28 **risk management plan notice**, for a licence—see section 269.

- 1 **scientific committee** means the scientific committee established
2 under section 31.
- 3 **sell**, for part 6.1 (Offences)—see section 124.
- 4 **serious harm**, to a reserve—
- 5 (a) for clearing native vegetation, for part 9.4 (Reserves—offences
6 about clearing native vegetation)—see section 233; or
- 7 (b) for damage to land, for part 9.5 (Reserves—offences about
8 damaging land)—see section 242.
- 9 **show cause notice**, for a licensee, for part 11.6 (Licences—
10 regulatory action)—see section 297.
- 11 **special protection status**, for a native species—see section 107.
- 12 **species**—see section 15.
- 13 **stop vehicle direction**, for part 13.1 (Directions)—see
14 section 321 (2).
- 15 **suitability information**—
- 16 (a) about an activity—see section 267; or
- 17 (b) about a person—see section 264.
- 18 **suitable activity**, for a licence—see section 266.
- 19 **suitable person**, to hold a licence, for chapter 11 (Nature
20 conservation licences)—see section 263.
- 21 **take**, for part 6.1 (Offences)—see section 124.
- 22 **threatened ecological communities list**—see section 66.
- 23 **threatened ecological communities list criteria**—see section 69.
- 24 **threatened ecological community**—see section 65.
- 25 **threatened native species**—see section 59.
- 26 **threatened native species list**—see section 60.

- 1 ***threatened native species list criteria***—see section 63.
- 2 ***threatening process***—see section 71.
- 3 ***transfer***, an item within a list, for part 4.4 (Including, transferring
4 and omitting items in list)—see section 78.
- 5 ***treatment direction***, for part 13.1 (Directions)—see section 327.
- 6 ***tree seedling***, for division 6.1.3 (Native plants)—see section 137.
- 7 ***urgent direction***, for part 13.1 (Directions)—see section 323.
- 8 ***vehicle*** includes vessel.
- 9 ***vessel*** includes hovercraft.
- 10 ***vulnerable ecological community*** means an ecological community
11 included in the vulnerable category on the threatened ecological
12 communities list.
- 13 ***vulnerable species*** means a species included in the vulnerable
14 category on the threatened native species list.
- 15 ***warrant***, for part 13.2 (Enforcement by conservation officers)—see
16 section 331.
- 17 ***wilderness area***—see section 168.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 18 September 2014.

2 Notification

Notified under the [Legislation Act](#) on 2014.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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