



Australian Capital Territory

# **Nature Conservation Act 1980**

**A1980-20**

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## **About this republication**

### **The republished law**

This is a republication of the *Nature Conservation Act 1980* effective 11 October 1994 to 13 November 1994.

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Australian Capital Territory

## **NATURE CONSERVATION ACT 1980**

*As at 11 October 1994*

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Australian Capital Territory

## **NATURE CONSERVATION ACT 1980**

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

### **PART I—PRELIMINARY**

#### **Short title**

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

#### **Commencement**

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

#### **Repeal**

3. The Ordinances specified in Schedule 1 are repealed.

#### **Interpretation**

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

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

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

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

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

“conservation officer” means a person appointed under subsection 11 (1) to be a conservation officer;

“Conservator” means the Conservator of Wildlife appointed under section 7;

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

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

“endangered” means—

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

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

“fish” includes the eggs of fish;

“habitat” means an area—

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

“licence” means a licence granted under section 63;

- “motor vehicle” has the same meaning as in the *Motor Traffic Act 1936*;
- “newspaper” means a daily newspaper published and circulating in the Territory;
- “noxious animal” means an animal that has been declared under the *Rabbit Destruction Act 1919* to be a noxious animal;
- “noxious weed” means a plant that has been declared under the *Noxious Weeds Act 1921* to be a noxious weed;
- “permit” means a permit granted under section 62;
- “pick”, in relation to a plant, means gather, pluck, cut, pull up, take, dig up or remove the plant;
- “Plan” has the same meaning as in the *Land (Planning and Environment) Act 1991*;
- “plant” means—
- (a) any member, alive or dead, of the plant kingdom or the fungus kingdom;
  - (b) any part of such a member; and
  - (c) seeds;
- “protected fish” means a fish specified in a declaration under paragraph 17 (1) (a);
- “protected invertebrate” means an invertebrate specified in a declaration under paragraph 17 (1) (a);
- “reserved area” means an area of public land reserved under the Plan as a wilderness area, national park or nature reserve;
- “restricted animal wildlife” means an animal specified in a declaration under paragraph 17 (1) (d);
- “restricted plant wildlife” means a plant specified in a declaration under paragraph 17 (1) (c);
- “seed” includes the fruit or spore of a plant;
- “sell” includes—
- (a) exchange; and

(b) expose for sale or exchange;

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

“species” means a group of organisms that are wildlife (including fish and invertebrates that are indigenous to the Territory) that—

(a) interbreed to produce fertile offspring; or

(b) possess common characteristics derived from a common gene pool;

and includes—

(c) a sub-species; and

(d) a distinct population of organisms prescribed as being a species;

but does not include a prescribed species;

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

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

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

“timber” means all timber, whether fallen or standing, from a tree that is wildlife, other than a tree seedling;

“tree seedling” means a tree that is not more than 1 metre high;

“Tribunal” means the Australian Capital Territory Administrative Appeals Tribunal;

“unleased land” does not include—

(a) land held in fee simple; or

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

“vessel” includes hovercraft;

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

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

“wildlife” means—

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

other than noxious animals or noxious weeds;

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

### **Application of Bushfire Act**

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

## **PART IA—ADMINISTRATION**

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

#### **The Conservator of Wildlife**

7. (1) There shall be a Conservator of Wildlife who shall be appointed by the Minister.

(2) The Conservator shall be appointed for such period, not exceeding 7 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

(3) A person who has attained the age of 65 years shall not be appointed or re-appointed as the Conservator, and a person shall not be appointed or re-

appointed as the Conservator for a period that extends beyond the date on which the person will attain the age of 65 years.

### **Powers of Conservator**

**8.** In addition to the powers conferred on the Conservator under any other provision of this Act, the Conservator has, and may exercise, any of the powers of a conservation officer.

### **Resignation of Conservator**

**9.** The Conservator may resign his or her office by writing signed by him or her and delivered to the Minister.

### **Termination of appointment of Conservator**

**10. (1)** The Minister may terminate the appointment of the Conservator by reason of misbehaviour or physical or mental incapacity.

**(2)** If the Conservator—

- (a)** becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (b)** is absent, except on leave granted by the Minister, from 3 consecutive meetings of the Council,

the Minister shall terminate the Conservator's appointment.

### **Conservation officers**

**11. (1)** The Minister may, by instrument in writing, appoint such persons as he or she considers necessary to be conservation officers for the purposes of this Act.

**(2)** The Minister shall cause to be issued to each conservation officer an identity card that specifies the name of the officer and the appointment that he or she holds and to which is attached a recent photograph of the officer.

### **Return of identity card**

**12.** A conservation officer shall, upon ceasing to be such an officer, return his or her identity card to the Minister.

Penalty: \$100.

### **Exercise of powers**

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

### **Delegation**

**14. (1)** The Conservator may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him or her, delegate to a conservation officer any of his or her powers under this Act, other than this power of delegation.

**(2)** A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Conservator.

**(3)** A delegation under this section does not prevent the exercise of a power by the Conservator.

### **Australian Capital Territory Parks and Conservation Service**

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

**(2)** The Australian Capital Territory Parks and Conservation Service shall consist of the conservation officers appointed under subsection 11 (1).

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

### ***Division 2—Flora and Fauna Committee***

#### ***Subdivision A—Establishment, functions and powers***

### **Establishment**

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

### **Functions**

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

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

### **Directions to Committee**

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

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

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

### **Powers**

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

### *Subdivision B—Constitution and meetings*

### **Membership**

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

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

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

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

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

### **Appointment of Chairperson and Deputy Chairperson**

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

(a) a Chairperson; and

(b) a Deputy Chairperson.

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



### **Secretary to Committee**

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

### **Remuneration and allowances**

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

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

### **Leave of absence**

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

### **Disclosure of interests**

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

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

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

### **Resignation**

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

### **Termination of appointment**

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

**(2)** If a member—

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

the Minister shall terminate the appointment of the member.

### **Acting members**

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

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

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

- (a) the occasion for the person's appointment had not arisen;
- (b) there was a defect or irregularity in connection with the person's appointment;
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

### **Convening meetings**

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

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

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

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

### **Procedure at meetings**

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

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

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

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

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

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

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

### **Quorum**

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

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

### *Division 1—Nature conservation strategy*

#### **Draft nature conservation strategy**

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

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

#### **Variation**

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

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

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

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

- (a) stating that copies of a draft strategy are available for public inspection during a period of not less than 21 days specified in the notice at a place specified in the notice; and

- (b) inviting interested persons to submit written comments about the draft strategy to the Conservator at an address specified in the notice and within that period.

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

- (3) In this section—

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

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

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

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

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

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

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

**15W. (1)** Where the Conservator—

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

the Conservator shall, after the expiration of any applicable period specified in a notice under subsection 15U (1), submit the draft strategy to the Minister for

approval, together with a written report setting out the issues raised in any written comments concerning the draft strategy submitted pursuant to the invitation in that notice.

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

(3) Where the Conservator—

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

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

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

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

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

**Notice of rejection of draft strategy**

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

**Commencement of nature conservation strategy or variations**

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

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

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

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

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

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

**16. (1)** The Conservator shall, by instrument, declare the members of a species of wildlife to have special protection status if—

- (a) in the case of the members of a species of migratory animal—the protection of that species is the object, or part of the object, of an Act of the Commonwealth, or of a convention, agreement or treaty entered into by the Commonwealth;
- (b) the Conservator believes on reasonable grounds that the species is vulnerable to, or threatened with, extinction; or
- (c) the Minister makes a declaration under section 21—

- (i) that a species is endangered; and
- (ii) that the species has not been declared to have special protection status.

(2) A declaration shall specify on which of the grounds set out in subsection (1) it is made.

(3) In this section—

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

### **Declaration of fish, invertebrates or animals to be protected, exempt or restricted**

17. (1) The Conservator may, by instrument, declare the members of a species of—

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

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

- (a) wildlife generally in the Territory; and
- (b) the significant ecosystems of the Territory, New South Wales and Australia.

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

#### ***Subdivision A—Criteria and guidelines for declarations***

### **Criteria for recommending declaration**

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

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

- (a) the conservation of a species or ecological community; or

- (b) the ecological significance of a threatening process;

in relation to the Territory and the surrounding region.

### **Guidelines for recommending declaration**

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

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

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

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

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

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

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

### ***Subdivision B—Making of declarations***

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

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

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



recommend to the Minister that the community be declared to be an endangered community.

- (3) Where, having regard to—
- (a) the criteria specified under section 18; and
  - (b) the significance of a process within the Territory and the surrounding region;

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

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

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

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

- (2) An application shall be—
- (a) in writing;
  - (b) in a form approved by the Committee; and
  - (c) accompanied by a statement containing the reasons why the applicant considers that the declaration should be made.

(3) On application, in accordance with this section, the Committee may, after considering the relevant criteria—

- (a) make the recommendation sought; or
- (b) refuse to make that recommendation.

(4) Where the Committee, in accordance with paragraph (3) (b), refuses to make a recommendation, the Chairperson shall give to the applicant a written notice including a statement of reasons for the decision.

#### ***Division 4—Action plans***

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

23. (1) The Conservator shall, as soon as practicable after the commencement of the *Nature Conservation (Amendment) Act 1994*, prepare,

for public information, a draft Action Plan in relation to each species, ecological community or process the subject of a declaration under section 21.

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

### **Variation**

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

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

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

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

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

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

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

### **Action Plan**

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

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

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

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

### *Division 5—Tabling and disallowance*

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

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

## **PART III—PROTECTION OF ANIMALS AND FISH**

### **Nests of wildlife**

**24. (1)** A person shall not, except in accordance with a permit, interfere with a nest of an animal that is wildlife, or with anything in the immediate environment of such a nest, if the interference—

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

Penalty:

- (a) if the animal has special protection status—\$10,000 or imprisonment for 5 years, or both;
- (b) in any other case—\$5,000 or imprisonment for 2 years, or both.

**(2)** A person shall not, except in accordance with a permit, interfere with a nest of an animal that is wildlife, or with anything in the immediate environment of such a nest.

Penalty:

- (a) if the animal has special protection status—\$2,000;
- (b) in any other case—\$1,000.

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

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

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

as the case may be.

(5) In this section—

“interfere with” includes damage or destroy;

“nest”, in relation to an animal that is wildlife, includes—

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

### **Killing animals**

**25. (1)** A person shall not, except in accordance with a permit, kill an animal that is wildlife.

Penalty:

- (a) if the animal has special protection status—\$10,000 or imprisonment for 5 years, or both;
- (b) in any other case—\$5,000 or imprisonment for 2 years, or both.

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

### **Taking animals**

**26. (1)** A person shall not, except in accordance with a permit or licence, take an animal that is wildlife, whether dead or alive.

Penalty:

- (a) if the animal has special protection status—\$10,000 or imprisonment for 5 years, or both;
  - (b) in any other case—\$5,000 or imprisonment for 2 years, or both.
- (2) Subsection (1) does not apply to or in relation to—
- (b) the taking of an animal that is suffering from a disease, illness or injury for the purpose of treating the animal or delivering it to a conservation officer.

**Keeping animals**

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

Penalty:

- (a) if the animal has special protection status—\$10,000 or imprisonment for 5 years, or both;
  - (b) in any other case—\$5,000 or imprisonment for 2 years, or both.
- (3) Subsection (1) does not apply to or in relation to an animal kept by a person if—
- (a) the animal is suffering from a disease, illness or injury;
  - (b) the animal is being kept by the person for the purpose of being given treatment for that disease, illness or injury or being delivered to a conservation officer; and
  - (c) the period for which the animal has been kept by the person does not exceed 48 hours.

**Selling animals**

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

Penalty:

- (a) if the animal has special protection status—\$10,000 or imprisonment for 5 years, or both;
- (b) in any other case—\$5,000 or imprisonment for 2 years, or both.

**Import and export of animals**

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

Penalty:

- (a) if the animal has special protection status—\$10,000 or imprisonment for 5 years, or both;
- (b) in any other case—\$5,000 or imprisonment for 2 years, or both.

### **Dealing in live fish**

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

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

Penalty:

- (a) if the fish has special protection status—\$10,000 or imprisonment for 5 years, or both;
- (b) in any other case—\$5,000 or imprisonment for 2 years, or both.

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

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

### **Import—inspection**

**36. (1)** Where a person, in accordance with a licence, imports an animal into the Territory, the person shall, not later than the working day next following the day of importation, notify the conservator of the importation and of the place at which the animal may be inspected.

Penalty: \$2,000.

**(2)** Where a conservation officer inspects an animal in pursuance of this section, the conservation officer shall—

- (a) issue to the person a certificate of compliance in respect of the animal if he or she is satisfied—
  - (i) that the animal was imported into the Territory by the person in accordance with a licence;

- (ii) that the condition of the animal is such that it would not, upon being introduced into the Territory, be likely to constitute a threat to the continuance of a species of wildlife or fish already found in the Territory; and
  - (iii) where the person proposes to sell the animal in pursuance of a licence—that the animal is of a species that the person is, by virtue of the licence, permitted to sell; or
- (b) if he or she is not so satisfied—refuse to issue to the person a certificate of compliance in respect of the animal.

(3) Where a conservation officer refuses to issue to a person a certificate of compliance, he or she shall notify the person in writing of the refusal.

(4) In this section, “animal” includes any live fish.

#### **Sale after import**

**37. (1)** Where a person, in accordance with a licence, imports an animal into the Territory, the person shall not, notwithstanding the provisions of the licence, sell the animal unless—

- (a) the person holds a certificate of compliance issued under subsection 36 (2) in respect of the animal; or
- (b) the person has complied with subsection 36 (1), not less than 2 working days have elapsed since such compliance and—
  - (i) the animal has not been inspected by a conservation officer; or
  - (ii) the animal has been inspected by a conservation officer but the conservation officer has not given to the person a notice under subsection 36 (3).

Penalty: \$2,000.

(2) In this section, “animal” includes any live fish.

#### **Export—inspection**

**38. (1)** A person who holds a licence authorizing the export from the Territory of an animal shall not export the animal unless—

- (a) at least 2 working days before the day of the proposed exportation, the person notifies the Conservator of the proposed exportation and of the place at which the animal may be inspected; and

- (b) a conservation officer has inspected the animal and issued to the person a certificate of compliance stating that the person is authorized by the licence to export the animal.
- (2) Nothing in subsection (1) applies to or in relation to a person who notifies the Conservator as required by that subsection if—
- (a) a conservation officer does not, before the day of the proposed exportation, inspect the animal; or
  - (b) a conservation officer, although having inspected the animal, does not, before the day of the proposed exportation, issue to the person a notice of refusal to issue a certificate of compliance.

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

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

Penalty:

- (a) if the animal has special protection status—\$10,000 or imprisonment for 5 years, or both;
- (b) in any other case—\$5,000 or imprisonment for 2 years, or both.

**(1A)** A person shall not, except in accordance with a permit, release an animal that is not wildlife from captivity if the release places an animal that is wildlife in danger of injury or death.

Penalty: \$2,000.

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

Penalty: \$1,000.

**(1C)** It is a defence to a prosecution for an offence under subsection (1) if it is established that the defendant believed on reasonable grounds that the release of the animal did not place the animal in greater danger of injury or death than if it had been kept in captivity.

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



- (2) Subsections (1) and (1B) do not apply to or in relation to a person who—
- (a) finds and takes an animal that is wildlife, being an animal that is suffering from a disease, illness or injury; and
  - (b) within 48 hours of having taken the animal—
    - (i) treats the animal; and
    - (ii) releases it within 500 metres of the place where it was taken.

### **Escape of animals**

40. Where an animal, being an animal that is wildlife, in the possession of a person escapes—
- (a) the interest held by any person in the animal is divested from that person; and
  - (b) any permit or licence held by a person in respect of the animal ceases to apply to the animal.

## **PART IV—PROTECTION OF PLANTS**

### **Picking of plants**

42. (1) A person shall not, except in accordance with a permit or licence, pick a plant that—
- (a) has special protection status;
  - (b) is restricted plant wildlife; or
  - (c) is wildlife growing on unleased land.

#### **Penalty:**

- (a) if the plant has special protection status—\$10,000 or imprisonment for 5 years, or both;
  - (b) if the plant does not have special protection status but the court finds that the defendant intended to sell it—\$5,000 or imprisonment for 2 years, or both;
  - (c) in any other case—\$2,500 or imprisonment for 1 year, or both.
- (2) Subsection (1) does not apply to or in relation to a person who—

- (a) being the occupier of land, cultivates or takes seeds from a plant that is restricted plant wildlife growing on the land;
- (b) being the occupier of land, picks a plant that is restricted plant wildlife growing on the land, being a plant that the person planted or caused to be planted;
- (c) takes seeds from a plant that is wildlife (other than a plant that is restricted plant wildlife) that is growing on unleased land;
- (d) being the occupier of land in the City Area, picks a plant that is restricted plant wildlife growing on the land;
- (e) being the occupier of land outside the City Area, picks a plant that is restricted plant wildlife in the course of preparing or using the land for primary production; or
- (f) being a public servant engaged in the administration of parks and gardens, picks a plant that is wildlife in the performance of his or her duties as such an officer or employee.

**(3)** Nothing in subsection (1) applies to or in relation to timber.

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

**(5)** In subsection (2), “cultivates”, in relation to a plant, means trims, lops or digs up the plant—

- (a) for a purpose reasonably beneficial to the plant, or another plant, being restricted plant wildlife, growing in close proximity to the first-mentioned plant; or
- (b) for the purpose of propagating the plant.

### **Preservation of timber**

**43. (1)** Subsection (2) applies to the following land:

- (a) land held under lease from the Commonwealth, being land outside a built-up area;
- (b) land that is occupied by a person in pursuance of a licence granted by the Territory or Commonwealth; and
- (c) unleased land.

**(2)** A person shall not—

- (a) damage or destroy timber on land to which this subsection applies; or
- (b) except in accordance with a permit or licence—
  - (i) fell timber on; or
  - (ii) remove timber from,  
land to which this subsection applies.

Penalty: \$1,000.

**(3)** Subsection (2) does not apply to or in relation to an occupier of land who—

- (a) damages, destroys or fells timber on, or removes timber from, the land—
  - (i) being timber that the person planted or caused to be planted on the land; or
  - (ii) in order to eliminate a hazard;
- (b) damages or fells timber on the land for the purpose of using the timber on the land;
- (c) damages or destroys timber on the land in the process of using the timber on the land;
- (d) fells dead timber on, or removes dead timber from, the land for a purpose other than the purpose of sale or trade; or
- (e) damages or destroys dead timber on the land.

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

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

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

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

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

(7) In subsection (1) “built-up area” has the same meaning as in the *Bushfire Act 1936*.

### Dealing in plants

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

- (a) sell a plant that is restricted plant wildlife;
- (b) grow or cultivate a plant that is restricted plant wildlife for the purposes of sale or trade;
- (c) import into, or export from, the Territory for the purposes of sale or trade a plant that is wildlife; or
- (d) export from the Territory a plant that is restricted plant wildlife, other than a seed or part of a plant lawfully picked or cultivated.

Penalty:

- (a) if the plant has special protection status—\$10,000 or imprisonment for 5 years, or both;
- (b) in any other case—\$5,000 or imprisonment for 2 years, or both.

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

### Plant tags

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

Penalty:

- (a) if the plant has special protection status—\$5,000; and
- (b) in any other case—\$2,500.

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

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

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

## **PART V—PROTECTION OF WILDLIFE GENERALLY**

### **Interpretation**

**45A.** In this Part—

“wildlife” includes any live fish.

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

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

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

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

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

### **Conservator’s advice**

**47. (1)** The Conservator may, whether or not an investigation or examination has been carried out on land in pursuance of section 46, give to the occupier of the land advice, in writing, with respect to the protection and conservation of wildlife on the land.

(2) Without limiting the generality of subsection (1), the advice referred to in subsection (1) may include advice with respect to—

- (a) the manner in which the protection and conservation of wildlife may be achieved consistently with other uses of the land.

### **Conservator's directions**

**48. (1)** Where—

- (a) the Conservator, in pursuance of section 47, gives advice to a person;
- (b) the person does not, within a reasonable time, follow that advice; and
- (c) the Conservator has reasonable cause to believe that, for the proper protection or conservation of wildlife, it is necessary or desirable that a particular requirement or particular requirements be complied with,

the Conservator may, by notice in writing, direct the person, within such period as is specified in the notice, being a period of not less than 2 working days after the notice is given, to comply with that requirement or those requirements.

(2) A person to whom a notice is given under subsection (1) shall not, without reasonable excuse, fail to comply with the notice.

Penalty for contravention of subsection (2):

- (a) if the notice relates to the protection and conservation of wildlife which has special protection status—\$5,000;
- (b) in any other case—\$2,500.

### **Diseased wildlife**

**49.**

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

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

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

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

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

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

(4) Where a person to whom a notice in respect to wildlife, other than wildlife that is a plant, is given under subsection (3) does not comply with the notice, a conservation officer may enter the land or premises upon or in which the wildlife is being kept and seize the wildlife.

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

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

**Issue of notices—relevant considerations**

**50.**

(2) In determining whether—

- (a) for the purpose of section 48, it is necessary or desirable for advice given under section 47 to be followed; or
- (b) for the purpose of subsection 49 (2), it is necessary or desirable for wildlife to receive treatment,

the Conservator shall have regard to—

- (c) the effect the failure to follow the advice or carry out the treatment, as the case may be, is likely to have on—
  - (i) a species of wildlife already found in the Territory;
  - (ii) the significant ecosystems of the Territory, New South Wales and Australia; and
  - (iii) in the case of a species of wildlife the members of which have special protection status—the world-wide survival of the wild populations of the species; and
- (d) the costs likely to be incurred by a person in following the advice or carrying out the treatment, as the case may be.

**PART VI—RESERVED AREAS**

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

**Access to reserved areas**

**53. (1)** The Conservator may—

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

where he or she has reasonable cause to believe that—

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

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

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

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

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

Penalty: \$2,000.

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

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

**Signs in reserved areas**



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

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

Penalty: \$500.

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

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

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

Penalty: \$500.

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

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

Penalty: \$1,000.

**(3)** It is a defence to a prosecution for an offence against subsection (2)—

- (a) that the fire was lit, maintained or used by the defendant in circumstances that constituted an emergency; or
- (b) that the defendant had no reasonable grounds for suspecting that the fire was within a reserved area.

#### **Activities prohibited in reserved areas without the Conservator's consent**

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

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

Penalty: \$500.

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

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

Penalty: \$500.

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

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

Penalty: \$1,000.

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

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

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

**57. (1)** A person shall not—

- (a) without the consent in writing of the Conservator, take into, or knowingly permit to enter, a reserved area an animal that is not wildlife; or
- (b) take a noxious weed into a reserved area.

Penalty: \$500.

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

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

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

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

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

**(2)** Where a conservation officer makes a requirement of a person under subsection (1), the conservation officer shall produce the identity card issued to him or her under subsection 11 (2) for inspection by that person and, if he or she fails to do so, that other person is not obliged to comply with the requirement.

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

Penalty: \$500.

**(4)** It is a defence to a prosecution for an offence against this section of contravening a requirement to produce a licence or permit or evidence of an

authority authorizing the doing of an act if the licence, permit or evidence is, within 2 working days after the requirement was made, produced at the office of the Conservator for inspection by a person apparently employed at that office.

### **Offences in wilderness zones**

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

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

Penalty: \$1,000.

### **Compensation**

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

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

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

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

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

## **PART VII—PERMITS AND LICENCES**

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

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

- (kb) where an application relating to wildlife which has special protection status is being sought on the ground set out in paragraph 63A (1) (a)—
    - (i) shall state the applicant's place of employment and relevant qualifications;
    - (ii) shall describe any relevant studies that have been or are being undertaken by the applicant; and
    - (iii) shall supply any other relevant information about the purpose for which the application is made;
  - (kc) in the case of an application for a permit to excavate in a wilderness area, shall specify—
    - (i) the objectives of the relevant archaeological investigation;
    - (ii) the archeological qualifications and experience of the applicant; and
    - (iii) each natural person or body (whether or not incorporated) sponsoring that archaeological investigation; and
  - (l) shall contain such other information as is prescribed.
- (2) In addition to complying with the requirements of subsection (1), an application for a relevant authorization shall be accompanied by—
- (a) a certificate by the Minister that, in the opinion of the Minister, the carrying on of the activity in respect of which the application is made at each place specified in the application in pursuance of paragraph (1) (h), subparagraph (1) (j) (ii) or paragraph (1) (k), as the case may be, is not prohibited—
    - (i) if the place is situated on, or is constituted by, land held under a lease granted by or in the name of the Commonwealth—by the provisions of that lease or by the Act under which that lease was granted; or
    - (ii) if the place is situated on, or is constituted by, land in relation to which a licence to occupy has been granted by the Territory or Commonwealth—by the terms of that licence; or
  - (b) a copy of an order of the Supreme Court declaring that the carrying on of the activity in respect of which the application is made at each such place is not so prohibited.

(3) Jurisdiction to hear and determine an application for an order for the purposes of paragraph (2) (b) is vested in the Supreme Court.

(4) In this section, “relevant authorization” means—

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

#### **Grant of permit**

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

(2) The Conservator shall not grant a permit authorizing—

- (a) the sale of more than 5 animals; or
- (b) the importation into, or exportation from, the Territory, for the purposes of sale or trade, of more than 5 animals.

(3) A permit authorizing—

- (a) the sale of an animal; or
- (b) the importation into, or exportation from, the Territory of an animal for the purposes of sale or trade,

shall not be granted for a period exceeding 12 months.

(4) The Conservator shall not grant a permit to a person authorizing—

- (a) the sale of live fish; or
- (b) the importation into, or exportation from, the Territory of live fish for the purposes of sale or trade,

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

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

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

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

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

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

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

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

### **Grant of licence**

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

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

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

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

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



**63A. (1)** The Conservator shall not grant a permit or licence authorising a person to do any act in relation to wildlife which has special protection status except on 1 of the following grounds:

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

**(2)** In deciding whether to grant a permit or licence on the ground specified in paragraph (1) (c), the Conservator shall have regard to the need to maintain such annual reproduction of the relevant species of wildlife as is required for the long-term survival of the species.

**(3)** In deciding whether to grant a permit or licence on the ground specified in paragraph (1) (d), the Conservator shall have regard to the need to preserve the relevant species of wildlife, and to maintain optimum numbers of that species for its long-term survival.

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

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

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

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

- (a) the effect the carrying on of the activity in respect of which the permit or licence is sought is likely to have on—
  - (i) a species of wildlife already found in the Territory;

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

- (j) in the case of an application for a permit or licence to export an animal or live fish from the Territory—the degree to which exportation of animals or fish of the species to which the application relates is likely to threaten the continuance in the Territory of that, or another, species of animal or fish;
- (k) in the case of an application by a person, being an individual, for a permit or licence to pick plants that are wildlife—
  - (i) the purpose for which the plants are required; and
  - (ii) the qualifications possessed by the applicant relating to the science of botany;
- (l) in the case of an application by a person, being a body corporate, for a permit or licence to pick plants that are wildlife—
  - (i) the purpose for which the plants are required; and
  - (ii) the qualifications possessed by the officers or employees of the applicant relating to the science of botany;
- (m) in the case of an application for a permit or licence to fell or remove timber—the effect of the felling of timber on, or the removal of timber from, the land to which the application relates is likely to have on that land;
- (n) in the case of an application for a permit or licence to pick plants that are restricted plant wildlife—the effect the picking of the plants will have on the area in which the plants are growing;
- (o) in the case of an application for a permit or licence relating to wildlife having special protection status—each ground on which the Conservator declared the wildlife to have special protection status; and
- (p) in the case of an application for a permit to excavate in a wilderness area—
  - (i) the objectives of the relevant archaeological investigation, including any expected contribution to the understanding of aboriginal prehistory or Australian history in general;
  - (ii) the archaeological qualifications and experience of the applicant; and

- (iii) the nature of each natural person or body (whether or not incorporated) sponsoring the archaeological investigation.

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

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

**66.** A permit or licence shall be in writing and shall specify—

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

- (m) in the case of a permit or licence authorizing the picking of plants that are wildlife—the land to which the permit or licence applies;
- (n) in the case of a permit or licence authorizing the felling or removal of timber—the quantity of timber and the land to which the permit or licence applies; and
- (o) in the case of a permit or licence relating to a species of wildlife the members of which have special protection status—the ground specified in subsection 63A (1) on which the permit or licence is granted.

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

**67.** The grant of a permit or licence does not authorize the holder of the permit or licence to enter upon—

- (a) land held in fee simple;
- (b) land held under a lease granted by or in the name of the Commonwealth; or
- (c) land that is occupied by a person in pursuance of a licence granted to the person by the Territory or Commonwealth.

#### **Duration of permits and licences**

**68. (1)** A permit, unless sooner surrendered or cancelled, remains in force for such period as is specified in the permit.

**(2)** A licence, unless sooner surrendered or cancelled, remains in force for such period, being a period not exceeding 1 year, as is specified in the licence.

#### **Cancellation of permits and licences**

**69. (1)** The Conservator may cancel a permit where—

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

**(2)** Where the holder of a licence—

- (a) is convicted of an offence against this Act; or
  - (b) fails to comply with a condition to which the licence is subject,
- the Conservator may cancel the licence.

### **Production of permits and licences**

**70.** The holder of a permit or licence shall, within 2 working days of being so requested by a conservation officer, produce the permit or licence, as the case requires, at the office of the Conservator for inspection by a person apparently employed at that office.

Penalty:

- (a) if the permit or licence relates to an animal with special protection status—\$1,000;
- (b) in any other case—\$500.

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

**71.** The holder of a permit who keeps—

- (a) more than 5 animals, not including exempt animals;
- (b) an animal that is restricted animal wildlife; or
- (c) an animal which has special protection status;

shall keep such records as are prescribed.

Penalty:

- (a) if an animal which has special protection status is kept—\$1,000;
- (b) in any other case—\$500.

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

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

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

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

Penalty:

- (a) if the animal or fish kept, or plant sold or exported, as the case requires, has special protection status—\$1,000;
- (b) in any other case—\$500.

### **Production of records**

**73.** A person who is, by virtue of section 71 or 72, required to keep records shall, within 2 working days of being so requested by a conservation officer, produce at the office of the Conservator for inspection by a person apparently employed at that office such records as the first-mentioned person is so required to keep.

Penalty:

- (a) if the records relate to an animal with special protection status—\$1,000;
- (b) in any other case—\$500.

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

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

**74. (1)** Application may be made to the Tribunal for a review of a decision of the Conservator—

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

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

**Notification of decisions**

**74A. (1)** Where the Conservator or a conservation officer makes a decision referred to in subsection 74 (1) or (2), as the case requires, that person shall, within 28 days after the date of the decision, cause notice in writing of the decision to be given to the person whose interests are affected by the decision.

**(2)** A notice shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Australian Capital Territory Administrative Appeals Tribunal for a review of the decision to which the notice relates; and
- (b) except where subsection 26 (11) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 26 of that Act.

**(3)** The validity of a decision referred to in subsection (1) shall not be taken to have been affected by a failure to comply with subsection (2).

**PART IX—MISCELLANEOUS****Royalty**

**75. (1)** In this section, “relevant licence” means—

- (a) a licence authorizing the taking of an animal that is wildlife;
- (b) a licence authorizing the picking of a plant that is wildlife; and
- (c) a licence authorizing the felling or removal of timber on or from land referred to in paragraph 43 (1) (a) or (b).

**(2)** Subject to this section, the holder of a relevant licence who sells or otherwise disposes of wildlife or timber taken or removed by him or her in accordance with his or her licence shall pay to the Territory in respect of the wildlife or timber, as the case may be, royalty at such rate as is prescribed.

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

- (a) as a flat rate in respect of each animal or plant; or
- (b) as a proportion of the amount received by the holder of the licence on the sale or other disposal of the wildlife or timber.



(4) In relation to a licence referred to in paragraph (1) (c), different rates of royalty may be prescribed depending on—

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

(5) Royalty is not payable in respect of wildlife or timber—

- (a) that is included in a prescribed class of wildlife or timber;
- (b) that is taken in a prescribed part of the Territory;
- (c) that is taken during a prescribed period; or
- (d) that is taken by a person included in a prescribed class of persons.

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

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

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

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

#### **Power of entry and search**

**77. (1)** In this section—

“animal” means—

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

“plant” means a plant that is wildlife.

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

- (a) search the land or premises;

- (aa) inspect the animal or plant; and
  - (b) inspect the accounts, books, documents and other records relating to the animal or plant.
- (3)** A conservation officer may—
- (a) where he or she has reasonable grounds for suspecting that an animal or plant is on land or premises in contravention of this Act—at any reasonable time, enter the land or premises and carry out a search of the land or premises; and
  - (b) where he or she has reasonable grounds for suspecting that an animal or plant is contained in a vehicle or vessel in contravention of this Act—
    - (i) stop and search the vehicle or vessel; or
    - (ii) stop the vehicle or vessel and require it to be taken to another place in the Territory where a search may conveniently be carried out.
- (4)** Where a conservation officer, in pursuance of subsection (2) or (3), enters land or premises, stops a vehicle or vessel or requires a person to take the action referred to in subparagraph (3) (b) (ii), the conservation officer shall, if requested by the occupier or person in charge of the land or premises, or the person in charge of the vehicle or vessel, produce the identity card issued to him or her under subsection 11 (2) for inspection by that person, and if he or she fails to do so—
- (a) where the conservation officer has entered land or premises—he or she is not authorized to remain on the land or premises;
  - (b) where the conservation officer has stopped a vehicle or vessel—he or she is not authorized to search the vehicle or vessel; and
  - (c) where the conservation officer has required a person to take the action referred to in subparagraph (3) (b) (ii)—that person is not obliged to comply with the requirement.
- (5)** A person shall not, without reasonable excuse—
- (a) obstruct or hinder a conservation officer in the exercise of his or her powers under this section; or
  - (b) except where paragraph (4) (c) applies—contravene a requirement made by a conservation officer under this section.

Penalty for contravention of subsection (5): \$2,000 or imprisonment for 12 months, or both.

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

**78. (1)** A conservation officer—

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

**(2)** Where a conservation officer makes a requirement of a person under subsection (1), the conservation officer shall produce the identity card issued to him or her under subsection 11 (2) for inspection by that person and, if he or she fails to do so, that other person is not obliged to comply with the requirement.

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

Penalty for contravention of subsection (3): \$500.

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

**78A. (1)** Where—

- (a) a person is found by a conservation officer to be in possession of a bird that is wildlife, not being—
  - (i) a bird that is on premises occupied by the person; or
  - (ii) an exempt animal;
- (b) the conservation officer suspects on reasonable grounds that the bird is in the possession of the person in contravention of this Act;
- (c) the person does not, upon being requested to do so by the conservation officer, produce for inspection by the conservation officer a permit or licence indicating that the person is entitled to have the bird in his or her possession; and
- (d) the conservation officer believes on reasonable grounds that—
  - (i) the bird is suffering pain or is in a state of distress; or

- (ii) the keeping of the bird in captivity, or in captivity of the kind in which it is being kept by the person, is likely to endanger the life of, or cause distress or otherwise be harmful to, the bird;

the conservation officer may, subject to subsection (2), seize the bird and, if the conservation officer believes on reasonable grounds that the welfare of the bird can be best provided for by releasing the bird from captivity, he or she may release it.

(2) A conservation officer is not entitled to seize a bird under subsection (1) if, on the request of the person in whose possession the bird is found, the conservation officer fails to produce, for inspection by that person, the identity card issued to the conservation officer under subsection 11 (2).

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

**79. (1)** In this section—

“animal” includes a live fish;

“plant” means a plant that is wildlife.

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

(3) Where—

- (a) an animal, plant, substance or thing is seized under subsection (2); and
- (b) a prosecution for an offence against this Act relating to the animal, plant, substance or thing is not instituted within 60 days of the seizure,

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

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

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

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

(5) Where, in proceedings for an offence against this Act, the court finds the offence proved, the court may declare that any animal or plant the subject of

the offence, or any substance or thing used in or in connection with the commission of the offence, be forfeited to the Territory.

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

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

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

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

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

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

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

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

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

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

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

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

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

**Conduct of directors, servants and agents**

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

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

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

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

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

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

**(5)** Where—

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

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

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

- (a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for the intention, opinion, belief or purpose.

(7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, another Territory or a State.

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

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

### **Corporations—penalties**

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

### **Evidence**

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

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

is evidence of the matters so stated.

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

### **Manner of giving notices**

**82.** A document that is required or permitted by this Act to be given to a person may be so given by post at the address of the person last known to the person giving the document.

### **Annual report**

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

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

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

#### **Regulations**

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

- (a) providing for the imposition of fees to be charged in respect of access to reserved areas; and
- (b) prescribing penalties not exceeding \$500 for offences against the regulations.

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

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

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### **SCHEDULE 1**

Section 3

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

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**NOTE-continued****NOTE**

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

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

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

Table 1

**Table of Ordinances**

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

## Self-Government day 11 May 1989

Table 2

Table of Acts

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

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

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

**NOTE-continued****Table of Amendments**

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

Provision	How affected
S. 4 .....	rep. Act No. 44, 1993
S. 5 .....	am. C'wealth Act No. 74, 1981; No. 38, 1989; Act No. 4, 1989; No. 118, 1991; No. 56, 1994
S. 6 .....	am. Act No. 74, 1993
Heading to Part 1A .....	ad. Act No. 56, 1994
Heading to Div. 1 of Part 1A	ad. Act No. 56, 1994
Ss. 7-9 .....	am. Act No. 56, 1994
S. 10 .....	am. C'wealth Act No. 74, 1981; Act No. 56, 1994
Ss. 11, 12.....	am. Act No. 56, 1994
S. 13 .....	am. No. 22, 1982; Act No. 56, 1994
S. 14 .....	am. Act No. 56, 1994
S. 15 .....	am. Act No. 118, 1991; No. 56, 1994
Div. 2 of Part 1A (ss. 15A-15R)	ad. Act No. 56, 1994
Ss. 15A-15R .....	ad. Act No. 56, 1994
Part II (ss. 16-24) .....	rep. C'wealth Act No. 74, 1981
Part II (ss. 15S-15Z) .....	ad. Act No. 56, 1994
Ss. 15S-15Z.....	ad. Act No. 56, 1994
Heading to Div. 2 of Part II	ad. Act No. 56, 1994
S. 16 .....	rep. C'wealth Act No. 74, 1981 ad. Act No. 4, 1989 am. No. 56, 1994
S. 17 .....	rep. C'wealth Act No. 74, 1981 ad. Act No. 4, 1989
Div. 3 of Part II (ss. 18-22)	ad. Act No. 56, 1994
S. 18 .....	rep. C'wealth Act No. 74, 1981 ad. Act No. 4, 1989 rs. No. 56, 1994
Ss. 19-22 .....	ad. Act No. 56, 1994
Div. 4 of Part II (ss. 23, 23A-23D)	ad. Act No. 56, 1994
S. 23 .....	ad. Act No. 56, 1994
Ss. 23A-23D .....	ad. Act No. 56, 1994
Div. 5 of Part II (s. 23E) .....	ad. Act No. 56, 1994
S. 23E .....	ad. Act No. 56, 1994
Ss. 19-23 .....	rep. C'wealth Act No. 74, 1981
S. 24 .....	rep. C'wealth Act No. 74, 1981
Heading to Part III .....	am. Act No. 4, 1989
Heading to Div. 1 of Part III	rep. Act No. 4, 1989
S. 24 .....	ad. Act No. 4, 1989
Ss. 25, 26.....	am. Act No. 4, 1989
S. 27 .....	am. No. 22, 1982; Act No. 4, 1989
Ss. 28-30 .....	am. Act No. 4, 1989

**NOTE-continued****Table of Amendments-continued**

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

Provision	How affected
Div. 2 of Part III (ss. 31-34)	rep. Act No. 4, 1989
Ss. 31-34 .....	rep. Act No. 4, 1989
Heading to Div. 3 of Part III	rep. Act No. 4, 1989
S. 35 .....	rep. Act No. 4, 1989
Ss. 36-39 .....	am. Act No. 4, 1989
S. 41 .....	am. No. 22, 1982 rep. Act No. 4, 1989
S. 42 .....	am. No. 38, 1989; Act No. 4, 1989
S. 43 .....	am. No. 72, 1984; No. 67, 1985; No. 38, 1989; Act No. 4, 1989; No. 74, 1993
Ss. 44, 45.....	am. Act No. 4, 1989
S. 45A.....	ad. Act No. 4, 1989
S. 46 .....	am. No. 38, 1989; Act No. 4, 1989; No. 56, 1994
S. 47 .....	am. Act No. 4, 1989
Ss. 48, 49.....	am. No. 22, 1982; Act No. 4, 1989
S. 50 .....	am. Act No. 4, 1989
Heading to Part VI .....	am. Act No. 118, 1991
Heading to Div. 1 of Part VI	ad. No. 65, 1986
Div. 1 of Part VI (ss. 51, 52, 52B-52J)	rep. Act No. 118, 1991
S. 51 .....	am. No. 1, 1987; No. 38, 1989 rep. Act No. 118, 1991
S. 52 .....	am. No. 22, 1982; No. 1, 1987; No. 38, 1989 rep. Act No. 118, 1991
S. 52A.....	ad. No. 65, 1986 rep. No. 38, 1989
Ss. 52B .....	ad. No. 65, 1986 rep. Act No. 118, 1991
S. 52C.....	ad. No. 65, 1986 am. No. 88, 1988; Act No. 60, 1990 rep. Act No. 118, 1991
S. 52D.....	ad. No. 65, 1986 rep. Act No. 118, 1991
S. 52E.....	ad. No. 65, 1986 rs. No. 1, 1987 rep. Act No. 118, 1991
Ss. 52F-52H.....	ad. No. 65, 1986 rs. No. 1, 1987 am. No. 38, 1989 rep. Act No. 118, 1991
S. 52I .....	ad. No. 1, 1987 rep. Act No. 118, 1991

**NOTE-continued****Table of Amendments-continued**

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

Provision	How affected
S. 52J.....	ad. No. 65, 1986 rep. Act No. 118, 1991
Heading to Div. 2 of Part VI	ad. No. 65, 1986
S. 53 .....	am. No. 22, 1982; Act No. 4, 1989
Ss. 54, 55.....	am. Act No. 4, 1989
S. 56 .....	am. Act No. 4, 1989; No. 118, 1991
Ss. 57, 58.....	am. Act No. 4, 1989
S. 59 .....	am. Act No. 4, 1989; No. 43, 1990; No. 118, 1991
S. 60 .....	am. No. 67, 1985; No. 38, 1989; Act No. 118, 1991
S. 60A.....	ad. Act No. 43, 1990 am. No. 118, 1991
S. 61 .....	am. No. 38, 1989; Act No. 4, 1989; No. 43, 1990; No. 118, 1991
S. 62 .....	am. Act No. 43, 1990; No. 118, 1991; No. 56, 1994
S. 62A.....	ad. Act No. 43, 1990 am. No. 118, 1991; No. 56, 1994
S. 63 .....	am. No. 43, 1983; No. 38, 1989; Act No. 118, 1991; No. 56, 1994
S. 63A.....	ad. Act No. 4, 1989 am. No. 56, 1994
S. 65 .....	am. Act No. 4, 1989; No. 43, 1990; No. 118, 1991
S. 66 .....	am. Act No. 4, 1989
S. 67 .....	am. No. 38, 1989
Ss. 70-73 .....	am. Act No. 4, 1989
S. 74 .....	am. No. 22, 1982; Act No. 56, 1994
S. 74A.....	ad. Act No. 4, 1989
S. 75 .....	am. No. 38, 1989; Act No. 56, 1994
S. 76 .....	am. Act No. 4, 1989
S. 76A.....	ad. No. 62, 1982 am. No. 31, 1988; Act No. 56, 1994
S. 77 .....	am. No. 22, 1982; Act No. 4, 1989
S. 78 .....	am. Act No. 4, 1989
S. 78A.....	ad. Act No. 4, 1989
S. 79 .....	am. No. 22, 1982; No. 38, 1989; Act No. 4, 1989
S. 80 .....	am. No. 67, 1985; No. 38, 1989
Ss. 80A, 80B.....	ad. Act No. 4, 1989
S. 83 .....	am. Act No. 56, 1994
S. 83A.....	ad. No. 43, 1983
S. 84 .....	am. No. 38, 1989; Act No. 4, 1989
Part X (s. 85).....	rep. Act No. 4, 1989
S. 85 .....	rep. Act No. 4, 1989
Schedule 2.....	am. No. 22, 1982 rep. Act No. 4, 1989
Schedules 3, 4.....	rep. Act No. 4, 1989

**NOTE-continued****Table of Amendments-continued**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted	
Provision	How affected
Schedules 5, 6 .....	rs. No. 22, 1982 rep. Act No. 4, 1989