



AUSTRALIAN CAPITAL TERRITORY

# Nature Conservation (Amendment) Act (No. 2) 1994

No. 110 of 1994

## TABLE OF PROVISIONS

Section	
1.	Short title
2.	Commencement
3.	Principal Act
4.	Interpretation
5.	Special protection status
6.	Declarations of protected and exempt flora and fauna
7.	Insertion— 26A. Drum nets
8.	Repeal
9.	Release of animals and fish from captivity
10.	Taking plants
11.	Preservation of native timber
12.	Dealing in protected native plants
13.	Insertion— PART IVA—PROHIBITED AND CONTROLLED ORGANISMS 45AA. Declarations 45AB. Possession of prohibited organisms 45AC. Controlled organisms
14.	Substitution— 47. Conservation directions
15.	Diseased native animals and plants

16. Substitution—
  50. Conservation criteria
17. Insertion—
  - 53A. Fees for entrance to reserved areas
18. Activities in reserved areas
19. Insertion—
  - PART VIA—MANAGEMENT AGREEMENTS
  - 60AA. Interpretation
  - 60AB. Management agreements
  - 60AC. Formulation of agreements
  - 60AD. Refusal to enter into management agreement
  - 60AE. Activities inconsistent with management agreement
20. Substitution—
  61. Application
  62. Grant of licence
  63. Conditions
  64. Licensing criteria
  65. Duration
  66. Surrender
21. Repeal
22. Cancellation
23. Substitution—
  74. Review of Conservator's decisions
24. Insertion—
  - PART VIIIA—ON-THE-SPOT FINES
  - 74AA. Interpretation
  - 74AB. Infringement notices
  - 74AC. Final infringement notices
  - 74AD. Discharge of liability for Schedule 2 offences
  - 74AE. Application for withdrawal of infringement notices
  - 74AF. Withdrawal of infringement notices
  - 74AG. Extension of time for pensioners
  - 74AH. Prosecution of Schedule 2 offences
  - 74AI. Non-antecedent value of infringement notice offences
  - 74AJ. Service of notices
  - 74AK. Evidence
25. Seizure and forfeiture of animals and plants
26. Release of animals—court orders
27. Addition
28. Further amendments
29. Savings

SCHEDULE 1

SCHEDULE 2



AUSTRALIAN CAPITAL TERRITORY

## **Nature Conservation (Amendment) Act (No. 2) 1994**

No. 110 of 1994

---

---

### **An Act to amend the *Nature Conservation Act 1980* and for related purposes**

*[Notified in ACT Gazette S289: 22 December 1994]*

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

#### **Short title**

**1.** This Act may be cited as the *Nature Conservation (Amendment) Act (No. 2) 1994*.

#### **Commencement**

**2. (1)** Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

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

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

**Principal Act**

3. In this Act, “Principal Act” means the *Nature Conservation Act 1980*.<sup>1</sup>

**Interpretation**

4. Section 5 of the Principal Act is amended—

- (a) by omitting “or fish” from the definition of “animal” and substituting “, fish or imported animal products”;
- (b) by omitting “63” from the definition of “licence” and substituting “62”;
- (c) by omitting “of wildlife” from the definition of “special protection status”;
- (d) by omitting “organisms that are wildlife (including fish and invertebrates that are indigenous to the Territory)” from the definition of “species” and substituting “native animals (including fish or invertebrates that are indigenous to the Territory) or native plants”;
- (e) by omitting “1 metre” from the definition of “tree seedling” and substituting “2 metres”;
- (f) by omitting the definitions of “permit”, “pick”, “restricted animal wildlife”, “restricted plant wildlife”, “timber” and “wildlife”; and
- (g) by inserting the following definitions:
  - “ ‘built-up area’ has the same meaning as in the *Bushfire Act 1936*;
  - ‘controlled organism’ means an organism specified in a declaration under subsection 45AA (2);
  - ‘determined fee’ means the fee determined under section 83A for the purposes of the provision in which the expression occurs;
  - ‘imported animal product’ means—
    - (a) a product—
      - (i) made or derived from any part of an animal, including the eggs, skin, feathers, horns or shell, or any part of the eggs, skin or shell;
      - (ii) lawfully processed, and obtained, outside the Territory; and

(iii) imported into the Territory; or

(b) a dead animal imported into the Territory;

‘native animal’ means—

(a) an animal of a kind indigenous to Australia;

(b) an animal of a kind indigenous to the Australian coastal sea or the sea-bed and sub-soil beneath that sea;

(c) an animal of a kind indigenous to the continental shelf of Australia or the superjacent waters;

(d) a migratory animal of a kind that periodically or occasionally visits Australia, the Australian coastal sea or the sea over the continental shelf of Australia; or

(e) an animal of a kind introduced into Australia, directly or indirectly, by Aboriginals before the year 1788;

other than a noxious animal;

‘native plant’ means—

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

(b) a plant of a kind indigenous to the Australian coastal sea or the sea-bed and sub-soil beneath that sea;

(c) a plant of a kind indigenous to the continental shelf of Australia or the superjacent waters; or

(d) a plant of a kind introduced into Australia, directly or indirectly, by Aboriginals before the year 1788;

other than a noxious weed;

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

(a) standing or fallen timber; and

(b) any material from such a tree;

but not including a tree seedling;

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

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

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

‘take’, in relation to a plant, includes—

- (a) gather, pluck, cut, pull up, dig up, remove or injure the plant; and
- (b) cause or permit the plant to be taken (within the extended meaning given by paragraph (a));”.

### **Special protection status**

5. Section 16 of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following subsections:

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

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

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

### **Declarations of protected and exempt flora and fauna**

6. Section 17 of the Principal Act is amended—

- (a) by omitting from subsection (1) “the members of a species of”;
- (b) by omitting from paragraph (1) (a) “invertebrate” and substituting “invertebrates of a particular kind”;
- (c) by omitting from paragraph (1) (b) “animal” and substituting “animals of a particular kind”;
- (d) by omitting paragraphs (1) (c) and (d) and substituting the following paragraphs:
  - “(c) native plants of a particular kind to be protected native plants; or

- (d) native animals of a particular kind to be protected native animals.”; and
- (e) by omitting from subsection (2) all the words after “take into” and substituting:
  - “consideration—
    - (a) the need to protect native animals and native plants generally in the Territory;
    - (b) the need to conserve the significant ecosystems of the Territory, New South Wales and Australia; and
    - (c) in relation to a declaration under paragraph (1) (a), (c) or (d)—the specialised welfare and security requirements of the animal, plant, fish or invertebrate.”.

### **Insertion**

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

#### **Drum nets**

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

Penalty: \$5,000.

“(2) In this section—

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

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

### **Repeal**

8. Sections 36, 37 and 38 of the Principal Act are repealed.

#### **Release of animals and fish from captivity**

9. Section 39 of the Principal Act is amended—

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

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



- (b) did not threaten the survival, abundance or evolution of any species of native animals.”;
- (i) by omitting from subsection (2) “and (1B)” and substituting “, (1B) and (1BA)”;
- (j) by omitting from paragraph (2) (a) “an animal that is wildlife, being an animal” and substituting “a native animal”.

### **Taking plants**

**10.** Section 42 of the Principal Act is amended—

- (a) by omitting from subsection (1) “a permit or licence, pick” and substituting “a licence, take”;
- (b) by omitting from paragraph (1) (b) “restricted plant wildlife” and substituting “a protected native plant”;
- (c) by omitting from paragraph (1) (c) “wildlife” and substituting “a native plant”;
- (d) by omitting subsection (2) and substituting the following subsection:
  - “(2) Subsection (1) does not apply where—
  - (a) an occupier of land not in a built-up area—
    - (i) cultivates a protected native plant on the land; or
    - (ii) takes seeds from a protected native plant growing on the land for the purposes of cultivating such a plant on the land;
  - (b) an occupier of land takes a protected native plant growing on the land which had been planted or caused to be planted by the occupier;
  - (c) a person takes seeds for domestic use from a native plant (other than a plant having special protection status or a protected native plant) growing on unleased land;
  - (d) an occupier of land in a built-up area takes a protected native plant growing on the land;
  - (e) an occupier of land outside any built-up area takes a protected native plant in the course of preparing or using the land for primary production in accordance with the lease or licence under which the land is occupied; or

- (f) a conservation officer or public servant takes a native plant in the performance of his or her functions.”;
- (e) by omitting subsection (3); and
- (f) by omitting subsection (5) and substituting the following subsection:
  - “(5) In this section—
    - ‘cultivates’, in relation to a native plant, means sowing its seeds, fertilising it, applying chemicals to it or trimming, lopping or digging it up—
      - (a) for a purpose reasonably beneficial to the plant, or to a protected native plant growing in close proximity; or
      - (b) for the purpose of its propagation;
  - ‘native plant’ does not include native timber;
  - ‘protected native plant’ does not include native timber.”.

### **Preservation of native timber**

**11.** Section 43 of the Principal Act is amended—

- (a) by omitting subsections (1), (2), (3) and (4) and substituting the following subsections:

“(1) A person shall not, without reasonable excuse—

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

except in accordance with a licence.

Penalty: \$5,000.

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

- (a) the timber was planted by or on behalf of an occupier and felled or damaged by or on behalf of that occupier or a subsequent occupier;
- (b) in the case of timber which is felled—in the opinion of the person responsible for the felling, based on reasonable grounds, the felling of the timber was necessary to avert an immediate danger of injury to a person or damage to property; or

- (c) the timber is felled or damaged with the intention of using it on the land for a purpose other than sale or trade.

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

Penalty: \$5,000.

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

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

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

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

- (b) by omitting from subsection (5) “of timber on land or the removal of timber from land”, substitute “or removal of native timber”; and
- (c) by omitting subsection (7) and substituting the following subsection:

“(7) In this section—

‘removal’ means—

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

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

**12.** Section 44 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “plant that is restricted plant wildlife;” and substituting “protected native plant; or”;
- (b) by omitting paragraphs (1) (b) and (c);
- (c) by omitting paragraph (1) (d) and substituting the following paragraph:

- “(b) import into the Territory, or export from the Territory, a protected native plant for the purposes of sale or trade.”; and
- (d) by omitting from subsection (2) “wildlife that is” and substituting “native”.

### **Insertion**

13. After Part IV of the Principal Act the following Part is inserted:

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

### **Declarations**

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

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

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

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

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

### **Possession of prohibited organisms**

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

Penalty: \$5,000.

### **Controlled organisms**

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

Penalty: \$5,000.”.

### **Substitution**

**14.** Sections 47 and 48 of the Principal Act are repealed and the following section is substituted:

#### **Conservation directions**

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

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

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

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

Penalty:

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

#### **Diseased native animals and plants**

**15.** Section 49 of the Principal Act is amended—

- (a) by omitting from paragraph (2) (a) “wildlife” and substituting “a native animal or a native plant”;
- (b) by omitting from subsection (2) “wildlife” (last occurring) and substituting “animal or plant”;
- (c) by inserting after subsection (2) the following subsection:

“(2A) The Conservator shall only issue a notice under subsection (2) in accordance with the criteria determined under section 50.”;
- (d) by omitting from paragraph (3) (b) “wildlife” and substituting “animal or plant”;
- (e) by omitting from paragraph (3) (b) “treatment received by it,” and substituting “treatment;”;
- (f) by omitting from subsection (3) “wildlife” (last occurring) and substituting “animal or plant”;

- (g) by omitting subsection (4) and substituting the following subsection:

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

- (a) enter the land or premises where the animal is kept; and
  - (b) seize the animal.”;
- (h) by omitting from subsection (5) “wildlife” (first occurring) and substituting “an animal”; and
- (i) by omitting from paragraphs (5) (a) and (b) “wildlife” and substituting “animal”.

### **Substitution**

**16.** Section 50 of the Principal Act is repealed and the following section substituted:

#### **Conservation criteria**

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

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

### **Insertion**

**17.** After section 53 of the Principal Act the following section is inserted:

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

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

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

Penalty: \$2,000.”.

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

**18.** Section 56 of the Principal Act is amended by inserting after subsection (3) the following subsection:

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

**Insertion**

19. After Part VI of the Principal Act the following Part is inserted:

**‘PART VIA—MANAGEMENT AGREEMENTS**

**Interpretation**

‘60AA. In this Part—

‘activities’ means—

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

‘agency’ means—

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

‘controlled land’ means—

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

‘development’, in relation to land, means—

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

‘Land Act’ means the *Land (Planning and Environment) Act 1991*;

‘land management objectives’ means—

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

‘management agreement’ means an agreement under section 60AB between the Conservator and an agency;

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

‘public land’ means land identified as such in the Territory Plan;

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

‘Territory Plan’ means the Territory Plan as in force from time to time under the Land Act.

### **Management agreements**

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

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

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

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

- (a) access to land;
- (b) fire management;



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

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

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

#### **Formulation of agreements**

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

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

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

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

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

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

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

- (a) the agency notifies the Conservator accordingly in writing; or

- (b) the agency does not return the agreement to the Conservator in accordance with subsection 60AC (3).

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

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

### **Substitution**

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

### **Application**

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

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

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

### **Grant of licence**

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

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

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

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

### **Conditions**

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

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

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

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

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

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

### **Licensing criteria**

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

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

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

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

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

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

**Duration**

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

**Surrender**

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

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

**Repeal**

**21.** Section 68 of the Principal Act is repealed.

**Cancellation**

**22.** Section 69 of the Principal Act is amended—

- (a) by omitting from subsection (1) “**(1)**”;
- (b) by omitting from subsection (1) “permit” (first occurring) and substituting “licence”;
- (c) by omitting from paragraph (1) (a) “holder of the permit” and substituting “licensee”;
- (d) by omitting paragraph (1) (b) and substituting the following paragraph:
  - “(b) the licensee fails to comply with a licence condition; or”;
- (e) by omitting from paragraph (1) (c) “permit” (wherever occurring) and substituting “licence”; and
- (f) by omitting subsection (2).

**Substitution**

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

**Review of Conservator’s decisions**

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

- (a) giving a direction under section 47;
- (b) restricting or prohibiting access to a reserved area or part of a reserved area under section 53;

- (c) refusing to grant consent under subsection 56 (1), (2) or (3) or 57 (1);
- (d) granting a licence under paragraph 62 (1) (a);
- (e) refusing to grant a licence under paragraph 62 (1) (b);
- (f) granting a licence subject to any condition under paragraph 62 (2) (a);
- (g) granting a licence for a particular duration under paragraph 62 (2) (b);
- (h) varying a licence condition under subsection 63 (4); or
- (i) cancelling a licence under section 69.”.

### **Insertion**

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

## **“PART VIIIA—ON-THE-SPOT FINES**

### **Interpretation**

“74AA. In this Part—

‘final infringement notice’ means a notice under section 74AC;

‘infringement notice’ means a notice under section 74AB;

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

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

‘relevant amount’ means—

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

‘relevant period for payment’ means—

- (a) in relation to an infringement notice—28 days after the date of the notice;

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

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

### **Infringement notices**

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

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

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

- (j) include a statement about the procedures for the withdrawal of the notice under this Part; and
- (k) be dated and signed by the conservation officer who serves the notice.

### **Final infringement notices**

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

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

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

- (a) identify the conservation officer who serves the notice;
- (b) state the full name, or surname and initials, and address of the person on whom it is served;
- (c) specify the nature of the alleged offence and the amount of the on-the-spot fine;
- (d) specify the day, time and place of the alleged commission of the offence;
- (e) specify the date of the relevant infringement notice, and include a statement to the effect that the person has not paid the on-the-spot fine for the alleged offence to which the notice relates;
- (f) include a statement to the effect that if the person on whom the notice is served does not wish the offence to be prosecuted in court, the person may pay the on-the-spot fine, in addition to the determined fee, to the Conservator within—

- (i) 14 days after the date of the notice; or
- (ii) such extended period as is allowed under this Part;
- (g) specify the place at which, and the manner in which, the fine and the fee may be paid;
- (h) include a statement of the possible consequences if the offence were to be prosecuted in court, including the maximum penalty applicable;
- (j) include a statement about the procedures for obtaining an extension of time under this Part;
- (k) include a statement about the procedures for the withdrawal of the notice under this Part; and
- (m) be dated and signed by the conservation officer who serves the notice.

#### **Discharge of liability for Schedule 2 offences**

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

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

“(2) Where this section applies—

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

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

#### **Application for withdrawal of infringement notices**

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

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



### **Withdrawal of infringement notices**

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

- (a) the applicant did not commit the offence;
- (b) the applicant had a reasonable excuse for committing the act constituting the offence;
- (c) it would be unreasonable in the circumstances to prosecute the applicant for the commission of the offence.

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

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

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

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

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

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

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

**Extension of time for pensioners**

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

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

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

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

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

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

“(6) In this section—

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

**Prosecution of Schedule 2 offences**

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

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

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

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

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

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

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

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

“(2) In subsection (1)—

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

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

#### **Service of notices**

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

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

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

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

### **Evidence**

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

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

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

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

25. Section 79 of the Principal Act is amended—

- (a) by omitting from the definition of “plant” in subsection (1) “plant that is wildlife” and substituting “native plant”; and
- (b) by omitting from paragraph (3) (b) “60 days” and substituting “6 months”.

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

26. Section 80 of the Principal Act is amended by inserting after subsection (2) the following subsection:

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

### **Addition**

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

### **Further amendments**

**28. (1)** The Principal Act is amended as set out in Part I of Schedule 2.

**(2)** The Nature Conservation Regulations are amended as set out in Part II of Schedule 2.

**(3)** The Acts specified in Part III of Schedule 2 are amended as set out in that Part.

### **Savings**

**29. (1)** A declaration under section 16 or 17 of the Principal Act, or a permit or licence under Part VII of the Principal Act, in force immediately before the commencement date, continues in force on and after that date notwithstanding the amendments to the Principal Act effected by this Act.

**(2)** The Principal Act as in force immediately before the commencement date continues to apply in relation to a declaration, permit or licence referred to in subsection (1) notwithstanding the amendments to the Principal Act effected by this Act.

**(3)** In this section—

“commencement date”, in relation to an amendment to the Principal Act, means the date of commencement of the amendment.

---

**SCHEDULE 1**

Section 27

**SCHEDULE 2**

Section 74AA

**ON-THE-SPOT FINES**

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

## SCHEDULE 1—continued

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

## SCHEDULE 2

Section 28

### FURTHER AMENDMENTS

#### PART I—AMENDMENT OF THE NATURE CONSERVATION ACT 1980

**Long title—**

Omit “wildlife”, substitute “native animals and native plants”.

**Subsections 24 (1) and (2)—**

Omit “permit, interfere with a nest of an animal that is wildlife”, substitute “licence, interfere with a nest of a native animal”.

**Subsection 24 (5) (definition of “nest”)—**

Omit “an animal that is wildlife”, substitute “a native animal”.

**Subsection 25 (1)—**

Omit “permit, kill an animal that is wildlife”, substitute “licence, kill a native animal”.

**Subsection 26 (1)—**

Omit “permit or licence, take an animal that is wildlife”, substitute “licence, take a native animal”.

**Subsections 27 (1), 28 (1), 29 (1) and 30 (1)—**

Omit “permit or”.

**Section 40—**

Omit “an animal, being an animal that is wildlife, in the possession of a person escapes”, substitute “a native animal escapes from custody”.

**Paragraph 40 (b)—**

Omit “permit or”.

**Subsection 45 (1)—**

Omit “plant that is restricted plant wildlife, or” and substituting “protected native plant, or a plant”.



**SCHEDULE 2**—continued

**Heading to Part V—**

Omit the heading, substitute the following heading:

**“PART V—CONSERVATION DIRECTIONS”.**

**Section 45A (definition of “wildlife”)—**

Omit the definition.

**Section 45A—**

Insert the following definition:

“ ‘native animal’ includes any live fish.”.

**Subsection 46 (1)—**

(a) Omit “wildlife” (first occurring), substitute “native animals or native plants”.

(b) Omit “that wildlife” (last occurring), substitute “those animals or plants”.

**Paragraph 46 (2) (b)—**

Omit the paragraph, substitute the following paragraph:

“(b) he or she has, not less than 24 hours before entering the land, given the occupier written notice of intention to enter the land.”.

**Paragraph 57 (1) (a)—**

Omit “that is not wildlife”, substitute “other than a native animal”.

**Paragraph 58 (1) (b)—**

Omit all the words after “hold”, substitute “an authority under this Act to produce the authority or evidence of the authority”.

**Subsection 58 (4)—**

Omit all the words from and including “a licence” to and including “permit” (last occurring), substitute “an authority or evidence of an authority for the doing of an act if the authority”.

**Section 58—**

Add at the end the following subsection:

“(5) In this section—

‘authority’ includes a licence.”.

**SCHEDULE 2**—continued**Paragraph 59 (a)**—

Omit “permit”, substitute “licence”.

**Subsection 60A (1)**—

Omit “permit”, substitute “licence”.

**Heading to Part VII**—

Omit “**PERMITS AND**”.

**Section 67**—

Omit “permit or licence does not authorize the holder of the permit or licence”, substitute “licence does not authorise the licensee”.

**Section 70**—

(a) Omit “The holder of a permit or licence”, substitute “A licensee”.

(b) Omit “permit or licence, as the case requires,”, substitute “licence”.

**Section 70 (penalty provision, paragraph (a))**—

Omit “permit or”.

**Section 71**—

Repeal the section.

**Subsection 72 (3)**—

Omit “plants that are wildlife”, substitute “native plants”.

**Section 73**—

Omit “71 or”.

**Subsection 74A (1)**—

Omit “subsection 74 (1) or (2), as the case requires”, substitute “section 74”.

**Subsections 75 (1) and (2)**—

Omit the subsections, substitute the following subsection:

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

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

**SCHEDULE 2**—continued

(c) native timber;

taken or removed in accordance with the licence.”.

**Paragraph 75 (3) (b)**—

Omit all the words after “received by the”, substitute “licensee for the sale or disposal”.

**Subsection 75 (4)**—

Omit all the words from and including “In relation” to and including “depending on”, substitute “Different rates of royalty may be prescribed in relation to native timber depending on”.

**Paragraph 75 (4) (a)**—

Omit “to which the licence applies”.

**Paragraph 75 (4) (b)**—

Omit “to which the licence applies”, substitute “from which the timber was taken”.

**Subparagraph 75 (4) (b) (i)**—

Omit “land”.

**Subparagraph 75 (4) (b) (ii)**—

Omit “land that is”.

**Subsection 75 (5)**—

Omit “wildlife or timber” (first occurring), substitute “animals, plants or timber”.

**Paragraph 75 (5) (a)**—

Omit “of wildlife or timber”.

**Section 76**—

Insert “45AB, 45AC,” after “43,”.

**Subsection 77 (1) (definition of “animal”, paragraph (a))**—

Omit “and”, substitute “or”.

**Subsection 77 (1) (definition of “plant”)**—

Omit “plant that is wildlife”, substitute “native plant”.

**SCHEDULE 2**—continued**Subsection 77 (2)**—

Omit “permit or”.

**Paragraph 78A (1) (a)**—

Omit “wildlife”, substitute “a native animal”.

**Paragraph 78A (1) (c)**—

Omit “permit or licence indicating that”, substitute “licence in accordance with which”.

**Paragraphs 81 (1) (a) and (b)**—

Omit “permit or”.

**Section 82**—

Repeal the section.

**PART II—AMENDMENT OF THE  
NATURE CONSERVATION REGULATIONS****Subregulation 3 (1)**—

Omit all the words from and including “section 71” to and including “kept by him are”, substitute “subsection 72 (1) of the Act, the holder of a licence relating to animals who keeps an animal, other than an exempt animal, shall keep the following records in respect of the animals kept by him or her”.

**Subparagraph 3 (c) (ii)**—

Omit “and”.

**Regulation 4**—

After “him” (first occurring) insert “or her”.

**Paragraph 4 (c)**—

Omit “authorizing him to sell”, substitute “authorising the sale of”.

**Regulation 5**—

Omit “authorizing him to sell or export from the Territory plants that are wildlife”, substitute “authorising the sale or export from the Territory of native plants”.

**SCHEDULE 2**—continued

**PART III—AMENDMENT OF OTHER ACTS**

***Animal Welfare Act 1992***

**Section 4 (definition of “feral animal”)—**

Omit “wildlife”, substitute “a native animal”.

**Section 4 (definition of “pest”)—**

Omit “, or wildlife”, substitute “or a native animal”.

**Section 4 (definition of “wildlife”)—**

Omit the definition.

**Section 4—**

Insert the following definition:

“ ‘native animal’ has the same meaning as in the *Nature Conservation Act 1980*.”

**Paragraph 12 (a)—**

Omit “, or to wildlife”, substitute “or to a native animal”.

**Paragraph 17 (3) (a)—**

Omit “wildlife”, substitute “native animals”.

**Subparagraph 19 (2) (b) (iii)—**

Omit “wildlife”, substitute “native animals”.

**Paragraph 21 (n)—**

Omit “wildlife”, substitute “native animals”.

***Dog Control Act 1975***

**Subsection 5 (1) (definition of “wildlife”)—**

Omit the definition.

**Subsection 5 (1)—**

Insert the following definition:

“ ‘native animal’ has the same meaning as in the *Nature Conservation Act 1980*.”

**Paragraph 40 (1) (c)—**

Omit “an animal that is”.

**SCHEDULE 2**—continued**Further amendments—**

The following provisions are amended by omitting “wildlife” and substituting “a native animal”:

Paragraph 25 (1) (d), subsections 28 (2) and (5) and 34 (2) and paragraph 40 (1) (c).

---

**NOTE**

1. Reprinted as at 31 January 1994. See also Acts Nos. 56 and 60, 1994.

**NOTE ABOUT SECTION HEADINGS**

On the day on which section 4 of this Act commences, headings to sections of the Principal Act are altered as set out below in the following table:

Section	Alteration
24	Omit “ <b>wildlife</b> ”, substitute “ <b>native animals</b> ”.
67	Omit “ <b>permits and</b> ”.
70	Omit “ <b>permits and</b> ”.

*[Presentation speech made in Assembly on 10 November 1994]*

© Australian Capital Territory 1994