



Australian Capital Territory

# Nature Conservation Act 2014

A2014-59

**Republication No 19**

**Effective: 21 December 2018 – 8 August 2019**

Republication date: 21 December 2018

Last amendment made by [A2018-42](#)  
(republication for amendments by [A2018-32](#))

## About this republication

### The republished law

This is a republication of the *Nature Conservation Act 2014* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 21 December 2018. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 21 December 2018.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$160 for an individual and \$810 for a corporation (see *Legislation Act 2001*, s 133).



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Australian Capital Territory

## Nature Conservation Act 2014

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

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## Chapter 1      Preliminary

### Part 1.1      Introduction

#### 1      Name of Act

This Act is the *Nature Conservation Act 2014*.

#### 3      Dictionary

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

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

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

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

#### 4      Notes

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

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

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

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

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

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

*Note 2 Penalty units*

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

## 6 Objects of Act

- (1) The main object of this Act is to protect, conserve and enhance the biodiversity of the ACT.
- (2) This is to be achieved particularly by—
  - (a) protecting, conserving, enhancing, restoring and improving nature conservation, including—
    - (i) native species of animals and plants and their habitats; and
    - (ii) ecological communities; and
    - (iii) biological diversity at the community, species and genetic levels; and
    - (iv) ecosystems, and ecosystem processes and functions; and

**Examples—processes and functions**

- 1 decomposition and production of plant matter
- 2 energy and nutrient exchanges

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

- (v) ecological connectivity; and

**Example—connectivity**

the movement of organisms from one place to another

- (vi) landforms of natural significance, including geological and geomorphological features and processes; and
- (vii) landscapes of natural significance; and
- (b) promoting and supporting the management, maintenance and enhancement of biodiversity of local, regional and national significance; and
- (c) promoting the involvement of, and cooperation between, Aboriginal and Torres Strait Islander people, landholders, other community members and governments in conserving, protecting, enhancing, restoring and improving biodiversity; and
- (d) encouraging public appreciation, understanding and enjoyment of biodiversity; and
- (e) recognising and promoting Aboriginal and Torres Strait Islander peoples' role in, and knowledge of, the conservation and ecologically sustainable use of biodiversity; and
- (f) recognising the significant stewardship role that landholders have in managing the natural assets on their land; and
- (g) ensuring that members of the public have—
  - (i) access to reliable and relevant information in appropriate forms to facilitate a good understanding of nature conservation issues; and
  - (ii) opportunities to participate in policy development, nature conservation planning and conservation work; and

**Example**

ACT ParkCare



- (h) promoting the principles of ecologically sustainable development.
- (3) In exercising a function under this Act, the Minister must have regard to the objects of this Act.
- (4) In this section:

*ecologically sustainable development* means the effective integration of economic and environmental considerations in decision-making processes achievable through implementation of the following:

- (a) the precautionary principle;
- (b) the inter-generational equity principle;
- (c) conservation of biological diversity and ecological integrity;
- (d) improved valuation and pricing of environmental resources.

*inter-generational equity principle* means that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

*precautionary principle* means that, if there is a threat of serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

## Part 1.2 Relationship to other laws

### 7 Application of Act to Emergencies Act 2004

- (1) This Act does not apply to the exercise or purported exercise by a relevant person of a function under the *Emergencies Act 2004* for the purpose of—
  - (a) protecting life or property; or
  - (b) controlling, extinguishing or preventing the spread of a fire.
- (2) In this section:  
*relevant person* means—
  - (a) a member of the ambulance service; or
  - (b) a member of the fire and rescue service; or
  - (c) a member of the rural fire service; or
  - (d) a member of the SES; or
  - (e) any other person under the control of—
    - (i) the chief officer (ambulance service); or
    - (ii) the chief officer (fire and rescue service); or
    - (iii) the chief officer (rural fire service); or
    - (iv) the chief officer (SES); or
  - (f) a police officer.

### 8 Relationship to environment laws

- (1) This Act must be construed and administered in a way that is consistent with an environment law unless the contrary intention appears from this Act or that law.
- (2) This Act is taken to be consistent with an environment law to the extent that it is capable of operating concurrently with that law.

(3) In this section:

*environment law* means—

- (a) the *Environment Protection Act 1997*; and
- (b) the *Fisheries Act 2000*; and
- (c) the *Water Resources Act 2007*; and
- (d) any other law of the Territory that has as 1 of its objects or purposes the protection of the environment.

## Part 1.3 Important concepts

### 9 What is *nature*?

In this Act:

*nature* means all aspects of nature including—

- (a) ecosystems and their constituent parts; and
- (b) all natural and physical resources; and
- (c) natural dynamic processes; and
- (d) the characteristics of places, however large or small, that contribute to their—
  - (i) biological diversity and integrity; or
  - (ii) intrinsic or scientific value.

### 10 What is *conservation*?

In this Act:

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

### 11 What is an *animal*?

In this Act:

*animal*—

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

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

**Examples**

skin, feathers, horns, shell, egg yolk

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

- (ii) animal reproductive material; but
- (c) does not include—

- (i) a human; or
- (ii) a fish unless the fish—
- (A) has special protection status; or

*Note* **Special protection status**—see s 109.

- (B) is a protected native species; or

*Note* **Protected native species**—see s 110.

- (iii) an invertebrate unless the invertebrate—
- (A) has special protection status; or
- (B) is a protected native species.

## 12 What is a *native animal*?

In this Act:

*native animal*—

- (a) means an animal of a native species; but
- (b) does not include a pest animal.

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

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

In this Act:

***plant***—

- (a) means a member, alive or dead, of the—
  - (i) plant kingdom; or
  - (ii) fungus kingdom; and
- (b) includes—
  - (i) a part of a plant; and
  - (ii) plant reproductive material.

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

In this Act:

***native plant***—

- (a) means a plant of a native species; but
- (b) does not include a pest plant.

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

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

(1) In this Act:

***species***—

- (a) means a group of biological entities that—
  - (i) interbreed to produce fertile offspring; or
  - (ii) possess common characteristics derived from a common gene pool; and
- (b) includes—
  - (i) a subspecies; and

- (ii) a variety; and
  - (iii) a distinct population of biological entities prescribed by regulation to be a species.
- (2) In this section:

*subspecies* 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.

## 16 What is a *native species*?

In this Act:

*native species*—

- (a) means a species—
  - (i) that is indigenous to—
    - (A) Australia or an external Territory; or
    - (B) the coastal sea of Australia or an external Territory; or
    - (C) the seabed of the coastal sea of Australia or an external Territory; or
    - (D) the continental shelf; or
    - (E) the exclusive economic zone; or
  - (ii) members of which periodically or occasionally visit—
    - (A) Australia or an external Territory; or
    - (B) the coastal sea of Australia or an external Territory; or
    - (C) the exclusive economic zone; or

- (iii) that was present in Australia or an external Territory before 1400; and
- (b) includes a species prescribed by regulation to be a native species; but
- (c) does not include a species prescribed by regulation to not be a native species.

*Note* *Coastal sea*—see the dictionary.  
*Continental shelf*—see the dictionary.  
*Exclusive economic zone*—see the dictionary.  
*Seabed*—see the dictionary.

## 17 What is an *ecological community*?

In this Act:

*ecological community* means the extent in nature in the ACT of an assemblage of native species that—

- (a) inhabits a particular area in nature; and
- (b) satisfies the criteria prescribed by regulation (if any).

## 18 What is a *member of a species or ecological community*?

In this Act:

*member* includes—

- (a) for a species of animal—
  - (i) any part of an animal of the species; and
  - (ii) any animal reproductive material of an animal of the species, or any part of that reproductive material; and
- (iii) the whole or any part of the dead body of an animal of the species; and



- (b) for a species of plant—
  - (i) any part of a plant of the species; and
  - (ii) any plant reproductive material of a plant of the species, or any part of that reproductive material; and
  - (iii) the whole or any part of a plant of the species that has died; and
- (c) for an ecological community—
  - (i) any part of an animal or plant of the community; and
  - (ii) any animal reproductive material of an animal, or plant reproductive material of a plant, of the community, or any part of that animal reproductive material or plant reproductive material; and
  - (iii) the whole or any part of an animal or plant of the community that has died.

## **19**      **What is *biodiversity*?**

In this Act:

***biodiversity***—

- (a) means the variability among living organisms from all sources (including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part); and
- (b) includes diversity—
  - (i) within species and between species; and
  - (ii) of ecosystems.

## Chapter 2 Administration

### Part 2.1 Conservator of flora and fauna

#### 20 Conservator—appointment

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

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

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

- (2) However, the director-general may appoint a person as the conservator only if satisfied that the person has suitable qualifications and experience to exercise the functions of the conservator.
- (3) An appointment is a notifiable instrument.

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

#### 21 Conservator—functions

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

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

- (2) The conservator has any other function given to the conservator under this Act or another territory law.

- (3) In exercising a function, the conservator must ensure that it is exercised in a way that is consistent with implementing—
- (a) the objects of this Act; and  
*Note* The objects of this Act are set out in s 6.
  - (b) any conservator guidelines; and  
*Note* **Conservator guidelines**—see s 23.
  - (c) the nature conservation strategy for the ACT.  
*Note* **Nature conservation strategy**, for the ACT—see s 47.
- (4) In exercising a function, the conservator may have regard to any other relevant matter, including the following:
- (a) the findings of a biodiversity research and monitoring program;  
*Note* **Biodiversity research and monitoring program**—see s 24.
  - (b) an action plan for a species, ecological community or process;  
*Note* **Action plan**—see s 99.
  - (c) a reserve management plan for a reserve;  
*Note* **Reserve management plan**, for a reserve—see s 175.
  - (d) any response of the government to—
    - (i) a state of the environment report under the *Commissioner for Sustainability and the Environment Act 1993*, section 19 (3) (State of the environment report); or
    - (ii) a special report under the *Commissioner for Sustainability and the Environment Act 1993*, section 21 (2) (Special reports);

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

**Example**

kangaroo management plan

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

- (5) In this section:

*state of the environment report* means a state of the environment report under the [Commissioner for Sustainability and the Environment Act 1993](#).

## 22 Conservator—delegation

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

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

## 23 Conservator—guidelines

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

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

- (2) In preparing the conservator guidelines, the conservator must consult the scientific committee.
- (3) A conservator guideline is a notifiable instrument.

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

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

In this part:

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

- (a) state of nature conservation generally in the ACT; and
- (b) effective management of nature conservation in the ACT.

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

- (1) The conservator must, every 2 years, prepare a biodiversity research and monitoring program for the next 2 years.
- (2) In preparing the biodiversity research and monitoring program, the conservator must—
  - (a) consult the scientific committee about—
    - (i) priorities for the program; and
    - (ii) appropriate methods for monitoring; and
  - (b) consider the potential for engaging community organisations in monitoring activities; and

**Example**

using volunteers with Frogwatch to assist in surveying frog numbers

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

- (c) consider arrangements for sharing and transferring monitoring data with other entities.
- (3) The biodiversity research and monitoring program is a notifiable instrument.

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

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

- (1) The conservator—
  - (a) must take reasonable steps to implement the biodiversity research and monitoring program; and
  - (b) may commission another entity to implement all or part of the program.
- (2) The conservator must at the end of each biodiversity research and monitoring program—
  - (a) prepare a report on the implementation of the program (a *biodiversity research and monitoring program report*); and
  - (b) make the report publicly accessible as soon as possible, but not later than 3 months, after the end of the program.

**Example—publicly accessible**

published on the directorate website

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

- (3) However, if the conservator considers that a plant or animal could be threatened by the disclosure of a particular detail in a finding, the conservator—
  - (a) need not include the particular detail; but
  - (b) must instead include a general statement of the finding.

## Part 2.2 ACT parks and conservation service

### 27 ACT parks and conservation service—establishment

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

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

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

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

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

- (a) the conservator in the exercise of the conservator's functions;  
and
- (b) for unleased land, or public land, that is a reserve—the custodian for the land in the exercise of the custodian's functions.

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

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

## Part 2.3 Conservation officers

### 28 Conservation officers—appointment

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

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

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

- (2) The conservator is a conservation officer.

### 29 Conservation officers—identity cards

- (1) The director-general must give a conservation officer an identity card stating the person's name and that the person is a conservation officer.
- (2) The identity card must show—
  - (a) a recent photograph of the conservation officer; and
  - (b) the card's date of issue and expiry; and
  - (c) anything else prescribed by regulation.
- (3) A person commits an offence if the person—
  - (a) stops being a conservation officer; and
  - (b) does not return the person's identity card to the director-general as soon as practicable (but not later than 7 days) after the day the person stops being a conservation officer.

Maximum penalty: 1 penalty unit.

- (4) Subsection (3) does not apply to a person if the person's identity card has been—
  - (a) lost or stolen; or



(b) destroyed by someone else.

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

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

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

## Part 2.4 Scientific committee

### 31 Scientific committee—establishment

The scientific committee is established.

### 32 Scientific committee—functions

The scientific committee has the following functions:

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

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

### 33 Scientific committee—annual report

- (1) The scientific committee must, each financial year, give the Minister a report (an *annual report*) about the activities of the committee during the year.
- (2) The scientific committee must make the annual report publicly accessible not later than 30 days after the day the scientific committee gives the report to the Minister.

#### **Example—publicly accessible**

published on the directorate website

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

### **34 Scientific committee—Minister's directions**

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

### **35 Scientific committee—membership**

The scientific committee is made up of 7 members appointed by the Minister under section 36.

### **36 Scientific committee—appointment of members**

- (1) The Minister must appoint 7 members to the scientific committee.

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

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

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see [Legislation Act](#), div 19.3.3).
- (2) The Minister must ensure that at least 4 members of the committee are not public servants.
- (3) The Minister must not appoint a person to the committee unless satisfied that the person has appropriate scientific expertise in biology, ecology, conservation science, or conservation management.

- (4) A member holds office as a part-time member.
- (5) The appointment of a member is for not longer than 3 years.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see [Legislation Act](#), s 208 and dict, pt 1, def *appoint*).

- (6) The conditions of appointment of a member under this section are the conditions stated in the appointment, subject to any determination under the [Remuneration Tribunal Act 1995](#).
- (7) An appointment is a disallowable instrument.

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

### **37 Scientific committee—chair and deputy chair**

- (1) The Minister must appoint a chair and deputy chair of the scientific committee from the members appointed under section 36.
- (2) However, the chair and deputy chair must not be public servants.

### **38 Scientific committee—secretary**

The director-general must nominate a public servant who is not a member appointed under section 36 to be the secretary of the scientific committee.

### **39 Scientific committee—ending appointments**

The Minister may end the appointment of a member—

- (a) for misbehaviour; or
- (b) if the member, without reasonable excuse, contravenes section 40; or
- (c) if the member is absent from 3 consecutive meetings of the scientific committee, other than on approved leave; or

- (d) for physical or mental incapacity, if the incapacity substantially affects the exercise of the member's functions.

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

#### 40 Scientific committee—disclosure of interests

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

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

- (2) The disclosure must be recorded in the committee's minutes and, unless the committee otherwise decides, the member must not—
- (a) be present when the committee considers the issue; or
  - (b) take part in a decision of the committee on the issue.
- (3) Any other committee member who also has a material interest in the issue must not be present when the committee is considering its decision under subsection (2).
- (4) In this section:
- associate**, of a person, means—
    - (a) the person's business partner; or
    - (b) a close friend of the person; or
    - (c) a family member of the person.

**executive officer**, of a corporation, means a person (however described) who is concerned with, or takes part in, the corporation's management, whether or not the person is a director of the corporation.

***indirect interest***—without limiting the kinds of indirect interests a person may have, a person has an ***indirect interest*** in an issue if any of the following has an interest in the issue:

- (a) an associate of the person;
- (b) a corporation if the corporation has not more than 100 members and the person, or an associate of the person, is a member of the corporation;
- (c) a subsidiary of a corporation mentioned in paragraph (b);
- (d) a corporation if the person, or an associate of the person, is an executive officer of the corporation;
- (e) the trustee of a trust if the person, or an associate of the person, is a beneficiary of the trust;
- (f) a member of a firm or partnership if the person, or an associate of the person, is a member of the firm or partnership;
- (g) someone else carrying on a business if the person, or an associate of the person, has a direct or indirect right to participate in the profits of the business.

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

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

**41 Scientific committee—meetings**

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

**42 Scientific committee—presiding member at meetings**

- (1) The chair presides at all meetings at which the chair is present.
- (2) If the chair is absent, the deputy chair presides.
- (3) If the chair and the deputy chair are absent, the member chosen by the members present presides.

**43 Scientific committee—quorum at meetings**

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

**44 Scientific committee—voting at meetings**

- (1) At a meeting of the scientific committee, each member has a vote on each question to be decided.
- (2) A question is decided by a majority of the votes of the members present and voting but, if the votes are equal, the member presiding has the deciding vote.

**45 Scientific committee—conduct of meetings**

- (1) The scientific committee may conduct its proceedings (including its meetings) as it considers appropriate.
- (2) The scientific committee must keep minutes of its meetings.



## **Part 2.5**                      **Advisory committees**

### **46**                      **Advisory committees**

- (1) The Minister may set up advisory committees that the Minister considers necessary.
- (2) An advisory committee may decide how to exercise its functions.
- (3) However, an advisory committee is subject to the direction of the Minister in the exercise of its functions.

## Chapter 3 Nature conservation strategy for the ACT

### 47 What is the *nature conservation strategy* for the ACT?

In this Act:

*nature conservation strategy*, for the ACT, means a strategy for the ACT, notified under section 54 (Draft strategy—Minister’s approval and notification).

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

### 48 What is a *draft nature conservation strategy*?—ch 3

In this chapter:

*draft nature conservation strategy*, for the ACT—

- (a) means a statement of—
  - (i) proposals about the protection, management and conservation of—
    - (A) native species indigenous to the ACT; and
    - (B) significant ecosystems of the ACT; and
  - (ii) strategies to address actual and potential impacts of climate change; and
- (b) includes anything required to be included by a conservator guideline.

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

**49 Draft nature conservation strategy—conservator to prepare**

- (1) The conservator must prepare a draft nature conservation strategy for the ACT.

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

- (2) In preparing the draft nature conservation strategy, the conservator must consider—
- (a) landscape scale approaches across tenures; and
  - (b) restoration of habitats; and
  - (c) landscape connectivity; and
  - (d) threats to biodiversity; and
  - (e) the impacts of climate change; and
  - (f) biodiversity research and monitoring program reports.

**50 Draft nature conservation strategy—consultation with entities**

In preparing a draft nature conservation strategy for the ACT, the conservator must consult—

- (a) the scientific committee; and
- (b) the commissioner for sustainability and the environment.

**51 Draft nature conservation strategy—public consultation**

- (1) If the conservator prepares a draft nature conservation strategy, the conservator must also prepare a notice about the draft nature conservation strategy (a *public consultation notice*).
- (2) A public consultation notice must—
  - (a) state that—
    - (i) anyone may give a written submission to the conservator about the draft nature conservation strategy; and
    - (ii) submissions may be given to the conservator only during the period starting on the day the public consultation notice is notified under the [Legislation Act](#) and ending on a stated day, being a day at least 6 weeks after the day it is notified (the *public consultation period*); and
  - (b) include the draft nature conservation strategy.
- (3) A public consultation notice is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).
- (4) If the conservator notifies a public consultation notice for a draft nature conservation strategy—
  - (a) anyone may give a written submission to the conservator about the draft strategy; and
  - (b) the submission may be given to the conservator only during the public consultation period for the draft strategy; and
  - (c) the person making the submission may, in writing, withdraw the submission at any time.
- (5) The conservator may make arrangements for people with particular communication needs to ensure they have adequate opportunity to comment on the draft strategy.

**52 Draft strategy—revision and submission to Minister**

- (1) If the public consultation period for a draft nature conservation strategy has ended, the conservator must—
  - (a) consider any submissions received during the public consultation period; and
  - (b) make any revisions to the draft strategy that the conservator considers appropriate.
- (2) The conservator must then submit the draft strategy to the Minister for approval.
- (3) The draft strategy must be accompanied by a report setting out the issues raised in any submissions given to the conservator during the public consultation period for the draft strategy.

**53 Draft strategy—Minister to approve, return or reject**

If the conservator submits a draft nature conservation strategy to the Minister for approval, the Minister must—

- (a) approve the draft strategy; or
- (b) return the draft strategy to the conservator and direct the conservator to take 1 or more of the following actions in relation to it:
  - (i) carry out stated further consultation;
  - (ii) consider a relevant report;

**Example**

a report of the commissioner for sustainability and the environment under the *Commissioner for Sustainability and the Environment Act 1993*

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

- (iii) revise the draft strategy in a stated way; or
- (c) reject the draft strategy.

#### **54 Draft strategy—Minister’s approval and notification**

- (1) A draft nature conservation strategy approved by the Minister under section 53 (a) or section 57 (3) is a nature conservation strategy.
- (2) A nature conservation strategy is a disallowable instrument.

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

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

*Note 3* Minor amendments may be made to the strategy under s 57.

#### **55 Draft strategy—Minister’s direction to revise etc**

- (1) This section applies if the Minister gives the conservator a direction under section 53 (b).
- (2) The conservator must—
  - (a) give effect to the direction; and
  - (b) resubmit the draft strategy to the Minister for approval.
- (3) The Minister must decide, under section 53, what to do with the resubmitted draft strategy.

#### **56 Draft strategy—Minister’s rejection**

- (1) If the Minister rejects a draft nature conservation strategy under section 53 (c), the Minister must prepare a notice stating that the draft strategy is rejected (a *rejection notice*).
- (2) A rejection notice is a notifiable instrument.

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

**57 Nature conservation strategy—minor amendments**

- (1) This section applies if—
  - (a) a nature conservation strategy for the ACT is in force (the *existing strategy*); and
  - (b) the conservator considers that minor amendments to the existing strategy are appropriate.
- (2) The conservator—
  - (a) may prepare a new draft nature conservation strategy, incorporating the minor amendments into the existing strategy; and
  - (b) need not comply with the requirements in this part; and
  - (c) may submit the new draft nature conservation strategy to the Minister for approval.
- (3) If the conservator submits a new draft nature conservation strategy to the Minister for approval, the Minister must—
  - (a) approve the strategy; or
  - (b) reject the strategy.

*Note* The new draft nature conservation strategy approved by the Minister is a nature conservation strategy and is a disallowable instrument (see s 54).

- (4) In this section:

**minor amendment**, of a nature conservation strategy for the ACT, means an amendment that will improve the effectiveness or technical efficiency of the strategy without changing the substance of the strategy.

**Examples**

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

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

**58 Nature conservation strategy—conservator to implement**

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

**59 Nature conservation strategy—monitoring**

- (1) The conservator must monitor the effectiveness of the nature conservation strategy for the ACT.
- (2) The conservator must report to the Minister about the nature conservation strategy for the ACT at least once every 5 years.
- (3) The Minister must consider the report and may take any action the Minister considers appropriate.
- (4) The Minister must make the report publicly accessible not later than 30 days after the day the conservator gives the report to the Minister.

**Example—publicly accessible**

published on the directorate website

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



**60 Nature conservation strategy—review**

- (1) The conservator must review the nature conservation strategy every 10 years after the plan commences.
- (2) However, the Minister may extend the time for conducting the review.
- (3) In conducting the review, the conservator must—
  - (a) consider each matter mentioned in section 49 (2) (Draft nature conservation strategy—conservator to prepare) in relation to the nature conservation strategy under review; and
  - (b) consult the entities mentioned in section 50; and
  - (c) carry out public consultation in accordance with section 51 (Draft nature conservation strategy—public consultation) as if a reference to a draft nature conservation strategy were a reference to the nature conservation strategy under review.
- (4) If the public consultation period for the review has ended, the conservator must—
  - (a) consider each submission received during the public consultation period; and
  - (b) if the person who makes a submission during the public consultation period agrees to the conservator making the submission publicly accessible—make the submission publicly accessible; and

**Example—publicly accessible**

published on the directorate website

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

- (c) make any recommendation to the Minister about the strategy under review that the conservator considers appropriate.

- (5) The recommendation must be accompanied by a report setting out the issues raised in any submissions given to the conservator during the public consultation period for the strategy under review.
- (6) If the conservator makes a recommendation to the Minister, the Minister must respond to the conservator about the recommendation.
- (7) If the conservator receives a response from the Minister, the conservator must make the following publicly accessible:
  - (a) the Minister's response;
  - (b) details of any proposed amendments to the strategy as a result of the review.

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

## Chapter 4      Threatened native species and ecological communities

### Part 4.1      Threatened native species

#### 61      What is a *threatened native species*?

In this Act:

*threatened native species* means a native species listed in the threatened native species list.

*Note*      *Native species*—see s 16.

#### 62      What is a *threatened native species list*?

In this Act:

*threatened native species list* means a list of species notified under section 91 (Final version of list and notification).

#### 63      Threatened native species list—categories

- (1) The Minister must make a threatened native species list.
- (2) The list must contain the species eligible to be included in 1 of the following categories (a *national category*) in the list:
  - (a) extinct;
  - (b) extinct in the wild;
  - (c) critically endangered;
  - (d) endangered;
  - (e) vulnerable;
  - (f) conservation dependent.

- (3) The list may contain the species eligible to be included in 1 of the following categories (a *regional category*) in the list:
- (a) regionally threatened;
  - (b) regionally conservation dependent;
  - (c) provisional.

**64 Threatened native species list—eligibility for national categories**

- (1) A native species is eligible to be included in the extinct category in the threatened native species list if, assessed at a national scale, there is no reasonable doubt that the last member of the species has died.
- (2) A native species is eligible to be included in the extinct in the wild category in the threatened native species list if, assessed at a national scale—
- (a) it is known only to survive in cultivation, in captivity or as a naturalised population well outside its past range; or
  - (b) it has not been recorded in its known or expected habitat, at appropriate seasons, anywhere in its past range, despite exhaustive surveys over a time frame appropriate to its life cycle and form.
- (3) A native species is eligible to be included in the critically endangered category in the threatened native species list if, assessed at a national scale, it is facing an extremely high risk of extinction in the wild in the immediate future.
- (4) A native species is eligible to be included in the endangered category in the threatened native species list if, assessed at a national scale—
- (a) it is not critically endangered; but
  - (b) it is facing a very high risk of extinction in the wild in the near future.

- (5) A native species is eligible to be included in the vulnerable category in the threatened native species list if, assessed at a national scale—
- (a) it is not critically endangered or endangered; but
  - (b) it is facing a high risk of extinction in the wild in the medium-term future.
- (6) A native species is eligible to be included in the conservation dependent category in the threatened native species list if—
- (a) it is a fish; and
  - (b) it is the subject of a plan of management, within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth), that identifies actions necessary to stop the decline of, and support the recovery of, the species to maximise its chances of long-term survival in the wild; and
  - (c) the plan of management is in force under a law of the Commonwealth, the Territory or a State; and
  - (d) the ending of the plan may result in the species becoming vulnerable, endangered or critically endangered.
- (7) In this section:

*assessed at a national scale*, for an item—see section 80.

*Note* *Item* includes a species (see s 80).

*fish* includes all species of bony fish, sharks, crustaceans, molluscs and other marine organisms, but does not include marine mammals or marine reptiles.

#### **64A Threatened native species list—eligibility for regional categories**

- (1) A native species is eligible to be included in the regionally threatened category in the threatened native species list if—
- (a) the species occurs or is likely to occur in the ACT; and

- (b) there are threatened native species list criteria for the category;  
and
  - (c) the species satisfies the threatened native species list criteria for the category.
- (2) A native species is eligible to be included in the regionally conservation dependent category in the threatened native species list if—
- (a) the species occurs or is likely to occur in the ACT; and
  - (b) there are threatened native species list criteria for the category;  
and
  - (c) the species satisfies the threatened native species list criteria for the category.
- (3) A native species is eligible to be included in the provisional category in the threatened native species list if—
- (a) there is a significant decline in the number of members of the species in the ACT or surrounding region; or
  - (b) the species—
    - (i) occurs or is likely to occur in the ACT or surrounding region; and
    - (ii) is listed as a threatened native species under a law of another jurisdiction corresponding, or substantially corresponding, to this Act; or
  - (c) the species was listed in the extinct category of the threatened native species list but has been definitely located in nature in the ACT or surrounding region since it was last listed as extinct.
- Note* See also s 97 about rediscovery of species that were extinct.
- (4) A native species is no longer eligible to be included in the provisional category in the threatened native species list if it has been in the category for 18 months.

- (5) A native species is not eligible to be included in a regional category in the threatened native species list if—
- (a) it is eligible to be included in a national category in the list; or
  - (b) it is included in the protected native species list.

*Note* **Protected native species list**—see s 111.

- (6) However, a native species that is eligible to be included in the extinct category or extinct in the wild category in the threatened native species list may be included in a regional category in the list if the species is introduced or reintroduced into the ACT.

*Note* **Species** includes a distinct population of biological entities prescribed by regulation to be a species (see s 15 (1), def *species*, par (b) (iii)).

## 65 Threatened native species list—eligibility criteria

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

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

- (2) The threatened native species list criteria may only include scientific matters.
- (3) In developing the threatened native species list criteria, the Minister must have regard to—
- (a) the conservation of the species; and
  - (b) the ecological significance of the species; and
  - (c) any relevant national standards.
- (4) In developing the threatened native species list criteria, the Minister must consult—
- (a) the conservator; and
  - (b) the scientific committee.

- (5) The threatened native species list criteria are a disallowable instrument.

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

## **66 Threatened native species list—criteria to review**

- (1) This section applies if the conservator, or the scientific committee, considers that the threatened native species list criteria should be reviewed because—
- (a) the criteria are not adequately identifying species eligible to be included in a category in the threatened native species list; or
  - (b) there are changes to national or international standards relating to the criteria.
- (2) The conservator or the scientific committee must recommend to the Minister that the Minister review the threatened native species list criteria.
- (3) The Minister must consider the recommendation and may—
- (a) review the threatened native species list criteria under section 65; or
  - (b) refuse to review the threatened native species list criteria.
- (4) A decision to refuse to review the threatened native species list criteria, including a statement of reasons for the decision, is a notifiable instrument.

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



## Part 4.2                      Threatened ecological communities

### 67                      **What is a *threatened ecological community*?**

In this Act:

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

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

### 68                      **What is a *threatened ecological communities list*?**

In this Act:

*threatened ecological communities list* means a list of ecological communities notified under section 91 (Final version of list and notification).

### 69                      **Threatened ecological communities list—categories**

The Minister must make a threatened ecological communities list—

- (a) containing the ecological communities eligible to be included in the list; and
- (b) divided into the following categories:
  - (i) collapsed;
  - (ii) critically endangered;
  - (iii) endangered;
  - (iv) vulnerable;
  - (v) provisional.

## 70 Threatened ecological communities list—eligibility for categories

- (1) An ecological community is eligible to be included in the collapsed category in the threatened ecological communities list if there is no reasonable doubt that its defining biotic or abiotic features are lost from all occurrences and the characteristic native biota are no longer sustained.

### Example

Collapse may occur when most of the diagnostic components of the characteristic native biota are lost from the ecological community, or when functional components (biota that perform key roles in ecological community organisation) are greatly reduced in abundance and lose the ability to recruit.

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

- (2) An ecological community is eligible to be included in the critically endangered category in the threatened ecological communities list if it is facing an extremely high risk of extinction in the wild in the immediate future.
- (3) An ecological community is eligible to be included in the endangered category in the threatened ecological communities list if—
- (a) it is not critically endangered; but
  - (b) it is facing a very high risk of extinction in the wild in the near future.
- (4) An ecological community is eligible to be included in the vulnerable category in the threatened ecological communities list if—
- (a) it is not critically endangered or endangered; but
  - (b) it is facing a high risk of extinction in the wild in the medium-term future.

- (5) An ecological community is eligible to be included in the provisional category in the threatened ecological communities list if—
  - (a) there is a strong decline in the size of the ecological community in the ACT and the surrounding region; or
  - (b) the ecological community—
    - (i) exists or is likely to exist in the ACT; and
    - (ii) is listed as a threatened ecological community under a law of another jurisdiction corresponding, or substantially corresponding, to this Act.
- (6) An ecological community is no longer eligible to be included in the provisional category in the threatened ecological communities list if it has been in the category for 18 months.

**71 Threatened ecological communities list—eligibility criteria**

- (1) The Minister must develop criteria to be used in deciding whether an ecological community is eligible to be included in a category in the threatened ecological communities list (the *threatened ecological communities list criteria*).
- (2) The threatened ecological communities list criteria may only include scientific matters.
- (3) In developing the threatened ecological communities list criteria, the Minister must have regard to—
  - (a) the conservation of the ecological community; and
  - (b) the ecological significance of the ecological community; and
  - (c) any relevant national standards.
- (4) In developing the threatened ecological communities list criteria, the Minister must consult—
  - (a) the conservator; and

(b) the scientific committee.

- (5) The threatened ecological communities list criteria are a disallowable instrument.

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

## **72 Threatened ecological communities list criteria—review**

- (1) This section applies if the conservator, or the scientific committee, considers that the threatened ecological communities list criteria should be reviewed because—
- (a) the criteria are not adequately identifying ecological communities eligible to be included in a category in the threatened ecological communities list; or
  - (b) there are changes to national or international standards relating to the criteria.
- (2) The conservator or the scientific committee must recommend to the Minister that the Minister review the threatened ecological communities list criteria.
- (3) The Minister must consider the recommendation and may—
- (a) review the threatened ecological communities list criteria under section 71; or
  - (b) refuse to review the threatened ecological communities list criteria.
- (4) A decision to refuse to review the threatened ecological communities list criteria, including a statement of reasons for the decision, is a notifiable instrument.

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

## Part 4.3 Key threatening processes

### 73 What is a *threatening process*?

In this Act:

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

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

*Native species*—see s 16.

### 74 What is a *key threatening process*?

In this Act:

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

### 75 What is a *key threatening processes list*?

In this Act:

*key threatening processes list* means—

- (a) the key threatening processes list made under section 76; or
- (b) a key threatening processes list notified under section 91 (Final version of list and notification).

### 76 Key threatening processes list

- (1) The Minister may make a key threatening processes list in accordance with this part.
- (2) The key threatening processes list is a notifiable instrument.

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

## 77 Key threatening processes list—eligibility

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

- (a) it could cause—
  - (i) a native species to become eligible for listing in the threatened native species list in a category other than conservation dependent; or
  - (ii) an ecological community to become eligible for listing in the threatened ecological communities list; or
- (b) it could cause—
  - (i) a threatened native species to become eligible to be listed in the threatened native species list in another category representing a higher degree of endangerment; or
  - (ii) a threatened ecological community to become eligible to be listed in the threatened ecological communities list in another category representing a higher degree of endangerment; or
- (c) it adversely affects 2 or more threatened native species (other than conservation dependent species) or 2 or more threatened ecological communities.

## 78 Key threatening processes list—eligibility criteria

- (1) The Minister must develop criteria to be used in deciding whether a threatening process is eligible to be included on the key threatening processes list (the *key threatening processes list criteria*).
- (2) The key threatening processes list criteria may only include scientific matters.

- (3) In developing the key threatening processes list criteria, the Minister must have regard to—
  - (a) the conservation of threatened native species and threatened ecological communities; and
  - (b) the ecological significance of threatened native species and threatened ecological communities; and
  - (c) any relevant national standards.
- (4) In developing the key threatening processes list criteria, the Minister must consult—
  - (a) the conservator; and
  - (b) the scientific committee.
- (5) The key threatening processes list criteria are a disallowable instrument.

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

## **79 Key threatening processes list criteria—review**

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

- (3) The Minister must consider the recommendation and may—
- (a) review the key threatening processes list criteria under section 78; or
  - (b) refuse to review the key threatening processes list criteria.
- (4) A decision to refuse to review the key threatening processes list criteria, including a statement of reasons for the decision, is a notifiable instrument.

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



## Part 4.4 Including, transferring and omitting items in list

### Division 4.4.1 Definitions—pt 4.4

#### 80 Definitions—pt 4.4

In this part:

*assessed at a national scale*, for an item, means the risk assessment criteria under the common assessment method is applied to the item throughout—

- (a) Australia or an external Territory; or
- (b) the coastal sea of Australia or an external Territory; or
- (c) the seabed of the coastal sea of Australia or an external Territory; or
- (d) the continental shelf; or
- (e) the exclusive economic zone.

*Note* *Coastal sea*—see the dictionary.

*Continental shelf*—see the dictionary.

*Exclusive economic zone*—see the dictionary.

*Seabed*—see the dictionary.

*common assessment method* means the methodology used to assess the risk of extinction of a species or collapse of an ecological community, agreed between—

- (a) the Commonwealth; and
- (b) the Territory; and
- (c) a participating State.

**item** means—

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

**list** means—

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

**listing assessment**—see section 85 (2).

**nationally threatened**, in relation to an item, means—

- (a) an item that is a listed threatened species or listed ecological community under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) (a **Commonwealth listed item**); or
- (b) an item (a **State assessed item**) that—
  - (i) is eligible to be a listed threatened species or listed ecological community under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth); and
  - (ii) has been assessed by a participating State as a threatened species or ecological community at a national scale, using the common assessment method; or
- (c) an item that—
  - (i) is either—
    - (A) eligible to be included in a national category of the threatened native species list; or

- (B) eligible to be included in the threatened ecological communities list; and
- (ii) has been assessed by the Territory as a threatened native species or threatened ecological community at a national scale, using the common assessment method.

***nomination*** means a nomination mentioned in—

- (a) section 81; or
- (b) section 83.

***participating State*** means a State that uses the common assessment method to assess a species or ecological community at a national scale.

***public consultation notice***—see section 84 (1).

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

## **Division 4.4.2 Including, transferring and omitting items in list—general**

### **81 Nominations—public may nominate item at any time**

- (1) A person may, at any time, nominate an item to be—
  - (a) included in a list; or
  - (b) transferred within a list; or
  - (c) omitted from a list.
- (2) A nomination must—
  - (a) comply with any requirements prescribed by regulation for the nomination; and

(b) be given to the scientific committee.

*Note* If a form is approved under s 369 for a nomination, the form must be used.

(3) A person who gives the scientific committee a nomination may, in writing, withdraw the nomination at any time.

## **82 Nominations—scientific committee may reject nomination**

(1) The scientific committee may reject a nomination if the scientific committee considers that—

(a) the nomination is vexatious, frivolous or not made in good faith; or

(b) a requirement prescribed by regulation for the nomination has not been complied with; or

(c) if the nomination is about including a nationally threatened item in, or transferring a nationally threatened item within, a list, and the item is a Commonwealth listed item or a State assessed item—the inclusion or transfer is more appropriately dealt with under section 90A.

(2) If the scientific committee rejects a nomination, the scientific committee must take reasonable steps to tell the person who made the nomination about the rejection and the reason for it.

## **83 Nominations—scientific committee may nominate items itself**

The scientific committee may, at any time, nominate an item to be—

(a) included in a list; or

(b) transferred within a list; or

(c) omitted from a list.

## **84 Nominations—public consultation**

- (1) The scientific committee must prepare a notice about a nomination (a *public consultation notice*) if the nominated item—
  - (a) is a native species nominated to be included in, transferred within or omitted from a national category in the threatened native species list; or
  - (b) is an ecological community nominated to be included in, transferred within or omitted from the threatened ecological community list.
- (2) In any other case, the scientific committee may prepare a public consultation notice about a nomination.
- (3) A public consultation notice—
  - (a) must state that—
    - (i) anyone may give a written submission to the scientific committee about the nomination; and
    - (ii) submissions may be given to the scientific committee only during the period starting on the day the public consultation notice is notified under the [Legislation Act](#) and ending on a stated day, being a day at least 6 weeks after the day it is notified (the *public consultation period*); and
  - (b) must include the nomination; and
  - (c) may invite people to comment on other matters that the scientific committee considers relevant.

*Note* The public consultation notice need not contain the precise location of the species (see s 363).

- (4) A public consultation notice is a notifiable instrument.

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

- (5) If the scientific committee notifies a public consultation notice for a nomination—
  - (a) anyone may give a written submission to the scientific committee about the nomination; and
  - (b) the submission may be given to the scientific committee only during the public consultation period for the nomination; and
  - (c) the person making the submission may, in writing, withdraw the submission at any time.
- (6) The scientific committee may make arrangements for people with particular communication needs to ensure they have adequate opportunity to comment on the nomination.

**85 Nominations—scientific committee to carry out *listing assessment***

- (1) This section applies if—
  - (a) the scientific committee does not notify a public consultation notice for a nomination under section 84 within 4 weeks after receiving the nomination or nominating the item itself; or
  - (b) the public consultation period for a nomination has ended.
- (2) The scientific committee must assess the nominated item (a *listing assessment*).
- (3) A listing assessment for a nominated item must assess—
  - (a) whether the item is eligible for inclusion in, or transfer within, a list; and

- (b) if eligible for inclusion or transfer—the category (if any) of the list the item is eligible to be included in or transferred to.

*Note* Eligibility for the threatened native species list is dealt with in s 64 and s 64A.  
Eligibility for the threatened ecological communities list is dealt with in s 70.  
Eligibility for the key threatening processes list is dealt with in s 77.

- (4) In carrying out a listing assessment for a nominated item, the scientific committee must consider—
- (a) if public consultation about the item has been carried out under section 84—any submissions received during the public consultation period for the item; and
- (b) the eligibility of the item for the list under—
- (i) for a species—the threatened native species list criteria; or
- (ii) for an ecological community—the threatened ecological communities list criteria; or
- (iii) for a threatening process—the key threatening processes list criteria; and

*Note* ***Threatened native species list criteria***—see s 65.  
***Threatened ecological communities list criteria***—see s 71.  
***Key threatening processes list criteria***—see s 78.

- (c) the effect that including, transferring or omitting the item could have on the survival of the species or ecological community concerned.
- (5) The scientific committee must give a listing assessment for an item to the Minister not later than 15 months after the end of the 4-week period, or public consultation period, mentioned in subsection (1).
- (6) However, the Minister may extend the time for giving the listing assessment under subsection (5).

**87 Minister to decide whether to include, transfer or omit item**

- (1) Not later than 3 months after the Minister receives a listing assessment for an item, the Minister must decide whether to—
  - (a) include, or refuse to include, an item in a list under section 88; or
  - (b) transfer, or refuse to transfer, an item within a list under section 89; or
  - (c) omit, or refuse to omit, an item from a list under section 90.

*Note* The Minister may include certain nationally threatened items in a list without a nomination under div 4.4.3.

- (2) If the decision is to include, transfer or omit an item, the Minister must—
  - (a) revise the list; and
  - (b) prepare a final version of the list.

*Note* The final version of the list is a notifiable instrument (see s 91).

- (3) The Minister must take reasonable steps to tell the following people about the decision:
  - (a) if the item was nominated by a person under section 81—the person who made the nomination;
  - (b) if a person made a submission to the scientific committee under section 84—the person who made the submission.



## 88 Minister's decision—include item

- (1) The Minister may include an item in a list, or category in a list, only if satisfied that the item is eligible to be included in the list or category.

*Note* Eligibility for the threatened native species list is dealt with in s 64 and s 64A.  
Eligibility for the threatened ecological communities list is dealt with in s 70.  
Eligibility for the key threatening processes list is dealt with in s 77.

- (2) In deciding whether to include an item, the Minister may only consider—
- (a) the listing assessment for the item; and
  - (b) the eligibility of the item for the list under—
    - (i) for a species—the threatened native species list criteria; or
    - (ii) for an ecological community—the threatened ecological communities list criteria; or
    - (iii) for a threatening process—the key threatening processes list criteria; and

*Note* **Threatened native species list criteria**—see s 65.  
**Threatened ecological communities list criteria**—see s 71.  
**Key threatening processes list criteria**—see s 78.

- (c) if the item is a species or ecological community—the effect that including the item may have on the survival of the item.

## **89 Minister's decision—transfer item**

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

*Note 1* Eligibility for the threatened native species list is dealt with in s 64 and s 64A.  
Eligibility for the threatened ecological communities list is dealt with in s 70.

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

- (2) In deciding whether to include an item, the Minister may only consider—
- (a) the listing assessment for the item; and
  - (b) the eligibility of the item for the new category under—
    - (i) for a species—the threatened native species list criteria; or
    - (ii) for an ecological community—the threatened ecological communities list criteria; and

*Note* **Threatened native species list criteria**—see s 65.  
**Threatened ecological communities list criteria**—see s 71.

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

## **90 Minister's decision—omit item**

- (1) The Minister may omit an item from a list only if satisfied that—
- (a) the item is no longer eligible to be included in the list; or

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

*Note* Eligibility for the threatened native species list is dealt with in s 64 and s 64A.  
Eligibility for the threatened ecological communities list is dealt with in s 70.  
Eligibility for the key threatening processes list is dealt with in s 77.

- (2) In deciding whether to omit an item from a list, the Minister may only consider—
  - (a) the listing assessment for the item; and
  - (b) the eligibility of the item for the list under—
    - (i) for a species—the threatened native species list criteria; or
    - (ii) for an ecological community—the threatened ecological communities list criteria; or
    - (iii) for a threatening process—the key threatening processes list criteria; and

*Note* **Threatened native species list criteria**—see s 65.  
**Threatened ecological communities list criteria**—see s 71.  
**Key threatening processes list criteria**—see s 78.

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

### **Division 4.4.3 Including or transferring certain nationally threatened items**

#### **90A Minister may include or transfer nationally threatened items without nomination**

- (1) This section applies to a nationally threatened item that is a Commonwealth listed item or a State assessed item (a *relevant item*).

- (2) The Minister may, without a nomination—
  - (a) include a relevant item in a list; or
  - (b) transfer a relevant item from 1 category in a list to another category in a list.
- (3) Before including a relevant item in, or transferring a relevant item within, a list, the Minister must—
  - (a) consult with the scientific committee; and
  - (b) consider any recommendations of the scientific committee.
- (4) A relevant item may only be included in, or transferred to, a national category in a list that corresponds with—
  - (a) for a Commonwealth listed item—the category in which the Commonwealth lists the item; and
  - (b) for a State assessed item—the category in which the State assesses the item is eligible to be listed.
- (5) If the Minister decides to include a relevant item in, or transfer a relevant item within, a list under this section, the Minister must—
  - (a) revise the list; and
  - (b) prepare a final version of the list.

*Note* The final version of the list is a notifiable instrument (see s 91).

## **Division 4.4.4 Conservation advice**

### **90B Conservation advice guidelines**

- (1) The Minister may make guidelines (the *conservation advice guidelines*) about the preparation of a conservation advice for an item, including—
  - (a) information to be included in a conservation advice; and
  - (b) requirements for the preparation of a conservation advice.

- (2) A guideline is a notifiable instrument.

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

### **90C Conservation advice**

- (1) The scientific committee must prepare an advice about each item included in a list (a *conservation advice*).
- (2) However, the scientific committee need not prepare a conservation advice for an item if—
- (a) the committee adopts an advice for the item under section 90E (Conservation advice—adopting advice for nationally threatened item); or
  - (b) the item is listed in a provisional category of a threatened native species list or a threatened ecological communities list.

*Note* For a nationally threatened item, an advice adopted under s 90E is the conservation advice.

- (3) The conservation advice must—
- (a) set out—
    - (i) the grounds on which the item is eligible to be included in, transferred within, or omitted from, the list; and
    - (ii) the main factors that make it eligible; and
  - (b) include anything else required to be included by a conservation advice guideline.

*Note 1* The conservation advice need not contain the precise location of a species or community (see s 363).

*Note 2* Eligibility for the threatened native species list is dealt with in s 64 and s 64A.

Eligibility for the threatened ecological communities list is dealt with in s 70.

Eligibility for the key threatening processes list is dealt with in s 77.

- (4) A conservation advice, including a conservation advice adopted under section 90E, is a notifiable instrument.

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

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

- (5) However, a conservation advice must be notified within 20 days after the following happens:
- (a) the Minister makes a decision to include an item on a list or transfer an item within a list;
  - (b) the scientific committee amends the conservation advice.
- (6) In this section:

*conservation advice guidelines*—see section 90B (1).

**90E Conservation advice—adopting advice for nationally threatened item**

- (1) This section applies to a nationally threatened item.
- (2) The scientific committee may adopt an advice prepared by the Commonwealth or a participating State for the item if the advice corresponds, or substantially corresponds, with the requirements for a conservation advice mentioned in section 90C (3).
- (3) If the scientific committee adopts an advice for the item under this section, the advice is taken to be the conservation advice for the item.
- (4) In this section:

*conservation advice guidelines*—see section 90B (1).

**90F Conservation advice—scientific committee to review**

- (1) The scientific committee may review a conservation advice on its own initiative or at the conservator's request.
- (2) Following the review of the conservation advice, the scientific committee may make amendments to the advice.

**Division 4.4.5 Final version of list and notification**

**91 Final version of list and notification**

- (1) The final version of—
  - (a) a list of species prepared under section 87, section 90A or section 94 is a threatened native species list; and
  - (b) a list of ecological communities prepared under section 87, section 90A or section 94 is a threatened ecological communities list; and
  - (c) a list of processes prepared under section 87, section 90A or section 94 is a key threatening processes list.
- (2) Each of the following is a notifiable instrument:
  - (a) a threatened native species list;
  - (b) a threatened ecological communities list;
  - (c) a key threatening processes list.

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

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

## **Division 4.4.6 Minor amendments of list**

### **93 What is a *minor amendment*?—div 4.4.6**

In this division:

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

- (a) include a species in the threatened native species list in the circumstances mentioned in section 95 (Minor amendment—including similar species); or
- (b) omit a species from the threatened native species list in the circumstances mentioned in section 96 (Minor amendment—omitting similar species); or
- (c) transfer a species from the extinct category to the provisional category of the threatened native species list in the circumstances mentioned in section 97 (Minor amendment—rediscovery of extinct species); or
- (d) update the name of a threatened native species or threatened ecological community; or
- (e) correct an inaccuracy.

### **94 Minister may make minor amendments**

- (1) This section applies if the Minister considers that a minor amendment to a list is appropriate.
- (2) The Minister—
  - (a) may prepare a new list, incorporating the minor amendments into the existing list; and
  - (b) need not comply with the requirements in section 84 (Nominations—public consultation) to section 90A (Minister may include or transfer nationally threatened items without nomination); and



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

*Note* The final version of the new list is a threatened native species list, threatened ecological communities list, or key threatening processes list and is a notifiable instrument (see s 91).

## **95 Minor amendment—including similar species**

- (1) A minor amendment of the threatened native species list may be appropriate if the amendment is to include a native species in a certain category of the list (the *ineligible species*) because—
  - (a) it so closely resembles in appearance, at any stage of its biological development, a species that is included in the category (the *eligible species*) that it is difficult to differentiate between the 2 species; and
  - (b) this difficulty poses an additional threat to the eligible species; and
  - (c) it would substantially promote the objects of this Act if the ineligible species were included in the category.
- (2) In deciding whether a minor amendment is appropriate, the Minister must obtain and consider the advice of the scientific committee.
- (3) If an ineligible species is included in a category of the threatened native species list under subsection (1) and the eligible species is—
  - (a) transferred to another category of the list, the ineligible species is also transferred to the other category; and
  - (b) omitted from the list, the ineligible species is also omitted from the list.

(4) In this section:

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

- (a) critically endangered; or
- (b) endangered; or
- (c) vulnerable.

*Note* Eligibility for critically endangered category, endangered category and vulnerable category (see s 64 (3) to (5)).

#### **96 Minor amendment—omitting similar species**

- (1) A minor amendment of the threatened native species list may be appropriate if the amendment is to omit an ineligible species included under section 95 because its inclusion is not having a significant beneficial effect on the survival of the eligible species.
- (2) In deciding whether a minor amendment is appropriate, the Minister must obtain and consider the advice of the scientific committee.

#### **97 Minor amendment—rediscovery of extinct species**

- (1) A minor amendment of the threatened native species list may be appropriate if the amendment is to transfer a species from the extinct category to the provisional category because the species has been definitely located in nature.
- (2) In deciding whether a minor amendment is appropriate, the Minister need not obtain and consider advice from the scientific committee.

## Part 4.5 Action plans

### 98 Definitions—Act

In this Act:

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

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

**relevant ecological community** means the following:

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

**relevant species** means—

- (a) a regular migratory species; and
- (b) the following species, other than a species that the Minister decides, under section 100A, does not need an action plan:
  - (i) a critically endangered species;
  - (ii) an endangered species;
  - (iii) a vulnerable species;
  - (iv) a regionally threatened species;
  - (v) a regionally conservation dependent species.

**99      What is an *action plan*?—pt 4.5**

In this part:

*action plan*, for a relevant species, relevant ecological community or key threatening process, means a plan for the species, ecological community or process, notified under section 105 (Draft action plan—final version and notification).

*Note*      *Key threatening process*—see s 74.

**100     What is a *draft action plan*?—pt 4.5**

In this part:

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

- (a) means a draft plan that—
  - (i) for a relevant species—
    - (A) sets out proposals to ensure, as far as practicable, the identification, protection and survival of the species; and
    - (B) if there is a known critical habitat for the species—identifies the critical habitat; and
    - (C) for regular migratory species—may include maps of potential habitats of the species; and
    - (D) may propose management strategies to ensure the persistence of the species; and
    - (E) may state requirements for monitoring the species and its habitats; and

- (ii) for a relevant ecological community—
  - (A) sets out proposals to ensure, as far as practicable, the identification, protection and survival of the community; and
  - (B) if there is a known critical habitat for the community—identifies the critical habitat; and
- (iii) for a key threatening process—sets out proposals to minimise any effect of the process that threatens a relevant species or relevant ecological community; and

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

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

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

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

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

- 1 a *native species conservation plan*, for a native species (see s 115)
- 2 a recovery plan under the [Environment Protection and Biodiversity Conservation Act 1999](#) (Cwlth), s 269A

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

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

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

**100A Minister to decide if action plan needed**

- (1) This section applies to each of the following species (an *applicable species*):
  - (a) a critically endangered species;
  - (b) an endangered species;
  - (c) a vulnerable species;
  - (d) a regionally threatened species;
  - (e) a regionally conservation dependent species.
- (2) Before an applicable species is included in, or transferred within, a list, the Minister must decide whether an action plan needs to be prepared for the species.
- (3) In deciding whether an action plan needs to be prepared for an applicable species, the Minister must seek the advice of the scientific committee.
- (4) The Minister may decide that an action plan does not need to be prepared for an item if satisfied that—
  - (a) the species does not occur in the ACT or occurs infrequently in the ACT; or
  - (b) having no plan will not increase the risk of extinction of the species.
- (5) In this section:  
*list*—see section 80.

## 101 Draft action plan—conservator to prepare

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

*Note* The draft action plan need not contain the precise location of the species, community or critical habitat (see s 363).

- (2) However, the conservator need not prepare a draft action plan—
- (a) for a species mentioned in section 100A—if the Minister has decided that an action plan is not needed for the species; or
  - (b) for a relevant species—if the species is the subject of a native species conservation plan.

*Note* *Native species conservation plan*, for a native species—see s 115.

- (3) In preparing a draft action plan for a relevant species or relevant ecological community, the conservator must consider—
- (a) the impact of climate change on the species or ecological community; and
  - (b) threats to the species or ecological community; and
  - (c) connectivity requirements of the species or ecological community; and
  - (d) critical habitat of the species or ecological community.

*Note* *Critical habitat*—see the dictionary.

## 102 Draft action plan—consultation with scientific committee

In preparing a draft action plan, the conservator must consult the scientific committee.

### 103 Draft action plan—public consultation

- (1) If the conservator prepares a draft action plan, the conservator must also prepare a notice about the draft action plan (a *public consultation notice*).
- (2) A public consultation notice must—
  - (a) state that—
    - (i) anyone may give a written submission to the conservator about the draft action plan; and
    - (ii) submissions may be given to the conservator only during the period starting on the day the public consultation notice is notified under the [Legislation Act](#) and ending on a stated day, being a day at least 6 weeks after the day it is notified (the *public consultation period*); and
  - (b) include the draft action plan.
- (3) A public consultation notice is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).
- (4) If the conservator notifies a public consultation notice for a draft action plan—
  - (a) anyone may give a written submission to the conservator about the draft plan; and
  - (b) the submission may be given to the conservator only during the public consultation period for the draft plan; and
  - (c) the person making the submission may, in writing, withdraw the submission at any time.
- (5) The conservator may make arrangements for people with particular communication needs to ensure they have adequate opportunity to comment on the draft action plan.



#### 104 Draft action plan—revision

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

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

#### 105 Draft action plan—final version and notification

- (1) The final version of a draft action plan prepared under section 104 or section 106 is an action plan.
- (2) An action plan is a disallowable instrument.

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

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

#### 106 Action plan—minor amendments

- (1) This section applies if—
  - (a) an action plan for a relevant species, relevant ecological community or key threatening process is in force (the *existing plan*); and
  - (b) the conservator considers that minor amendments to the existing plan are appropriate.

- (2) The conservator—
- (a) may prepare a new draft action plan for the species, community or process, incorporating the minor amendments into the existing plan; and
  - (b) need not comply with the consultation requirements in section 103 (Draft action plan—public consultation); and
  - (c) may prepare a final version of the new draft action plan, as amended.

*Note* The final version of the new draft action plan is an action plan and is a disallowable instrument (see s 105).

- (3) In this section:

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

**Examples**

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

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

## 107 Action plan—conservator to implement

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

## 108 Action plan—monitoring and review

- (1) The conservator must—
  - (a) monitor the effectiveness of an action plan; and
  - (b) make the findings of the monitoring publicly accessible.

### **Example—publicly accessible**

published on the directorate website

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

- (2) However, if the conservator considers that a species or ecological community could be threatened by the disclosure of a particular detail in a finding, the conservator—
  - (a) need not include the particular detail; but
  - (b) must instead include a general statement about the finding.
- (3) The conservator must report to the Minister about each action plan at least once every 5 years.
- (4) The Minister must make the report publicly accessible not later than 30 days after the day the conservator gives the report to the Minister.
- (5) The scientific committee must review an action plan—
  - (a) every 10 years after the plan commences; and
  - (b) at any other time at the conservator's request.
- (6) However, the Minister may extend the time for conducting the review under subsection (5) (a).
- (7) In reviewing an action plan, the scientific committee may make recommendations to the conservator about the plan, including that the plan is no longer needed for a species.

**108A Action plan—ending action plan after review**

- (1) This section applies if the scientific committee recommends to the conservator that an action plan is no longer needed for a species under section 108 (7).
- (2) The conservator may request that the Minister end the action plan.
- (3) If the Minister receives a request from the conservator, the Minister must decide whether to end the action plan.
- (4) In deciding whether to end the action plan, the Minister must have regard to the recommendation of the scientific committee.
- (5) The Minister may end the action plan if satisfied that ending the plan will not increase the risk of extinction of the species the subject of the plan.

## Chapter 5      Protection of native species— conservation plans

### Part 5.1      Special protection status

#### 109      What is *special protection status*?

(1) In this Act:

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

(a) a threatened native species; or

*Note*      *Threatened native species*—see s 61.

(b) a listed threatened species; or

(c) a listed migratory species.

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

(2) In this section:

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

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

*Note 2*      The conservator must make an action plan for regular migratory species (see s 101).

## Part 5.2 Protected native species

### 110 What is a *protected native species*?

In this Act:

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

### 111 Minister to make protected native species list

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

*Note* *Native species*—see s 16.

- (2) The protected native species list must be divided into the following categories:
  - (a) restricted trade;
  - (b) rare;
  - (c) data deficient;
  - (d) any other category prescribed by regulation.

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

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

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

### 112 Protected native species list—eligibility

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

- (2) A native species is eligible to be included in the rare category in the protected native species list if—
- (a) it is not a threatened native species; and  
*Note* **Threatened native species**—see s 61.
  - (b) it does not have special protection status; and  
*Note* **Special protection status**—see s 109.
  - (c) it is rare in the ACT.
- (3) A native species is eligible to be included in the data deficient category in the protected native species list if there is insufficient information about the species in the ACT for the species to be eligible to be—
- (a) a threatened native species; or  
*Note* **Threatened native species**—see s 61.
  - (b) included in any other category in the protected native species list.

**113 Minister to develop criteria and processes for protected native species list**

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

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

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

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

#### **114 Protected native species list criteria—review**

- (1) This section applies if the conservator, or the scientific committee, considers that the protected native species list criteria should be reviewed because—
- (a) the criteria are not adequately identifying species eligible to be included in a category on the protected native species list; or
  - (b) there are changes to national or international standards relating to the criteria.
- (2) The conservator, or the scientific committee, must recommend to the Minister that the Minister review the protected native species list criteria.
- (3) The Minister must consider the recommendation and may—
- (a) review the protected native species list criteria under section 113; or
  - (b) refuse to review the protected native species list criteria.
- (4) A decision to refuse to review the protected native species list criteria, including a statement of reasons for the decision, is a notifiable instrument.

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



## Part 5.3 Native species conservation plans

### 115 What is a *native species conservation plan*?

In this Act:

*native species conservation plan*, for a native species, means a plan for the species on stated land, notified under section 122 (Draft native species conservation plan—final version and notification).

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

### 116 What is a *draft native species conservation plan*?—pt 5.3

In this part:

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

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

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

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

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

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

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

*Note 3* A native species conservation plan may include provisions about carrying on an activity that would usually require a nature conservation licence. If a person intends to carry on the activity under a plan, the person must apply for a nature conservation licence in the usual way.

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

## 117 **Draft native species conservation plan—conservator to prepare**

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

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

*Note* **Special protection status**—see s 109.

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

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

*Note 2* A species that is the subject of a native species conservation plan is eligible to be included in the conservation dependent category in the threatened native species list if the ending of the plan may result in the species becoming vulnerable, endangered or critically endangered (see s 64A (2)).

*Note 3* The draft native species conservation plan need not contain the precise location of the species (see s 363).

## 118 **Draft native species conservation plan—consultation with scientific committee**

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

**119 Draft native species conservation plan—consultation with lessee and custodian**

- (1) In preparing a draft native species conservation plan for stated land, the conservator must consult the relevant person for the stated land if the plan requires the person to do or not do something.
- (2) However, the conservator need not consult the relevant person in relation to something the person may do under the plan even though, if done, the thing must be done in the way stated in the plan.
- (3) In this section:

*relevant person*, for stated land, means—

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

**120 Draft native species conservation plan—public consultation**

- (1) If the conservator prepares a draft native species conservation plan, the conservator must also prepare a notice about the draft native species conservation plan (a *public consultation notice*).
- (2) A public consultation notice must—
  - (a) state that—
    - (i) anyone may give a written submission to the conservator about the draft native species conservation plan; and
    - (ii) submissions may be given to the conservator only during the period starting on the day the public consultation notice is notified under the [Legislation Act](#) and ending on a stated day, being a day at least 6 weeks after the day it is notified (the *public consultation period*); and
  - (b) include the draft native species conservation plan.

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

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

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

## **121 Draft native species conservation plan—revision**

If the public consultation period for a draft native species conservation plan has ended, the conservator must—

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

**122 Draft native species conservation plan—final version and notification**

- (1) The final version of a draft native species conservation plan prepared under section 121 or section 123 is a native species conservation plan.
- (2) A native species conservation plan is a notifiable instrument.

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

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

**123 Native species conservation plan—minor amendments**

- (1) This section applies if—
  - (a) a native species conservation plan for a native species is in force (the *existing plan*); and
  - (b) the conservator considers that minor amendments to the existing plan are appropriate.
- (2) The conservator—
  - (a) may prepare a new draft native species conservation plan for the native species, incorporating the minor amendments into the existing plan; and
  - (b) need not comply with the consultation requirements in section 119 to section 121; and
  - (c) may prepare a final version of the new draft native species conservation plan, as amended.

*Note* The final version of the new draft native species conservation plan is a native species conservation plan and is a notifiable instrument (see s 122).

(3) In this section:

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

**Examples**

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

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

**124 Native species conservation plan—conservator etc to implement**

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

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

**125 Native species conservation plan—monitoring and review**

- (1) The conservator must—
  - (a) monitor the effectiveness of a native species conservation plan; and

(b) make the findings of the monitoring publicly accessible.

**Example—publicly accessible**

published on the directorate website

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

- (2) However, if the conservator considers that a species could be threatened by the disclosure of a particular detail in a finding, the conservator—
- (a) need not include the particular detail; but
  - (b) must instead include a general statement about the finding.
- (3) The conservator may ask the scientific committee to review a native species conservation plan.
- (4) In reviewing a native species conservation plan, the scientific committee may make recommendations to the conservator about the plan.

## Chapter 6 Protection of native species— offences

### Part 6.1 Offences

#### Division 6.1.1 Definitions—pt 6.1

##### 126 Definitions—pt 6.1

In this part:

*sell* includes—

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

*take* includes—

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

#### Division 6.1.2 Native animals

##### 127 Definitions—div 6.1.2

In this division:

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



*nest*, of an animal, includes—

- (a) a 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.

## **128 Offence—interfere with nest of native animal**

- (1) A person commits an offence if the person—
  - (a) interferes with—
    - (i) the nest of an animal; or
    - (ii) something in the immediate environment of the nest of an animal; and
  - (b) the animal is a native animal.

Maximum penalty: 20 penalty units.

*Note* **Interfere with** an item—see s 127.  
**Nest**, of an animal—see s 127.

- (2) A person commits an offence if—
  - (a) the person interferes with—
    - (i) the nest of an animal; or
    - (ii) something in the immediate environment of the nest of an animal; and
  - (b) the animal—
    - (i) is a native animal; and
    - (ii) has special protection status.

Maximum penalty: 30 penalty units.

*Note* **Special protection status**—see s 109.

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

*Note* The chapter 6 exceptions are set out in s 153.

**129 Offence—interfere with nest of native animal—endanger progeny or breeding**

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

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

*Note* **Interfere with** an item—see s 127.  
**Nest**, of an animal—see s 127.  
**Progeny**—see s (5).

- (2) A person commits an offence if—
- (a) the person interferes with—
    - (i) the nest of an animal; or

- (ii) something in the immediate environment of the nest of an animal; and
- (b) the interference—
  - (i) places the animal or its progeny in danger of death; or
  - (ii) places the animal in danger of not being able to breed—
    - (A) if the interference happens during the animal's breeding season—during the breeding season; or
    - (B) in any other case—during the animal's next breeding season; and
- (c) the animal—
  - (i) is a native animal; and
  - (ii) has special protection status.

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

*Note* **Special protection status**—see s 109.

- (3) This section does not apply to a person if the person believed on reasonable grounds that—
  - (a) the danger did not exist; or
  - (b) for an offence involving interference with a nest—the thing interfered with was not a nest; or
  - (c) for an offence involving interference with something in the immediate environment of a nest—the thing interfered with was not in the immediate environment of a nest.

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

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

*Note* The chapter 6 exceptions are set out in s 153.

- (5) In this section:

*progeny*, of an animal—

- (a) means any descendant of the animal; and  
(b) includes any animal reproductive material of the animal.

### **130 Offence—kill native animal**

- (1) A person commits an offence if—
- (a) the person engages in conduct; and  
(b) the conduct causes the death of an animal; and  
(c) the animal is a native animal.

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

- (2) A person commits an offence if—
- (a) the person engages in conduct; and  
(b) the conduct causes the death of an animal; and  
(c) the animal—
- (i) is a native animal; and  
(ii) has special protection status.

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

*Note* *Special protection status*—see s 109.

- (3) This section does not apply to a person if the death of the animal was caused—
- (a) in circumstances in which the animal was a danger to the person; or
  - (b) by an accidental collision with a motor vehicle.
- (4) This section does not apply to a person if—
- (a) the animal is a fish that—
    - (i) has special protection status; or
    - (ii) is a protected native species; and
  - (b) the conduct constituting the offence is consistent with a native species conservation plan for the animal.

**Example**

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

*Note 1* **Native species conservation plan**, for a native species—see s 115.

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

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

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

*Note* The chapter 6 exceptions are set out in s 153.

**131 Offence—injure or endanger native animal**

- (1) A person commits an offence if—
- (a) the person engages in conduct; and
  - (b) the conduct causes injury to an animal; and

(c) the animal is a native animal.

Maximum penalty: 50 penalty units.

(2) A person commits an offence if—

(a) the person engages in conduct; and

(b) the conduct places an animal in danger of injury or death; and

(c) the animal is a native animal.

Maximum penalty: 50 penalty units.

(3) This section does not apply to a person if the injury or endangerment of the animal was caused—

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

(b) by an accidental collision.

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

(a) the animal is a fish that—

(i) has special protection status; or

(ii) is a protected native species; and

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

*Note 1* **Native species conservation plan**, for a native species—see s 115.

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

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

*Note* The chapter 6 exceptions are set out in s 153.

## 132 Offence—take native animal

- (1) A person commits an offence if—
- (a) the person takes an animal, whether dead or alive; and
  - (b) the animal is a native animal.

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

*Note* **Take**—see s 126.

- (2) A person commits an offence if—
- (a) the person takes an animal, whether dead or alive; and
  - (b) the animal—
    - (i) is a native animal; and
    - (ii) has special protection status.

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

*Note* **Special protection status**—see s 109.

- (3) This section does not apply to a person if the animal is suffering from a disease, illness or injury and the person takes the animal to give it to—
- (a) a conservation officer; or
  - (b) a veterinary practitioner; or
  - (c) someone licensed to keep the animal.

*Note* **Nature conservation licence**—see s 262.

- (4) This section does not apply to a person if—
- (a) the animal is a fish that—
    - (i) has special protection status; or

- (ii) is a protected native species; and
- (b) the conduct constituting the offence is consistent with a native species conservation plan for the animal.

*Note 1* **Native species conservation plan**, for a native species—see s 115.

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

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

*Note* The chapter 6 exceptions are set out in s 153.

### **133 Offence—keep non-exempt animal**

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

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

*Note* **Exempt animal**—see s 154.

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

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

*Note* **Special protection status**—see s 109.



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

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

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

*Note* The chapter 6 exceptions are set out in s 153.

### **134 Offence—sell non-exempt animal**

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

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

*Note* **Exempt animal**—see s 154.  
**Sell** includes offer for sale (see s 126).

- (2) A person commits an offence if—
- (a) the person sells an animal; and
  - (b) the animal has special protection status; and

(c) the animal is not an exempt animal.

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

*Note* **Special protection status**—see s 109.

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

*Note* The chapter 6 exceptions are set out in s 153.

### **135 Offence—offer to sell animal without disclosing licence**

(1) A person commits an offence if—

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

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

(c) the offer does not disclose—

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

(ii) the person's licence number.

Maximum penalty: 50 penalty units.

*Note* **Nature conservation licence**—see s 262.

**Sell** includes offer for sale (see s 126).

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

**136 Offence—import non-exempt animal**

- (1) A person commits an offence if—
- (a) the person imports an animal into the ACT; and
  - (b) the animal is not an exempt animal.

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

*Note* **Exempt animal**—see s 154.

- (2) A person commits an offence if—
- (a) the person imports an animal into the ACT; and
  - (b) the animal has special protection status; and
  - (c) the animal is not an exempt animal.

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

*Note* **Special protection status**—see s 109.

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

*Note* The chapter 6 exceptions are set out in s 153.

**137 Offence—export non-exempt animal**

- (1) A person commits an offence if—
- (a) the person exports an animal from the ACT; and
  - (b) the animal is not an exempt animal.

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

*Note* **Exempt animal**—see s 154.

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

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

*Note* **Special protection status**—see s 109.

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

*Note* The chapter 6 exceptions are set out in s 153.

### **138 Offence—release animal from captivity**

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

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to the release of a dog or a cat if the release would not constitute an offence under the *Domestic Animals Act 2000*.

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

- (4) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant took all reasonable precautions and exercised all appropriate diligence to prevent the commission of the offence.
- (5) A person also has the benefit of the chapter 6 exceptions for an offence against this section.

*Note* The chapter 6 exceptions are set out in s 153.

## Division 6.1.3 Native plants

### 139 Definitions—div 6.1.3

In this division:

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

*damage*, a tree, includes the following:

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

*native timber*—

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

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

***native tree***—

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

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

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

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

**140      Offence—take native plant—unleased land**

- (1) A person commits an offence if—
  - (a) the person takes a plant; and
  - (b) the plant is—
    - (i) a native plant; and
    - (ii) growing on unleased land.

Maximum penalty: 50 penalty units.

*Note*      **Take**—see s 126.

- (2) This section does not apply to a person if the person—
  - (a) is a public servant exercising a function as a public servant; or
  - (b) is authorised to take the plant under a development approval under the *Planning and Development Act 2007*, chapter 7 (Development approvals); or

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

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

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

*Note* The chapter 6 exceptions are set out in s 153.

## **141 Offence—take and sell native plant—unleased land**

(1) A person commits an offence if—

(a) the person takes a plant; and

(b) the plant is—

(i) a native plant; and

(ii) growing on unleased land; and

(c) the person sells the plant.

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

*Note* **Sell** includes offer for sale (see s 126).

**Take**—see s 126.

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

*Note 1* **Native timber**—see s 139.

*Note 2* It is an offence to damage a native tree on unleased land (see s 144). It is also an offence to take fallen native timber from unleased land (see s 146).

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

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

*Note* The chapter 6 exceptions are set out in s 153.

**142      Offence—take native plant—protected native species**

- (1) A person commits an offence if—
- (a) the person takes a plant; and
  - (b) the plant is a protected native species.

Maximum penalty: 50 penalty units.

*Note*      **Protected native species**—see s 110.

**Take**—see s 126.

- (2) This section does not apply to a person if the person—
- (a) is a public servant exercising a function as a public servant; or
  - (b) is an occupier of land outside a built-up urban area and the person—
    - (i) takes the plant in the course of cultivating the plant on the land; or
    - (ii) takes seeds from a plant growing on the land to cultivate the plant on the land; or
  - (c) is an occupier of land and the plant—
    - (i) is growing on the land; and
    - (ii) was planted by the person; or
  - (d) is an occupier of land in a built-up urban area and the plant is growing on the land; or
  - (e) is an occupier of land outside a built-up urban area and the person takes the plant in the course of using the land for primary production in accordance with the purpose authorised by the lease; or



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

*Note 1* **Built-up urban area**—see s 139.

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

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

*Note* The chapter 6 exceptions are set out in s 153.

### **143 Offence—take native plant—special protection status**

(1) A person commits an offence if—

(a) the person takes a plant; and

(b) the plant—

(i) is a native plant; and

(ii) has special protection status.

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

*Note* **Special protection status**—see s 109.

**Take**—see s 126.

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

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

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

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

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

*Note* The chapter 6 exceptions are set out in s 153.

#### **144 Offence—damage native tree—unleased land**

- (1) A person commits an offence if—
- (a) the person damages a tree; and
  - (b) the tree is—
    - (i) a native tree; and
    - (ii) on unleased land.

Maximum penalty: 400 penalty units.

*Note* **Damage**, a tree includes fell the tree—see s 139.  
**Native tree**—see s 139.

- (2) This section does not apply to a person if the person is—
- (a) a public servant exercising a function as a public servant; or
  - (b) authorised to engage in the conduct constituting the offence under a development approval under the *Planning and Development Act 2007*, chapter 7 (Development approvals).

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

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

*Note* The chapter 6 exceptions are set out in s 153.

- (4) In addition to the penalty that may be imposed for an offence against this section, the court may order the defendant to—
- (a) make good the damage incurred; or
  - (b) pay the Territory the cost of making good the damage.

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

#### 145 Offence—damage native tree—leased land

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

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

*Note* **Built-up urban area**—see s 139.  
**Damage**, a tree includes fell the tree—see s 139.  
**Native tree**—see s 139.

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

*Note* **Sell** includes offer for sale (see s 126).

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

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

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

*Note* The chapter 6 exceptions are set out in s 153.

#### **146 Offence—damage or take fallen native timber**

- (1) A person commits an offence if—
- (a) the person damages fallen timber; and
  - (b) the timber—
    - (i) is native timber; and
    - (ii) has a diameter of more than 10cm; and
    - (iii) is on unleased land.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—
- (a) the person takes fallen timber from land; and
  - (b) the timber is native timber; and
  - (c) the land is—
    - (i) unleased land; or
    - (ii) leased land outside a built-up urban area.

Maximum penalty: 50 penalty units.

*Note* **Built-up urban area**—see s 139.

**Native timber**—see s 139.

**Take**—see s (7).

- (3) This section does not apply to a person if the person is—
- (a) a public servant exercising a function as a public servant; or

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

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

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

*Note* The chapter 6 exceptions are set out in s 153.

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

- (a) make good the damage incurred; or  
(b) pay the Territory the cost of making good the damage.

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

- (7) In this section:

**take** means—

- (a) for timber on leased land—take the timber from the land subject to the lease; or  
(b) for timber on unleased land—take the timber from the immediate vicinity.

## **147 Offence—offer to sell native plant without disclosing licence**

- (1) A person commits an offence if—
- (a) the person holds a nature conservation licence to sell a native plant; and
- (b) the person offers to sell the native plant; and

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

Maximum penalty: 50 penalty units.

*Note* **Nature conservation licence**—see s 262.  
**Sell** includes offer for sale (see s 126).

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

**148 Offence—sell native plant—protected or special protection status**

- (1) A person commits an offence if—
  - (a) the person sells a plant; and
  - (b) the plant is—
    - (i) a native plant; and
    - (ii) a protected native species.

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

*Note* **Protected native species**—see s 110.  
**Sell** includes offer for sale (see s 126).

- (2) A person commits an offence if—
  - (a) the person sells a plant; and
  - (b) the plant—
    - (i) is a native plant; and
    - (ii) has special protection status.

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

*Note* **Special protection status**—see s 109.

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

*Note* The chapter 6 exceptions are set out in s 153.

**149 Offence—sell native plant without plant tag—protected or special protection status**

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

Maximum penalty: 25 penalty units.

*Note* **Protected native species**—see s 110.  
**Sell** includes offer for sale (see s 126).

- (2) A person commits an offence if—
- (a) the person sells a plant; and
  - (b) the plant—
    - (i) is a native plant; and
    - (ii) has special protection status; and
  - (c) the plant is not a seed or a dead plant; and
  - (d) a plant tag is not visibly attached to the plant at the time of sale.

Maximum penalty: 50 penalty units.

*Note* **Special protection status**—see s 109.

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

**150 Offence—import native plant—protected or special protection status**

- (1) A person commits an offence if—
- (a) the person imports a plant into the ACT; and
  - (b) the plant is—
    - (i) a native plant; and
    - (ii) a protected native species.

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

*Note* **Protected native species**—see s 110.

- (2) A person commits an offence if—
- (a) the person imports a plant into the ACT; and
  - (b) the plant—
    - (i) is a native plant; and
    - (ii) has special protection status.

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

*Note* **Special protection status**—see s 109.

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

*Note 1* **Native timber**—see s 139.

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

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

*Note* The chapter 6 exceptions are set out in s 153.



**151 Offence—export native plant—protected or special protection status**

- (1) A person commits an offence if—
- (a) the person exports a plant from the ACT; and
  - (b) the plant is—
    - (i) a native plant; and
    - (ii) a protected native species.

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

*Note* **Protected native species**—see s 110.

- (2) A person commits an offence if—
- (a) the person exports a plant from the ACT; and
  - (b) the plant—
    - (i) is a native plant; and
    - (ii) has special protection status.

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

*Note* **Special protection status**—see s 109.

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

*Note* The chapter 6 exceptions are set out in s 153.

**152 Offence—export plant without plant tag—protected or special protection status**

- (1) A person commits an offence if—
- (a) the person exports a plant from the ACT; and

- (b) the plant is—
  - (i) a native plant; and
  - (ii) a protected native species; and
- (c) the plant is not a seed or a dead plant; and
- (d) a plant tag is not visibly attached to the plant at the time of export.

Maximum penalty: 25 penalty units.

*Note* **Protected native species**—see s 110.

- (2) A person commits an offence if—
  - (a) the person exports a plant from the ACT; and
  - (b) the plant—
    - (i) is a native plant; and
    - (ii) has special protection status; and
  - (c) the plant is not a seed or a dead plant; and
  - (d) a plant tag is not visibly attached to the plant at the time of export.

Maximum penalty: 50 penalty units.

*Note* **Special protection status**—see s 109.

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

## **Division 6.1.4      Exceptions to offences**

### **153      Chapter 6 exceptions**

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

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

(a) the conduct constituting the offence is—

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

*Note*      **Activities declaration**—see s 256.  
**Restricted activity**—see s 256.

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

*Note*      **Management agreement**—see s 310.

(iii) undertaken in implementing a controlled native species management plan under section 167 (Controlled native species management plan—conservator etc to implement); or

*Note*      **Controlled native species management plan**—see s 158.

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

(i) a nature conservation licence; or

*Note*      **Nature conservation licence**—see s 262.

(ii) a public unleased land permit; or

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

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

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

## Part 6.2 Other matters

### 154 What is an *exempt animal*?

In this Act:

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

### 155 Declarations—exempt animals

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

*Note* Power to make a statutory instrument (including a regulation) includes power to make different provision for different categories (see [Legislation Act](#), s 48).

- (2) In making an exempt animal declaration, the conservator must consider—
  - (a) the need to protect native species in the ACT; and
  - (b) the need to conserve the significant ecosystems of the ACT, New South Wales and Australia.
- (3) An exempt animal declaration is a disallowable instrument.

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

### 156 Interest in native animal ends with escape

If a person holds an interest in a native animal and the animal escapes, the person's interest in the animal ends.

*Note* Also, if the person held a nature conservation licence to keep the escaped native animal, the licence no longer applies in relation to the animal (see s 276 (4)).

## Chapter 7 Controlled native species management plans

### 157 What is a *controlled native species*?—ch 7

- (1) In this chapter:

*controlled native species* means a native species declared to be a controlled native species under subsection (2).

- (2) The Minister may declare a native species to be a controlled native species if satisfied that the species is having, or is likely to have, an unacceptable environmental, social or economic impact.

**Example—unacceptable social impact**

a threatened native species poses a serious threat to human health

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

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

- (3) A declaration is a disallowable instrument.

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

**158 What is a *controlled native species management plan*?**

In this Act:

***controlled native species management plan***, for a controlled native species, means a plan for the species on stated land, notified under section 165 (Draft controlled native species management plan—final version and notification).

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

**159 What is a *draft controlled native species management plan*?—ch 7**

(1) In this chapter:

***draft controlled native species management plan***, for a controlled native species on stated land—

(a) means a draft plan detailing how the species may be appropriately managed on the stated land; and

**Examples—appropriate management**

- 1 prohibiting the feeding of an animal species
- 2 prohibiting the propagation of a plant species
- 3 best practice in relation to management of the species

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

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

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

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

**Example—instrument that may be applied, adopted or incorporated**

a controlled native species management plan may incorporate requirements agreed to in a conservation agreement under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth)

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

*Note 2*    A notifiable instrument must be notified under the *Legislation Act*.

- (2) If a controlled native species management plan is inconsistent with an approved code of practice, or mandatory code of practice, under the *Animal Welfare Act 1992*, the code of practice prevails to the extent of the inconsistency.

**160      Draft controlled native species management plan—  
conservator to prepare**

The conservator may prepare a draft controlled native species management plan for a controlled native species on stated land.

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

**161      Draft controlled native species management plan—  
consultation with lessee and custodian**

- (1) In preparing a draft controlled native species management plan for a controlled native species on stated land, the conservator must consult the relevant person for the stated land if the plan requires the relevant person to do or not do something.



- (2) However, the conservator need not consult the relevant person in relation to something the person may do under the plan even though, if done, the thing must be done in the way stated in the plan.
- (3) In this section:  
*relevant person*, for stated land, means—
  - (a) if the land is leased land—the lessee of the land; and
  - (b) if the land is unleased land or public land—the custodian of the land.

## **162 Draft controlled native species management plan—public consultation**

- (1) If the conservator prepares a draft controlled native species management plan, the conservator must also prepare a notice about the draft plan (a *public consultation notice*).
- (2) A public consultation notice must—
  - (a) state that—
    - (i) anyone may give a written submission to the conservator about the draft controlled native species management plan; and
    - (ii) submissions may be given to the conservator only during the period starting on the day the public consultation notice is notified under the [Legislation Act](#) and ending on a stated day, being a day at least 6 weeks after the day it is notified (the *public consultation period*); and
  - (b) include the draft controlled native species management plan.
- (3) A public consultation notice is a notifiable instrument.

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

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

**163 Draft controlled native species management plan—  
revision**

If the public consultation period for a draft controlled native species management plan has ended, the conservator must—

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

**164 Draft controlled native species management plan—  
emergencies**

- (1) This section applies if the conservator—
  - (a) is preparing a draft controlled native species management plan for a controlled native species; and
  - (b) considers that the situation is an emergency.

- (2) The conservator—
- (a) need not comply with the consultation requirements in section 162 (Draft controlled native species management plan—public consultation); and
  - (b) may prepare a final version of the draft controlled native species management plan.

*Note* The final version of a draft controlled native species management plan is a controlled native species management plan and is a disallowable instrument (see s 165).

### **165 Draft controlled native species management plan—final version and notification**

- (1) The final version of a draft controlled native species management plan prepared under section 163, section 164 or section 166 is a controlled native species management plan.
- (2) A controlled native species management plan is a disallowable instrument.

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

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

### **166 Controlled native species management plan—minor amendments**

- (1) This section applies if—
  - (a) a controlled native species management plan for a controlled native species is in force (the *existing plan*); and
  - (b) the conservator considers that minor amendments to the existing plan are appropriate.

- (2) The conservator—
- (a) may prepare a new draft controlled native species management plan for the controlled native species, incorporating the minor amendments into the existing plan; and
  - (b) need not comply with the consultation requirements in section 162 (Draft controlled native species management plan—public consultation); and
  - (c) may prepare a final version of the new draft controlled native species management plan, as amended.

*Note*      The final version of the new draft controlled native species management plan is a controlled native species management plan and is a disallowable instrument (see s 165).

- (3) In this section:

***minor amendment***, of a controlled native species management plan, means an amendment that will improve the effectiveness or technical efficiency of the plan without changing the substance of the plan.

**Examples**

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

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

**167      Controlled native species management plan—  
conservator etc to implement**

- (1) If a controlled native species management plan is in force for a controlled native species on stated land, the following people must take reasonable steps to implement the plan:
- (a) the conservator;

(b) if the land is unleased land or public land—the custodian of the land.

(2) In implementing the plan, the conservator or the custodian may authorise another person to take action to implement the plan.

*Note 1* Power to make a statutory instrument includes power to make different provision in relation to different matters or different classes of matters (see [Legislation Act](#), s 48).

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

(3) An authorisation under subsection (2) must—

(a) be in writing; and

(b) state—

(i) the authorised person; and

(ii) the authorised action; and

**Example**

dispersing a camp of grey-headed flying foxes

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

(iii) any conditions that apply to the action; and

**Example**

shooting of wildlife may only be done at night and in accordance with the animal welfare guidelines

(iv) the period of time that the authorisation is in force.

**168      Controlled native species management plan—monitoring and review**

- (1) The conservator must monitor the effectiveness of a controlled native species management plan.
- (2) The conservator must review each controlled native species management plan at least once every 5 years.

## Chapter 8 Reserves—management planning

### Part 8.1 Definitions

#### 169 What is a *reserve*?—Act

(1) In this Act:

*reserve*—

(a) means—

- (i) a wilderness area; and
- (ii) a national park; and
- (iii) a nature reserve; and
- (iv) a catchment area; and

(b) includes any other area of public land that is—

- (i) reserved in the [territory plan](#) under the *Planning and Development Act 2007*, section 315 (Reserved areas—public land); and
- (ii) prescribed by regulation to be a reserve; but

(c) does not include an area prescribed by regulation as excluded from a reserve.

(2) In this section:

***catchment area*** means an area of public land reserved in the [territory plan](#) for the protection of water supply under the *Planning and Development Act 2007*, section 315 (g).

***national park*** means an area of public land reserved in the [territory plan](#) for a national park under the *Planning and Development Act 2007*, section 315 (b).

*nature reserve* means an area of public land reserved in the [territory plan](#) for a nature reserve under the [Planning and Development Act 2007](#), section 315 (c).

**170 What is a *wilderness area*?—Act**

In this Act:

*wilderness area* means an area of public land reserved in the [territory plan](#) for a wilderness area under the [Planning and Development Act 2007](#), section 315 (a).



## Part 8.2 IUCN categories for reserves

*Note* IUCN refers to the International Union for Conservation of Nature.

### 171 What is an *IUCN category* for a reserve?—pt 8.2

In this part:

*IUCN category*—see the [Environment Protection and Biodiversity Conservation Act 1999](#) (Cwlth), section 346 (1) (Content of Proclamation declaring Commonwealth reserve).

### 172 Assignment of reserves to IUCN categories

- (1) The conservator may assign a reserve to an IUCN category.
- (2) The conservator may divide a reserve into parts (*zones*) and assign each zone to an IUCN category.
- (3) Before the conservator assigns a reserve or zone to an IUCN category, the conservator must—
  - (a) be satisfied that the reserve or zone—
    - (i) has the characteristics (if any) prescribed by regulation for the category; and
    - (ii) meets the criteria (if any) prescribed by regulation for the category; and
    - (iii) will be managed in accordance with the IUCN reserve management objectives for the category; and
  - (b) consult the custodian of the reserve.
- (4) An assignment of a reserve or zone to an IUCN category is a notifiable instrument.

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

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

**173 IUCN reserve management objectives**

A regulation may prescribe objectives for each IUCN category (the *IUCN reserve management objectives*).

**174 Management of reserve assigned to IUCN category if no reserve management plan**

- (1) This section applies if—
  - (a) there is no reserve management plan in force for a reserve; but
  - (b) the reserve, or a zone of the reserve, has been assigned by the conservator to an IUCN category.
- (2) If the reserve has been assigned to an IUCN category, the custodian of the reserve must manage the reserve in accordance with the IUCN reserve management objectives for the IUCN category to which the reserve is assigned.
- (3) If a zone of the reserve has been assigned to an IUCN category, the custodian of the zone must manage the zone in accordance with the IUCN reserve management objectives for the IUCN category to which the zone is assigned.

*Note* The land must also be managed in accordance with the management objectives for the land and any management plan for the land (see [Planning and Development Act 2007](#), s 316).

## Part 8.3 Reserve management plans

*Note* Under the *Planning and Development Act 2007*, s 316 (b), each area of public land identified in the [territory plan](#) must be managed in accordance with the public land management plan for the area. If the area is a reserve, the public land management plan is a reserve management plan for the area under this part (see *Planning and Development Act 2007*, s 318 (1) (a)).

### 175 What is a *reserve management plan*?

In this Act:

*reserve management plan*, for a reserve—

- (a) means a plan for the reserve, notified under section 184 (Draft reserve management plan—Minister’s approval and notification); and
- (b) if the reserve includes a Ramsar wetland—includes a Ramsar wetlands management plan for the wetland.

*Note 1* *Ramsar wetland*—see s 190.

*Ramsar wetland management plan*, for a Ramsar wetland—see s 191.

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

### 176 What is a *draft reserve management plan*?—pt 8.3

In this part:

*draft reserve management plan*, for a reserve, means a draft management plan for the reserve that—

- (a) identifies the reserve; and

- (b) describes how the planning and development management objectives for the reserve are to be implemented or promoted in the reserve; and

*Note* **Planning and development management objectives**—see the dictionary.

- (c) for a reserve or zone that is assigned to an IUCN category—
- (i) is consistent with the IUCN reserve management objectives for the category; and
- (ii) describes how the IUCN reserve management objectives for the reserve are to be implemented or promoted in the reserve or zone.

*Note* **IUCN category**, for a reserve—see s 171.  
**IUCN reserve management objectives**—see s 173.

### **177 Draft reserve management plan—custodian to prepare**

- (1) The custodian of a reserve must prepare a draft reserve management plan for the reserve.

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

- (2) In preparing a draft reserve management plan, the custodian must consult—
- (a) the conservator; and
- (b) the planning and land authority.

**178 Draft reserve management plan—planning reports and strategic environmental assessments**

- (1) At any time before a draft reserve management plan for a reserve is approved by the Minister under section 183 (3) (a), the Minister may direct the planning and land authority to prepare—
  - (a) a planning report for the draft plan; or
  - (b) a strategic environmental assessment for the draft plan.
- (2) If a planning report or strategic environmental assessment is prepared under subsection (1), the custodian of the reserve must consider the report or assessment in preparing the draft reserve management plan for the reserve.
- (3) In this section:

*planning and land authority*—see the *Planning and Development Act 2007*, dictionary.

*planning report*—see the *Planning and Development Act 2007*, section 97 (What is a *planning report*?).

*strategic environmental assessment*—see the *Planning and Development Act 2007*, section 99 (What is a *strategic environmental assessment*?).

**179 Draft reserve management plan—public consultation**

- (1) If the custodian of a reserve prepares a draft reserve management plan for the reserve, the custodian must also prepare a notice about the draft reserve management plan (a *public consultation notice*).
- (2) A public consultation notice must—
  - (a) state that—
    - (i) anyone may give a written submission to the custodian of the reserve about the draft reserve management plan; and

- (ii) submissions may be given to the custodian only during the period starting on the day the public consultation notice is notified under the [Legislation Act](#) and ending on a stated day, being a day at least 6 weeks after the day it is notified (the *public consultation period*); and
  - (b) include the draft reserve management plan.
- (3) A public consultation notice is a notifiable instrument.  
*Note* A notifiable instrument must be notified under the [Legislation Act](#).
- (4) If the custodian of a reserve notifies a public consultation notice for a draft reserve management plan—
  - (a) anyone may give a written submission to the custodian about the draft plan; and
  - (b) the submission may be given to the custodian only during the public consultation period for the draft plan; and
  - (c) the person making the submission may, in writing, withdraw the submission at any time.
- (5) The custodian may make arrangements for people with particular communication needs to ensure they have adequate opportunity to comment on the draft plan.

**180 Draft reserve management plan—revision and submission to Minister**

- (1) If the public consultation period for a draft reserve management plan has ended, the custodian of the reserve must—
  - (a) consider any submissions received during the public consultation period; and
  - (b) make any revisions to the draft plan that the custodian considers appropriate.

- (2) The custodian of the reserve must then submit the draft plan to the Minister for approval.
- (3) The submission must be accompanied by a report—
  - (a) setting out the issues raised in any submissions given to the custodian during the public consultation period for the draft plan; and
  - (b) if the conservator or the planning and land authority made a submission during the public consultation period recommending a change to the draft plan and the custodian did not revise the draft plan to incorporate the change—explaining why the custodian did not make the recommended change.

**181 Draft reserve management plan—referral to Legislative Assembly committee**

- (1) This section applies if the custodian of a reserve submits a draft reserve management plan to the Minister for approval.
- (2) The Minister must, not later than 5 working days after the day the Minister receives the draft plan, refer the following to an appropriate committee of the Legislative Assembly:
  - (a) the draft plan;
  - (b) the report mentioned in section 180 (3).
- (3) The committee must consider the draft plan and report and either—
  - (a) recommend that the Minister approves the draft plan; or
  - (b) make another recommendation about the draft plan.
- (4) The committee must tell the Minister about the recommendation and refer the matter back to the Minister.

**182 Draft reserve management plan—committee to report**

- (1) This section applies if the Minister has referred a draft plan to a committee of the Legislative Assembly under section 181.
- (2) The Minister must not take action under section 183 in relation to the draft plan until—
  - (a) the committee has referred the draft plan back to the Minister under section 181 (4); or
  - (b) 6 months after the day the draft plan was given to the committee.
- (3) If the committee has not referred the draft plan back to the Minister 6 months after the day the draft plan was given to the committee, the Minister may take action under section 183 in relation to the draft plan.
- (4) After the committee refers the draft plan back to the Minister, the Minister must take action under section 183 in relation to the draft plan.

**183 Draft reserve management plan—Minister to approve, return or reject**

- (1) This section applies if—
  - (a) a Legislative Assembly committee refers a draft plan back to the Minister under section 181 (4); or
  - (b) the Minister may take action under section 182 (3); or
  - (c) a custodian resubmits a draft plan to the Minister under section 185 (Draft reserve management plan—Minister’s direction to revise etc).



- (2) If the Legislative Assembly committee has made a recommendation about the draft plan, the Minister must consider the recommendation.
- (3) The Minister must, not later than the required time—
- (a) approve the draft plan; or
  - (b) return the draft plan to the custodian and direct the custodian to take 1 or more of the following actions in relation to it:
    - (i) if the Legislative Assembly committee has made a recommendation about the draft plan—consider the recommendation;
    - (ii) carry out stated further consultation;
    - (iii) consider a revision suggested by the Minister;
    - (iv) revise the draft plan in a stated way; or
  - (c) reject the draft plan.
- (4) In this section:
- required time*** means 45 working days after—
- (a) if subsection (1) (a) applies—the day the committee tells the Minister about the recommendation under section 181 (4); or
  - (b) if subsection (1) (b) applies—the end of the 6-month period mentioned in section 182 (3); or
  - (c) if subsection (1) (c) applies—the day the custodian resubmits the plan to the Minister.

**184 Draft reserve management plan—Minister’s approval and notification**

- (1) A draft reserve management plan approved by the Minister under section 183 (3) (a) or section 187 (3) (a) is a reserve management plan.
- (2) A reserve management plan is a disallowable instrument.

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

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

*Note 3* Minor amendments may be made to the plan under s 187.

**185 Draft reserve management plan—Minister’s direction to revise etc**

- (1) This section applies if the Minister gives the custodian of a reserve a direction under section 183 (3) (b).
- (2) The custodian must—
  - (a) give effect to the direction; and
  - (b) resubmit the draft plan to the Minister for approval.
- (3) The Minister must decide, under section 183, what to do with the resubmitted draft plan.

**186 Draft reserve management plan—Minister’s rejection**

- (1) If the Minister rejects a draft reserve management plan under section 183 (3) (c), the Minister must prepare a notice stating that the draft plan is rejected (a *rejection notice*).
- (2) A rejection notice is a notifiable instrument.

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

## 187 Reserve management plan—minor amendments

- (1) This section applies if—
  - (a) a reserve management plan for a reserve is in force (the *existing plan*); and
  - (b) the custodian considers that minor amendments to the existing plan are appropriate.
- (2) The custodian—
  - (a) may prepare a new draft reserve management plan for the reserve, incorporating the minor amendments into the existing plan; and
  - (b) need not comply with the requirements in this part; and
  - (c) may submit the new draft reserve management plan to the Minister for approval.
- (3) If the custodian submits a new draft reserve management plan to the Minister for approval, the Minister must—
  - (a) approve the plan; or
  - (b) reject the plan.

*Note* The new draft reserve management plan approved by the Minister is a reserve management plan and is a disallowable instrument (see s 184).

(4) In this section:

**minor amendment**, of a reserve management plan for a reserve, means an amendment that will improve the effectiveness or technical efficiency of the plan without changing the substance of the plan.

**Examples**

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

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

**188 Reserve management plan—custodian to implement**

If a reserve management plan is in force for a reserve, the custodian of the reserve must take reasonable steps to implement the plan.

**189 Reserve management plan—review**

- (1) This section applies if a reserve management plan is in force for a reserve.
- (2) The custodian of the reserve must report to the Minister about the implementation of the plan at least once every 5 years.
- (3) The custodian of the reserve must review the plan—
  - (a) every 10 years after the plan commences; and
  - (b) at any other time at the Minister's request.
- (4) However, the Minister may extend the time for conducting a review under subsection (3) (a).

- (5) In carrying out a review, the custodian of the reserve must—
- (a) undertake public consultation in accordance with section 179 (Draft reserve management plan—public consultation) as if a reference to a draft reserve management plan were a reference to the reserve management plan under review; and
  - (b) consider any submissions received during the public consultation period.

## Part 8.4 Ramsar wetlands management plans

*Note* Ramsar wetlands are wetlands of international importance.

### 190 What is a *Ramsar wetland*?

- (1) In this Act:

*Ramsar wetland* means a declared Ramsar wetland.

- (2) In this section:

*declared Ramsar wetland*—see the [Environment Protection and Biodiversity Conservation Act 1999](#) (Cwlth), section 17 (What is a *declared Ramsar wetland*?).

### 191 What is a *Ramsar wetland management plan*?

In this Act:

*Ramsar wetland management plan*, for a Ramsar wetland, means a plan for the wetland notified under section 198 (Draft Ramsar wetland management plan—Minister’s approval and notification).

### 192 What is a *draft Ramsar wetland management plan*?—pt 8.4

- (1) In this part:

*draft Ramsar wetland management plan*, for a Ramsar wetland—

- (a) means a draft plan detailing how the Ramsar wetland, and its surrounding area, is to be managed to preserve and protect the ecological character of the Ramsar wetland; and

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

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

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

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

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

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

- (2) In this section:

**ecological character**—see the [Environment Protection and Biodiversity Conservation Act 1999](#) (Cwlth), section 16 (3) (Requirement for approval of activities with a significant impact on a declared Ramsar wetland).

**193 Draft Ramsar wetland management plan—conservator to prepare**

The conservator may prepare a draft Ramsar wetland management plan for a Ramsar wetland.

**194 Draft Ramsar wetland management plan—consultation with Commonwealth and custodian**

In preparing a draft Ramsar wetland management plan, the conservator must consult—

- (a) the Commonwealth Minister responsible for administering the [Environment Protection and Biodiversity Conservation Act 1999](#) (Cwlth); and
- (b) if the Ramsar wetland is located on unleased land or public land—the custodian of each area of land where the wetland is located.

**195 Draft Ramsar wetland management plan—public consultation**

- (1) If the conservator prepares a draft Ramsar wetland management plan, the conservator must also prepare a notice about the draft Ramsar wetland management plan (a *public consultation notice*).
- (2) A public consultation notice must—
  - (a) state that—
    - (i) anyone may give a written submission to the conservator about the draft Ramsar wetland management plan; and
    - (ii) submissions may be given to the conservator only during the period starting on the day the public consultation notice is notified under the [Legislation Act](#) and ending on a stated day, being a day at least 6 weeks after the day it is notified (the *public consultation period*); and
  - (b) include the draft Ramsar wetland management plan.
- (3) A public consultation notice is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).
- (4) If the conservator notifies a public consultation notice for a draft Ramsar wetland management plan—
  - (a) anyone may give a written submission to the conservator about the draft plan; and
  - (b) the submission may be given to the conservator only during the public consultation period for the draft plan; and
  - (c) the person making the submission may, in writing, withdraw the submission at any time.
- (5) The conservator may make arrangements for people with particular communication needs to ensure they have adequate opportunity to comment on the draft plan.



**196 Draft Ramsar wetland management plan—revision and submission to Minister**

- (1) If the public consultation period for a draft Ramsar wetland management plan has ended, the conservator must—
  - (a) consider any submissions received during the public consultation period; and
  - (b) make any revisions to the draft plan that the conservator considers appropriate.
- (2) The conservator must then submit the draft plan to the Minister for approval.
- (3) The submission must be accompanied by a report setting out the issues raised in any submissions given to the conservator during the public consultation period for the draft plan.

**197 Draft Ramsar wetland management plan—Minister to approve, return or reject**

If the conservator submits a draft Ramsar wetland management plan to the Minister for approval, the Minister must, not later than 45 days after receiving the submission—

- (a) approve the draft plan; or
- (b) return the draft plan to the conservator and direct the conservator to take 1 or more of the following actions in relation to it:
  - (i) carry out stated further consultation;
  - (ii) consider a relevant report;
  - (iii) revise the draft plan in a stated way; or
- (c) reject the draft plan.

**198 Draft Ramsar wetland management plan—Minister’s approval and notification**

- (1) A draft Ramsar wetland management plan approved by the Minister under section 197 (a) or section 201 (3) is a Ramsar wetland management plan.
- (2) A Ramsar wetland management plan is a disallowable instrument.

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

*Note 2* The power to make a Ramsar wetland management plan includes the power to amend or repeal the plan. The power to amend or repeal the plan is exercisable in the same way, and subject to the same conditions, as the power to make the plan (see [Legislation Act](#), s 46).

*Note 3* Minor amendments may be made to the Ramsar wetland management plan under s 201.

**199 Draft Ramsar wetland management plan—Minister’s direction to revise etc**

- (1) This section applies if the Minister gives the conservator a direction under section 197 (b).
- (2) The conservator must—
  - (a) give effect to the direction; and
  - (b) resubmit the draft plan to the Minister for approval.
- (3) The Minister must decide, under section 197, what to do with the resubmitted draft plan.

**200 Draft Ramsar wetland management plan—Minister’s rejection**

- (1) If the Minister rejects a draft nature conservation Ramsar wetland management plan under section 197 (c), the Minister must prepare a notice stating that the draft plan is rejected (a *rejection notice*).
- (2) A rejection notice is a notifiable instrument.

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

**201 Ramsar wetland management plan—minor amendments**

- (1) This section applies if—
  - (a) a Ramsar wetland management plan for a Ramsar wetland is in force (the *existing plan*); and
  - (b) the conservator considers that minor amendments to the existing plan are appropriate.
- (2) The conservator—
  - (a) may prepare a new draft Ramsar wetland management plan for the wetland, incorporating the minor amendments into the existing plan; and
  - (b) need not comply with the requirements in this part; and
  - (c) may submit the new draft Ramsar wetland management plan to the Minister for approval.
- (3) If the conservator submits a new draft Ramsar wetland management plan to the Minister for approval, the Minister must—
  - (a) approve the plan; or
  - (b) reject the plan.

*Note* The new draft Ramsar wetland management plan approved by the Minister is a Ramsar wetland management plan and is a disallowable instrument (see s 198).

(4) In this section:

**minor amendment**, of a Ramsar wetland management plan, means an amendment that will improve the effectiveness or technical efficiency of the plan without changing the substance of the plan.

**Examples**

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

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

**202 Ramsar wetland management plan—conservator etc to implement**

If a Ramsar wetland management plan is in force for a Ramsar wetland, the following people must take reasonable steps to implement the plan:

- (a) the conservator;
- (b) if the Ramsar wetland is located on unleased land or public land—the custodian of each area of land where the wetland is located.

**203 Ramsar wetland management plan—monitoring and review**

- (1) The conservator must monitor the effectiveness of a Ramsar wetland management plan.
- (2) The conservator must report to the Minister about each Ramsar wetland management plan at least once every 7 years.

## Part 8.5 Access to biological resources in reserves

### 204 What are *biological resources*?—pt 8.5

In this part:

*biological resources* includes—

- (a) genetic resources; and
- (b) organisms or parts of organisms; and
- (c) populations of species or ecological communities; and
- (d) any other biotic component of an ecosystem with actual or potential use or value for humanity.

### 205 What are *genetic resources*?—pt 8.5

In this part:

*genetic resources* means—

- (a) any material of plant, animal, microbial or other origin that contains functional units of heredity; and
- (b) has actual or potential value for humanity.

### 206 Who is an *access provider*?—pt 8.5

In this part:

*access provider*, for biological resources in a reserve means—

- (a) the Territory; and
- (b) if native title exists in relation to the reserve—the native title holders for the reserve.

## 207 What is *accessing biological resources*?—pt 8.5

(1) In this part:

### *accessing biological resources*—

- (a) means taking biological resources of native species for research and development on any genetic resources, or biochemical compounds, comprising or contained in the biological resources; but

#### **Examples**

- 1 collecting living material for taxonomic research
- 2 analysing and sampling stored material for potential commercial product development

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

(b) does not include the following activities:

- (i) Aboriginal or Torres Strait Islander people taking biological resources—
  - (A) for a purpose other than a purpose mentioned in paragraph (a); and
  - (B) in the exercise of their native title rights and interests;
- (ii) accessing human remains;
- (iii) taking biological resources that have been cultivated or tended for a purpose other than a purpose mentioned in paragraph (a);
- (iv) taking public resources for a purpose other than a purpose mentioned in paragraph (a);
- (v) taking a biological resource that is a genetically modified organism;

- (vi) accessing biological resources mentioned in a declaration under section 208.
- (2) A person is taken to have access to biological resources if there is a reasonable prospect that biological resources taken by the person will be subject to research and development on any genetic resources, or biochemical compounds, comprising or contained in the biological resources.
- (3) In this section:
- genetically modified organism*—see the *Gene Technology Act 2003*, dictionary.
- taking public resources* includes the following activities:
- (a) fishing for commerce or recreation;
  - (b) collecting broodstock for aquaculture;
  - (c) harvesting wildflowers;
  - (d) taking wild animals or plants for food;
  - (e) collecting peat or firewood;
  - (f) taking essential oils from wild plants;
  - (g) collecting plant reproductive material for propagation;
  - (h) commercial forestry.

## **208 Application—certain biological resources**

- (1) The conservator may declare that this part does not apply to stated biological resources or a stated collection of biological resources (including future additions to the collection) if—
- (a) the resources are held as specimens away from their natural environment by the Territory or a territory authority and the conservator has reasonable grounds to believe that access to the resources is in a way that is consistent with this part; or

- (b) the conservator has reasonable grounds to believe that—
  - (i) access to the resources is under a law in force in the Territory; or
  - (ii) access to the resources is under a law (other than a Commonwealth law) in force in a State and, if the declaration is made, access to the resources would be in a way that is consistent with this part; or
- (c) use of the resources is required to be controlled under any international agreement to which Australia is a party.

**Example—international agreement to which Australia is a party**

the International Treaty on Plant Genetic Resources for Food and Agriculture

*Note 1* **State** includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

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

- (2) A person may ask the conservator to make a declaration.

*Note* If a form is approved under s 369 for this provision, the form must be used.

- (3) A declaration may be subject to conditions.
- (4) A declaration is a notifiable instrument.

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

## 209 Offence—access biological resources

- (1) A person commits an offence if—
  - (a) the person accesses biological resources; and
  - (b) the biological resources are in a reserve.

Maximum penalty: 50 penalty units.

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



- (3) This section does not apply to a person if—
- (a) the person holds a nature conservation licence authorising the access to the biological resources; or

*Note* **Nature conservation licence**—see s 262.

- (b) the person is an access provider for the biological resources.

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

## **210 Benefit-sharing agreement—licensee required to enter**

- (1) An applicant for a nature conservation licence to access biological resources for commercial purposes in a reserve must enter into a benefit-sharing agreement with each access provider for the resources to enable the fair and equitable sharing of benefits derived from the use of the resources.

*Note* The conservator may make a model benefit-sharing agreement as a guide (see s 211 (2)).

- (2) The conservator may, on behalf of the Territory as an access provider, enter into the benefit-sharing agreement.
- (3) A benefit-sharing agreement takes effect only if a nature conservation licence for the proposed access is issued under chapter 11 (Nature conservation licences).

## **211 Benefit-sharing agreement—provisions**

- (1) A benefit-sharing agreement must provide for reasonable benefit-sharing arrangements, including protection for, recognition of and valuing of any Aboriginal or Torres Strait Islander people's knowledge to be used.
- (2) The conservator may make a model benefit-sharing agreement as a guide for applicants.

- (3) A model benefit-sharing agreement is a notifiable instrument.

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

## **212 Benefit-sharing agreement—informed consent**

- (1) The conservator must not enter into a benefit-sharing agreement on behalf of the Territory concerning access to biological resources for which a native title holder is an access provider unless the conservator is satisfied on reasonable grounds that the access provider has given informed consent to the benefit-sharing agreement.
- (2) In considering whether an access provider has given informed consent to a benefit-sharing agreement, the conservator must consider the following matters:
- (a) whether the access provider had adequate knowledge of this part and was able to engage in reasonable negotiations with the applicant for the nature conservation licence about the benefit-sharing agreement;
  - (b) whether the access provider was given adequate time—
    - (i) to consider the application for the nature conservation licence (including time to consult relevant people); and
    - (ii) to negotiate the benefit-sharing agreement;
  - (c) whether the views of any representative Aboriginal body or any other body performing the functions of a representative body for the reserve have been sought;
  - (d) whether the access provider has received independent legal advice about the application and the requirements of this part.

## Chapter 9 Reserves—offences

### Part 9.1 Reserves—offences generally

#### 213 Offence—enter reserve without paying entry fee

- (1) A person commits an offence if—
  - (a) the Minister has determined an entry fee for a reserve; and  
*Note* An entry fee may be determined under s 368 for this provision.
  - (b) a conservation officer asks the person to pay the entry fee for the reserve; and
  - (c) the person fails to pay the entry fee; and
  - (d) the person enters the reserve.

Maximum penalty: 20 penalty units.

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

#### 214 Offence—take animal into reserve

- (1) A person commits an offence if—
  - (a) the person—
    - (i) takes an animal into a reserve; or
    - (ii) allows an animal to enter a reserve; and
  - (b) the animal is not a native animal.

Maximum penalty: 50 penalty units.

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

- (3) This section does not apply to a person if the animal is an assistance animal.

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

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

*Note* The chapter 9 exceptions are set out in s 252.

- (5) In this section:

*assistance animal*—see the [Domestic Animals Act 2000](#), dictionary.

## **215 Offence—feed native animal in reserve**

- (1) A person commits an offence if—
- (a) the person feeds an animal in a reserve; and
  - (b) the animal is a native animal.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) A person has the benefit of the chapter 9 exceptions for an offence against this section.

*Note* The chapter 9 exceptions are set out in s 252.

## **216 Offence—interfere with trap or bait in reserve**

- (1) A person commits an offence if the person—
- (a) interferes with a trap or bait; and
  - (b) the trap or bait is in a reserve.

Maximum penalty: 30 penalty units.

*Note* **Reserve**—see s 169.

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

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

*Note* The chapter 9 exceptions are set out in s 252.

### **217 Offence—weapons and traps in reserve**

- (1) A person commits an offence if the person possesses or uses, in a reserve—
- (a) a firearm; or
  - (b) a spear, spear gun, bow or arrow; or
  - (c) a trap, net, snare or other device designed, or capable of being used, to take or capture an animal; or
  - (d) a substance that is capable of being used to take or capture an animal.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) A person has the benefit of the chapter 9 exceptions for an offence against this section.

*Note* The chapter 9 exceptions are set out in s 252.

- (4) In this section:

*firearm*—see the *Firearms Act 1996*, section 6.

### **218 Offence—damage native plant in reserve**

- (1) A person commits an offence if—
- (a) the person engages in conduct; and
  - (b) the conduct causes damage to a plant; and

- (c) the plant is—
  - (i) a native plant; and
  - (ii) in a reserve.

Maximum penalty: 50 penalty units.

*Note* **Reserve**—see s 169.

- (2) An offence against this section is a strict liability offence.
- (3) A person has the benefit of the chapter 9 exceptions for an offence against this section.

*Note* The chapter 9 exceptions are set out in s 252.

## **219 Offence—take plant or plant reproductive material into reserve**

- (1) A person commits an offence if—
  - (a) the person takes a plant into a reserve; and
  - (b) the plant is a pest plant.
- (2) A person commits an offence if the person—
  - (a) takes plant reproductive material into a reserve; and
  - (b) leaves the plant reproductive material in the reserve.

Maximum penalty: 30 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) A person has the benefit of the chapter 9 exceptions for an offence against this section.

*Note* The chapter 9 exceptions are set out in s 252.

**220 Offence—planting a plant in a reserve**

- (1) A person commits an offence if the person plants a plant in a reserve.  
Maximum penalty: 30 penalty units.
- (2) An offence against this section is a strict liability offence.
- (3) A person has the benefit of the chapter 9 exceptions for an offence against this section.

*Note* The chapter 9 exceptions are set out in s 252.

**221 Offence—remove soil or stone from reserve**

- (1) A person commits an offence if the person removes soil or stone from a reserve.  
Maximum penalty: 30 penalty units.
- Note* **Reserve**—see s 169.
- (2) An offence against this section is a strict liability offence.
- (3) A person has the benefit of the chapter 9 exceptions for an offence against this section.

*Note* The chapter 9 exceptions are set out in s 252.

**222 Offence—damage, destroy or remove things in reserve**

- (1) A person commits an offence if—
  - (a) the person damages or destroys—
    - (i) a natural or constructed structure or feature; or
    - (ii) infrastructure; and

- (b) the structure, feature or infrastructure is in a reserve.

Maximum penalty: 50 penalty units.

*Note* If a person damages territory property in a reserve, the director-general may direct the person to repair the damage. Failure to comply with the direction is an offence (see *Public Unleased Land Act 2013*, s 21 and s 22).

- (2) A person commits an offence if—
- (a) the person damages or destroys a site or object; and
  - (b) the site or object is—
    - (i) of historical, archaeological, palaeontological or geological interest; and
    - (ii) in a reserve.

Maximum penalty: 50 penalty units.

- (3) A person commits an offence if the person removes infrastructure from a reserve.

Maximum penalty: 50 penalty units.

- (4) A person commits an offence if—
- (a) the person removes an object from a reserve; and
  - (b) the object is of historical, archaeological, palaeontological or geological interest.

Maximum penalty: 50 penalty units.

- (5) An offence against this section is a strict liability offence.
- (6) A person has the benefit of the chapter 9 exceptions for an offence against this section.

*Note* The chapter 9 exceptions are set out in s 252.



(7) In this section:

*infrastructure*, in a reserve means the buildings, roads, items and equipment associated with managing the reserve.

**Examples—infrastructure in a reserve**

roads, fences, gates, signs, taps, garbage bins, toilets, visitors centre

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

## Part 9.2 Reserves—offences in wilderness areas

### 223 Offence—make road in wilderness area

- (1) A person commits an offence if the person—
  - (a) makes a track or road; and
  - (b) the track or road is in a wilderness area.

Maximum penalty: 50 penalty units.

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

### 224 Offence—use motor vehicle off road in wilderness area

- (1) A person commits an offence if—
  - (a) the person uses a motor vehicle in a wilderness area; and
  - (b) the motor vehicle is used outside a track or road that—
    - (i) is designed to be used by vehicles with 4 or more wheels; and
    - (ii) was in existence when the wilderness area was reserved in the [territory plan](#).

Maximum penalty: 50 penalty units.

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

### 225 Offence—excavate in wilderness area without licence

- (1) A person commits an offence if the person excavates in a wilderness area.

Maximum penalty: 50 penalty units.

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

- (3) This section does not apply to a person if the person holds a nature conservation licence authorising the excavation.

*Note 1* **Nature conservation licence**—see s 262.

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

## 226 Direction to restore excavation site

- (1) This section applies if a person—
- (a) excavates in a wilderness area; and
  - (b) when the excavation is finished, fails to restore the excavation site and its surroundings as far as possible to their former state.
- (2) The conservator may direct the person to restore the site and surroundings as far as possible to their former state (a **restore excavation direction**).
- (3) A restore excavation direction must be in writing and state—
- (a) the wilderness area; and
  - (b) the excavation site and surroundings; and
  - (c) the former state of the site and surroundings; and
  - (d) when the direction must be complied with, being a day at least 1 month after the direction is given to the person.

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

## **227 Offence—fail to comply with restore excavation direction**

- (1) A person commits an offence if the person—
  - (a) is subject to a restore excavation direction; and
  - (b) fails to comply with the direction.Maximum penalty: 20 penalty units.
- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a person if the person takes reasonable steps to restore the excavation site and its surroundings as far as possible to their former state.

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

## **228 Restoration of excavation site by Territory**

- (1) This section applies if a person—
  - (a) is subject to a restore excavation direction; and
  - (b) fails to comply with the direction.
- (2) The conservator may—
  - (a) restore the site and surroundings; and
  - (b) recover from the person the reasonable costs of restoring the site and surroundings.

*Note* An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

## Part 9.3 Reserves—repairing damage

### 229 Directions to repair damage to reserve

- (1) This section applies if—
- (a) a person causes damage to—
- (i) a reserve; or
- (ii) Territory property on a reserve; and

#### Examples

- fence
- visitor facilities

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

- (b) the damage is not authorised under a nature conservation licence.

*Note* **Nature conservation licence**—see s 262.

- (2) The conservator may direct the person to repair the damage (a ***repair damage direction***).
- (3) A repair damage direction must be in writing and state—
- (a) the reserve and Territory property (if any); and
- (b) the damage to be repaired; and
- (c) when the direction must be complied with, being a day at least 1 month after the direction is given to the person.

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

**230 Offence—fail to comply with repair damage direction**

- (1) A person commits an offence if the person—
- (a) is subject to a repair damage direction; and
  - (b) fails to comply with the direction.

Maximum penalty: 20 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a person if the person takes reasonable steps to repair the damage.

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

**231 Repair of damage by Territory**

- (1) This section applies if a person—
- (a) is subject to a repair damage direction; and
  - (b) fails to comply with the direction.
- (2) The conservator may—
- (a) repair the damage; and
  - (b) recover from the person the reasonable costs of repairing the damage.

*Note* An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

## Part 9.4 Reserves—offences about clearing native vegetation

### 232 What is *native vegetation*?—pt 9.4

In this part:

*native vegetation*, for an area, means any of the following kinds of vegetation indigenous to the area:

- (a) trees;
- (b) understorey plants;
- (c) groundcover consisting of any kind of grass or herbaceous vegetation;
- (d) plants occurring in a wetland or stream in the area.

### 233 What is a *native vegetation area*?—pt 9.4

In this part:

*native vegetation area*, means an area where—

- (a) either—
  - (i) 10% or more of the area is covered with vegetation (whether dead or alive); and
  - (ii) no more than 60% of the ground layer vegetation cover is exotic annual (at any time of year); and
  - (iii) more than 50% of the perennial ground layer vegetation cover is native vegetation; or
- (b) trees or shrubs indigenous to the area have a canopy cover of 10% or more in any stratum over the area.

**234 What is *clearing* native vegetation?—pt 9.4**

In this part:

*clearing* native vegetation includes—

- (a) cutting down, felling, thinning, logging or removing native vegetation; and
- (b) burning native vegetation; and
- (c) doing anything else that kills, or is likely to kill, native vegetation.

**235 When does clearing native vegetation *cause serious harm* or *material harm* to a reserve?—pt 9.4**

In this part:

*cause*, serious harm or material harm, means substantially contribute directly or indirectly to the harm.

*material harm*—clearing native vegetation in a reserve causes *material harm* to the reserve if—

- (a) it happens in a wetland, other than a Ramsar wetland, in the reserve; or  
*Note* **Ramsar wetland**—see s 190.
- (b) the total area cleared of native vegetation is more than 0.2ha but not more than 2ha; or
- (c) the cost of action needed to restore native vegetation to the area cleared is within the range of \$5 000 to \$50 000.

*serious harm*—clearing native vegetation in a reserve causes *serious harm* to the reserve if—

- (a) it causes the loss of, or the loss of part of—
  - (i) a critically endangered ecological community in the reserve; or



- (ii) an endangered ecological community in the reserve; or
- (iii) a vulnerable ecological community in the reserve; or

*Note* Critically endangered, endangered and vulnerable ecological communities are threatened ecological communities—see s 69.

- (b) it causes a substantial loss of habitat of native plants or native animals in the reserve; or
  - (c) it happens in a Ramsar wetland in the reserve; or
- Note* **Ramsar wetland**—see s 190.
- (d) the total area cleared of native vegetation in the reserve is more than 2ha; or
  - (e) the cost of action needed to restore native vegetation to the area cleared in the reserve is more than \$50 000.

### **236 Offence—clear vegetation causing serious harm**

- (1) A person commits an offence if—
  - (a) the person clears native vegetation in a native vegetation area; and
  - (b) the native vegetation area is in a reserve; and
  - (c) the clearing causes serious harm to the reserve; and
  - (d) the person knows that—
    - (i) the vegetation is native vegetation; and
    - (ii) the area cleared is in a reserve; and
    - (iii) the clearing causes serious harm to the reserve.

Maximum penalty: 2 500 penalty units, imprisonment for 7 years or both.

- (2) A person commits an offence if—
- (a) the person clears native vegetation in a native vegetation area;  
and
  - (b) the native vegetation area is in a reserve; and
  - (c) the clearing causes serious harm to the reserve; and
  - (d) the person is reckless about whether—
    - (i) the vegetation is native vegetation; and
    - (ii) the area cleared is in a reserve; and
    - (iii) the clearing causes serious harm to the reserve.

Maximum penalty: 2 000 penalty units, imprisonment for 5 years or both.

- (3) A person commits an offence if—
- (a) the person clears native vegetation in a native vegetation area;  
and
  - (b) the native vegetation area is in a reserve; and
  - (c) the clearing causes serious harm to the reserve; and
  - (d) the person is negligent about whether—
    - (i) the vegetation is native vegetation; and
    - (ii) the area cleared is in a reserve; and
    - (iii) the clearing causes serious harm to the reserve.

Maximum penalty: 1 500 penalty units, imprisonment for 3 years or both.

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

*Note* The chapter 9 exceptions are set out in s 252.

**237 Offence—clear vegetation causing material harm**

- (1) A person commits an offence if—
- (a) the person clears native vegetation in a native vegetation area; and
  - (b) the native vegetation area is in a reserve; and
  - (c) the clearing causes material harm to the reserve; and
  - (d) the person knows that—
    - (i) the vegetation is native vegetation; and
    - (ii) the area cleared is in a reserve; and
    - (iii) the clearing causes material harm to the reserve.

Maximum penalty: 1 500 penalty units, imprisonment for 5 years or both.

- (2) A person commits an offence if—
- (a) the person clears native vegetation in a native vegetation area; and
  - (b) the native vegetation area is in a reserve; and
  - (c) the clearing causes material harm to the reserve; and
  - (d) the person is reckless about whether—
    - (i) the vegetation is native vegetation; and
    - (ii) the area cleared is in a reserve; and
    - (iii) the clearing causes material harm to the reserve.

Maximum penalty: 1 000 penalty units, imprisonment for 2 years or both.

- (3) A person commits an offence if—
- (a) the person clears native vegetation in a native vegetation area; and
  - (b) the native vegetation area is in a reserve; and
  - (c) the clearing causes material harm to the reserve; and
  - (d) the person is negligent about whether—
    - (i) the vegetation is native vegetation; and
    - (ii) the area cleared is in a reserve; and
    - (iii) the clearing causes material harm to the reserve.

Maximum penalty: 750 penalty units, imprisonment for 1 year or both.

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

*Note* The chapter 9 exceptions are set out in s 252.

### **238 Offence—clear vegetation**

- (1) A person commits an offence if—
- (a) the person clears native vegetation in a native vegetation area; and
  - (b) the native vegetation area is in a reserve.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) A person has the benefit of the chapter 9 exceptions for an offence against this section.

*Note* The chapter 9 exceptions are set out in s 252.

- (4) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant took all reasonable steps to avoid committing the offence.

*Note* The defendant has a legal burden in relation to the matters mentioned in s (4) (see [Criminal Code](#), s 59).

### **239 Defence of appropriate diligence for offences—pt 9.4**

It is a defence to a prosecution for an offence against this part if the defendant proves that the defendant took all reasonable precautions and exercised all appropriate diligence to prevent the commission of the offence.

### **240 Alternative verdicts for offences—pt 9.4**

- (1) This section applies if, in a prosecution for a relevant offence, the trier of fact—
- (a) is not satisfied beyond reasonable doubt that the defendant is guilty of the relevant offence; but
  - (b) is satisfied beyond reasonable doubt that the defendant is guilty of an alternative offence.
- (2) The trier of fact may find the defendant guilty of the alternative offence, but only if the defendant has been given procedural fairness in relation to that finding of guilt.
- (3) In this section:

*alternative offence*, for a relevant offence, means an offence mentioned in table 240, column 3, for the offence.

*relevant offence* means an offence mentioned in table 240, column 2.

**Table 240 Alternative verdicts for offences—pt 9.4**

<b>column 1 item</b>	<b>column 2 relevant offence</b>	<b>column 3 alternative offence</b>
1	s 236 (1) (knowingly clear vegetation—serious harm)	s 236 (2) (recklessly clear vegetation—serious harm) s 236 (3) (negligently clear vegetation—serious harm)
2	s 236 (2) (recklessly clear vegetation—serious harm)	s 236 (3) (negligently clear vegetation—serious harm)
3	s 237 (1) (knowingly clear vegetation—material harm)	s 237 (2) (recklessly clear vegetation—material harm) s 237 (3) (negligently clear vegetation—material harm)
4	s 237 (2) (recklessly clear vegetation—material harm)	s 237 (3) (negligently clear vegetation—material harm)

**241 Order to restore cleared vegetation etc**

- (1) This section applies if a court convicts a person, or finds a person guilty, of an offence against this part.
- (2) The court may order the person to—
  - (a) take any action the court considers appropriate, including action to—
    - (i) mitigate the effect of the clearing; or
    - (ii) restore native vegetation in the area cleared; or
  - (b) pay an amount to the Territory for reasonable costs incurred, or to be incurred, by the Territory in taking action—
    - (i) mentioned in paragraph (a); or
    - (ii) to monitor the outcome of action ordered under paragraph (a).
- (3) The court may also order the person to provide security for the performance of any obligation under the order.

- (4) The court may take action under this section—
- (a) on its own initiative or on the application of the conservator; and
  - (b) in addition to, or instead of, any other penalty it may impose for the offence.

**242 Order to publicise conviction or finding of guilt—pt 9.4**

- (1) This section applies if a court convicts a person, or finds a person guilty, of an offence against this part.
- (2) The court may order the person to take stated action to publicise—
- (a) the conviction or finding of guilt; and
  - (b) the environmental and other consequences of the offence; and
  - (c) any order made by the court under section 241 (2) (a); and
  - (d) any action taken by the person—
    - (i) to mitigate the effect of the clearing; or
    - (ii) to restore native vegetation in the area cleared.
- (3) The court may take action under this section—
- (a) on its own initiative or on the application of the conservator; and
  - (b) in addition to, or instead of, any other penalty it may impose for the offence.

## Part 9.5 Reserves—offences about damaging land

### 243 What is *damage* to land?—pt 9.5

In this part:

*damage*, to land, includes the destruction on the land, or removal from the land, of any of the following:

- (a) clay;
- (b) gravel;
- (c) rock;
- (d) sand;
- (e) soil;
- (f) stone.

#### Examples—damage to land

- crushing rocks
- contaminating soil
- heaping rocks, stones, gravel, sand, clay or soil
- altering the soil profile

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

### 244 When does damage to land *cause serious harm* or *material harm* to a reserve?—pt 9.5

In this part:

*cause* serious or material harm, means substantially contribute directly or indirectly to the harm.



**material harm**—damage to land in a reserve causes **material harm** to the reserve if the cost of action needed to rehabilitate the area damaged is within the range of \$5 000 to \$50 000.

**serious harm**—damage to land in a reserve causes **serious harm** to the reserve if—

- (a) it causes the loss of, or the loss of part of—
    - (i) a critically endangered ecological community in the reserve; or
    - (ii) an endangered ecological community in the reserve; or
    - (iii) a vulnerable ecological community in the reserve; or
- Note* Critically endangered, endangered and vulnerable ecological communities are threatened ecological communities—see s 69.
- (b) it causes a substantial loss of habitat of native plants or native animals in the reserve; or
  - (c) the total area damaged in the reserve is more than 2ha; or
  - (d) the cost of action needed to rehabilitate the land damaged in the reserve is more than \$50 000.

## **245 Offence—damage land causing serious harm**

- (1) A person commits an offence if—
  - (a) the person damages land; and
  - (b) the land is in a reserve; and
  - (c) the damage causes serious harm to the reserve; and

- (d) the person knows that—
  - (i) the land damaged is in a reserve; and
  - (ii) the damage causes serious harm to the reserve.

Maximum penalty: 2 500 penalty units, imprisonment for 7 years or both.

- (2) A person commits an offence if—
  - (a) the person damages land; and
  - (b) the land is in a reserve; and
  - (c) the damage causes serious harm to the reserve; and
  - (d) the person is reckless about whether—
    - (i) the land damaged is in a reserve; and
    - (ii) the damage causes serious harm to the reserve.

Maximum penalty: 2 000 penalty units, imprisonment for 5 years or both.

- (3) A person commits an offence if—
  - (a) the person damages land; and
  - (b) the land is in a reserve; and
  - (c) the damage causes serious harm to the reserve; and
  - (d) the person is negligent about whether—
    - (i) the land damaged is in a reserve; and
    - (ii) the damage causes serious harm to the reserve.

Maximum penalty: 1 500 penalty units, imprisonment for 3 years or both.

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

*Note* The chapter 9 exceptions are set out in s 252.

**246 Offence—damage land causing material harm**

- (1) A person commits an offence if—
- (a) the person damages land; and
  - (b) the land is in a reserve; and
  - (c) the damage causes material harm to the reserve; and
  - (d) the person knows that—
    - (i) the land damaged is in a reserve; and
    - (ii) the damage causes material harm to the reserve.

Maximum penalty: 1 500 penalty units, imprisonment for 5 years or both.

- (2) A person commits an offence if—
- (a) the person damages land; and
  - (b) the land is in a reserve; and
  - (c) the damage causes material harm to the reserve; and
  - (d) the person is reckless about whether—
    - (i) the land damaged is in a reserve; and
    - (ii) the damage causes material harm to the reserve.

Maximum penalty: 1 000 penalty units, imprisonment for 2 years or both.

- (3) A person commits an offence if—
- (a) the person damages land; and
  - (b) the land is in a reserve; and
  - (c) the damage causes material harm to the reserve; and
  - (d) the person is negligent about whether—
    - (i) the land damaged is in a reserve; and
    - (ii) the damage causes material harm to the reserve.

Maximum penalty: 750 penalty units, imprisonment for 1 year or both.

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

*Note* The chapter 9 exceptions are set out in s 252.

## **247 Offence—damage land causing harm**

- (1) A person commits an offence if—
- (a) the person damages land; and
  - (b) the land is in a reserve; and
  - (c) the damage causes harm to the reserve.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) A person has the benefit of the chapter 9 exceptions for an offence against this section.

*Note* The chapter 9 exceptions are set out in s 252.

- (4) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant took all reasonable steps to avoid committing the offence.

*Note* The defendant has a legal burden in relation to the matters mentioned in s (4) (see [Criminal Code](#), s 59).

- (5) In this section:

*harm*, to a reserve, includes any loss or disadvantage to the environment in the reserve.

#### **248 Defence of appropriate diligence for offences—pt 9.5**

It is a defence to a prosecution for an offence against this part if the defendant proves that the defendant took all reasonable precautions and exercised all appropriate diligence to prevent the commission of the offence.

#### **249 Alternative verdicts for offences—pt 9.5**

- (1) This section applies if, in a prosecution for a relevant offence, the trier of fact—
- (a) is not satisfied beyond reasonable doubt that the defendant is guilty of the relevant offence; but
  - (b) is satisfied beyond reasonable doubt that the defendant is guilty of an alternative offence.
- (2) The trier of fact may find the defendant guilty of the alternative offence, but only if the defendant has been given procedural fairness in relation to that finding of guilt.

(3) In this section:

*alternative offence*, for a relevant offence, means an offence mentioned in table 249, column 3, for the offence.

*relevant offence* means an offence mentioned in table 249, column 2.

**Table 249 Alternative verdicts for offences—pt 9.5**

column 1 item	column 2 relevant offence	column 3 alternative offence
1	s 245 (1) (knowingly damage land—serious harm)	s 245 (2) (recklessly damage land—serious harm) s 245 (3) (negligently damage land—serious harm)
2	s 245 (2) (recklessly damage land—serious harm)	s 245 (3) (negligently damage land—serious harm)
3	s 246 (1) (knowingly damage land—material harm)	s 246 (2) (recklessly damage land—material harm) s 246 (3) (negligently damage land—material harm)
4	s 246 (2) (recklessly damage land—material harm)	s 246 (3) (negligently damage land—material harm)

## 250 Order to rehabilitate land etc

- (1) This section applies if a court convicts a person, or finds a person guilty, of an offence against this part.
- (2) The court may order the person to—
  - (a) take any action the court considers appropriate, including action to—
    - (i) mitigate the effect of the damage; or
    - (ii) rehabilitate the land damaged as closely as possible to its condition before the damage; or

- (b) pay an amount to the Territory for reasonable costs incurred, or to be incurred, by the Territory in taking action—
  - (i) mentioned in paragraph (a); or
  - (ii) to monitor the outcome of action ordered under paragraph (a).
- (3) The court may also order the person to provide security for the performance of any obligation under the order.
- (4) The court may take action under this section—
  - (a) on its own initiative or on the application of the conservator; and
  - (b) in addition to, or instead of, any other penalty it may impose for the offence.

**251 Order to publicise conviction or finding of guilt—pt 9.5**

- (1) This section applies if a court convicts a person, or finds a person guilty, of an offence against this part.
- (2) The court may order the person to take stated action to publicise—
  - (a) the conviction or finding of guilt; and
  - (b) the environmental and other consequences of the offence; and
  - (c) any order made by the court under section 250 (2) (a); and
  - (d) any action taken by the person—
    - (i) to mitigate the effect of the damage; or
    - (ii) to rehabilitate the land damaged as closely as possible to its condition before the damage.
- (3) The court may take action under this section—
  - (a) on its own initiative or on the application of the conservator; and
  - (b) in addition to, or instead of, any other penalty it may impose for the offence.

## Part 9.6 Exceptions to offences

### 252 Chapter 9 exceptions

- (1) This section applies if a person has the benefit of the chapter 9 exceptions for an offence.
- (2) The offence does not apply to the person if—
  - (a) the conduct constituting the offence is—

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

*Note* **Activities declaration**—see s 256.  
**Restricted activity**—see s 256.

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

*Note* **Management agreement**—see s 310.

- (iii) undertaken in implementing a controlled native species management plan under section 167 (Controlled native species management plan—conservator etc to implement); or

*Note* **Controlled native species management plan**—see s 158.

- (iv) undertaken in carrying out minor public works on a reserve in accordance with a minor public works code approved by the conservator of flora and fauna under section 318A; or

*Note* **Minor public works**—see the *Planning and Development Act 2007*, sch 4, s 4.1.  
**Minor public works code**—see s 318A.



- (b) the person is authorised to engage in the conduct constituting the offence under—
- (i) a nature conservation licence; or
  - (ii) a strategic bushfire management plan under the *Emergencies Act 2004*, section 72; or
  - (iii) a development approval under the *Planning and Development Act 2007*, chapter 7 (Development approvals); or
  - (iv) a public unleased land permit; or
- (c) the person is a conservation officer exercising a function under this Act.

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

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

## Chapter 10 Reserves—prohibited and restricted activities

*Note* Because reserves are public unleased land, the provisions of the [Public Unleased Land Act 2013](#) also apply. For example, a person wishing to camp in a reserve may need a public unleased land permit if the camping is not authorised under this Act.

### Part 10.1 Resource protection areas

#### 253 What is a *resource protection area*?—ch 10

In this chapter:

*resource protection area* means an area declared by the Minister to be a resource protection area under section 254.

#### 254 Resource protection area—declaration

- (1) The Minister may declare an area in a reserve to be a resource protection area (a *resource protection area declaration*).

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

- (2) A resource protection area declaration must—
- (a) state the purpose of the declaration, including a description of the environmental harm that the declaration is intended to reduce; and
  - (b) identify the area to be declared as a resource protection area.

- (3) In deciding whether to make a resource protection area declaration, the Minister must consider—
- (a) the purpose for which the area was reserved in the [territory plan](#) under the [Planning and Development Act 2007](#), section 315 (Reserved areas—public land); and
  - (b) the planning and development management objectives for the area; and

*Note* **Planning and development management objectives**—see the dictionary.

- (c) for an area in a reserve that the conservator has assigned to an IUCN category—the IUCN reserve management objectives identified for the reserve.

*Note* **IUCN category**—see s 171.  
**IUCN reserve management objectives**—see s 173.

- (4) In deciding whether to make a resource protection area declaration, the Minister must consult—
- (a) the conservator; and
  - (b) the custodian of the area.

- (5) A resource protection area declaration is a disallowable instrument.

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

- (6) In this section:

**environmental harm**—see the [Environment Protection Act 1997](#), dictionary.

**255 Resource protection area—review**

- (1) The conservator must review a resource protection area declaration at least once every 3 years after the declaration commences.
- (2) In reviewing a resource protection area declaration, the conservator—
  - (a) must consider the effectiveness of the declaration in achieving its stated purpose; and
  - (b) may make recommendations to the Minister about the declaration.

## Part 10.2 Prohibited and restricted activities

### 256 Conservator may make activities declarations

- (1) This section applies if the conservator reasonably believes that a certain activity, if carried out in a reserve, may have a negative impact on the reserve.
- (2) The conservator may declare (an *activities declaration*) that a stated activity—
  - (a) may be carried out in a stated reserve only if stated directions or requirements are complied with (a *restricted activity*); or
  - (b) is prohibited in a stated reserve (a *prohibited activity*).

#### Examples—activities in reserves

- driving a motor vehicle
- parking a motor vehicle
- mooring a vessel
- taking an animal
- lighting, maintaining or using a fire
- camping
- swimming

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

- (3) In deciding whether to make an activities declaration for a reserve, the conservator must consider the reserve management plan for the reserve.

*Note* **Reserve management plan**—see s 175.

- (4) An activities declaration is a notifiable instrument.

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

- (5) If the conservator makes an activities declaration for a reserve, the conservator must—
- (a) give additional public notice about the declaration; and
  - (b) display a notice about the declaration in a conspicuous place at the reserve.

*Note 1* The power to make a declaration includes the power to amend or repeal the declaration (see [Legislation Act](#), s 46).

*Note 2* **Public notice** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1). The requirement in s (5) is in addition to the requirement for notification on the legislation register as a notifiable instrument.

## 257 Offence—carry on restricted activity in reserve

- (1) A person commits an offence if—
- (a) an activities declaration is in force for a reserve; and
  - (b) the activities declaration states that an activity is a restricted activity for the reserve; and
  - (c) the person carries on the restricted activity in the reserve in contravention of the activities declaration.

Maximum penalty: 10 penalty units.

- (2) A person commits an offence if—
- (a) an activities declaration is in force for a resource protection area in a reserve; and
  - (b) the activities declaration states that an activity is a restricted activity for the resource protection area; and
  - (c) the person carries out the restricted activity in the resource protection area in contravention of the activities declaration.

Maximum penalty: 30 penalty units.

*Note* **Resource protection area**—see s 253.

- (3) An offence against this section is a strict liability offence.
- (4) A person has the benefit of the part 10.2 exceptions for an offence against this section.

*Note* The part 10.2 exceptions are set out in s 261.

### **258 Offence—carry on prohibited activity in reserve**

- (1) A person commits an offence if—
  - (a) an activities declaration is in force for a reserve; and
  - (b) the activities declaration states that an activity is a prohibited activity for the reserve; and
  - (c) the person carries out the prohibited activity in the reserve.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if—
  - (a) an activities declaration is in force for a resource protection area in a reserve; and
  - (b) the activities declaration states that an activity is a prohibited activity for the resource protection area; and
  - (c) the person carries out the prohibited activity in the resource protection area.

Maximum penalty: 50 penalty units.

*Note* **Resource protection area**—see s 253.

- (3) An offence against this section is a strict liability offence.
- (4) A person has the benefit of the part 10.2 exceptions for an offence against this section.

*Note* The part 10.2 exceptions are set out in s 261.

## 259 Conservator may close reserve

- (1) This section applies if the conservator reasonably believes that public access to a reserve may—
  - (a) endanger public safety; or
  - (b) interfere with the management of the reserve.
- (2) The conservator may declare (a *closed reserve declaration*) that—
  - (a) access to a reserve is restricted to stated people or a stated class of people; or
  - (b) public access to a reserve is prohibited.

- (3) A closed reserve declaration is a notifiable instrument.

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

- (4) If the conservator makes a closed reserve declaration, the conservator must—
  - (a) give additional public notice about the declaration; and
  - (b) display a notice about the declaration in a conspicuous place at the reserve.

*Note 1* The power to make a declaration includes the power to amend or repeal the declaration (see [Legislation Act](#), s 46).

*Note 2* **Public notice** means notice on an ACT government website or in a daily newspaper circulating in the ACT (see [Legislation Act](#), dict, pt 1). The requirement in s (4) is in addition to the requirement for notification on the legislation register as a notifiable instrument.

- (5) A closed reserve declaration may commence on a day or at a time earlier than its notification day.



**260 Offence—enter closed reserve**

- (1) A person commits an offence if—
  - (a) a closed reserve declaration is in force for a reserve; and
  - (b) the person enters the reserve in contravention of the declaration.Maximum penalty: 50 penalty units.
- (2) An offence against this section is a strict liability offence.
- (3) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant—
  - (a) took reasonable steps to ensure that the contravention did not happen; or
  - (b) had no reasonable grounds for suspecting that a closed reserve declaration was in force for the reserve.

*Note* The defendant has a legal burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 59).

**261 Part 10.2 exceptions**

- (1) This section applies if a person has the benefit of the part 10.2 exceptions for an offence.
- (2) The offence does not apply to the person if—
  - (a) the person is authorised to engage in the conduct constituting the offence under—
    - (i) a nature conservation licence; or  
*Note* *Nature conservation licence*—see s 262.
    - (ii) a licence to occupy or use the land under the *Planning and Development Act 2007*, section 303; or
    - (iii) a development approval under the *Planning and Development Act 2007*, chapter 7; or

- (iv) a work approval under the *Public Unleased Land Act 2013*, section 19; or
- (v) a public unleased land permit; or
- (vi) another law of the Territory; or
- (b) the person is a conservation officer exercising a function under this Act.

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

- (3) It is a defence to a prosecution for an offence against this part if the defendant proves that the defendant took reasonable steps to ensure that the contravention did not happen.

*Note 1* The defendant has a legal burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 59).

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

## Chapter 11 Nature conservation licences

### Part 11.1 Licences—preliminary

#### 262 What is a *nature conservation licence*?

In this Act:

*nature conservation licence* means a licence that authorises the licensee to carry on 1 or more activities (the *licensed activity*) that would otherwise be an offence under this Act.

*Note* Some activities are unsuitable for a licence (see s 268 (1), def *suitable activity*, par (b)).

#### 263 Offence—fail to comply with condition of licence

- (1) A person commits an offence if—
- (a) the person holds a licence; and
  - (b) the licence is subject to a condition; and
  - (c) the person fails to comply with the condition.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if—
- (a) the person holds a licence; and
  - (b) the licence is subject to a financial assurance condition; and
  - (c) the person fails to comply with the financial assurance condition.

Maximum penalty: 30 penalty units.

*Note* *Financial assurance condition*, on a licence—see s 278.

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

## Part 11.2 Licences—application and suitability

### 264 Licence—application

- (1) A person may apply to the conservator for a licence.
- (2) The application must—
  - (a) be in writing; and
  - (b) state the activity for the licence; and
  - (c) include complete details of suitability information about—
    - (i) the applicant; and
    - (ii) if the applicant is a corporation—each influential person for the applicant; and
    - (iii) if someone other than the applicant is to have management or control of the activity for the licence—each person who is to have management or control; and
    - (iv) the activity for the licence.

*Note 1* **Suitability information**, about a person—see s 266.  
**Suitability information**, about an activity—see s 269.

*Note 2* Giving false or misleading information is an offence against the [Criminal Code](#), s 338.

*Note 3* If a form is approved under s 369 for this provision, the form must be used.

*Note 4* A fee may be determined under s 368 for this provision.

**265 Who is a *suitable person* to hold a licence?—ch 11**

(1) In this chapter:

*suitable person*, to hold a licence, means a person who the conservator is satisfied is a suitable person to hold the licence.

(2) In deciding whether a person is a suitable person to hold a licence, the conservator must consider each of the following:

- (a) suitability information about the person;
- (b) any information given to the conservator under section 267 (Suitability of people—further information about people).

**266 What is *suitability information* about a person?—ch 11**

In this chapter:

*suitability information*, about a person, means information about—

- (a) any conviction of, or finding of guilt against, the person for an offence against the following:
  - (i) this Act;
  - (ii) the *Animal Welfare Act 1992*;
  - (iii) the *Domestic Animals Act 2000*;
  - (iv) the *Environment Protection Act 1997*;
  - (v) the *Fisheries Act 2000*;
  - (vi) the *Water Resources Act 2007*;

- (vii) a law of another jurisdiction corresponding, or substantially corresponding, to this Act or an Act mentioned in subparagraphs (ii) to (vi); and

**Examples—subpar (vii)**

- 1 *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth)
- 2 *National Parks and Wildlife Act 1974* (NSW)
- 3 *Threatened Species Conservation Act 1995* (NSW)

*Note 1* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

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

- (b) any noncompliance by the person with a requirement under an Act mentioned in paragraph (a); and

**Example**

failing to comply with a treatment direction (see s 334)

- (c) any refusal of an application by the person for a licence, permit or other authority (however described) under an Act mentioned in paragraph (a); and
- (d) any other matter relevant to the person's ability to appropriately carry on an activity in relation to an animal, plant or land; and
- (e) any other matter prescribed by regulation.

**267 Suitability of people—further information about people**

- (1) This section applies if the conservator is making a decision about whether a person is a suitable person to hold a licence.
- (2) The conservator may, by written notice given to the person (a *personal information notice*), require the person to give the conservator stated information about 1 or more of the following people, not later than a stated reasonable time:
  - (a) the person;
  - (b) if the person is a corporation—an influential person for the corporation.
- (3) The conservator need not decide whether a person is a suitable person to hold a licence if—
  - (a) the conservator has given the person a personal information notice; and
  - (b) the person does not comply with the notice.

**268 What is a *suitable activity* for a licence?**

- (1) In this Act:

*suitable activity*, for a licence—

  - (a) means an activity that the conservator is satisfied is suitable for the licence; but
  - (b) does not include an activity prescribed by regulation as an unsuitable activity.
- (2) In deciding whether an activity is suitable for a licence, the conservator must consider each of the following:
  - (a) suitability information about the activity;

- (b) any information about the activity given to the conservator under section 270 (Suitability of activities—further information about activity);
- (c) any risk management plan given to the conservator under section 271 (Suitability of activities—risk management plan);
- (d) the results of any inspection of a place by the conservator under section 272 (Suitability of activities—inspection of place);
- (e) if the activity involves a relevant species, relevant ecological community or key threatening process for which an action plan is in force—the action plan;

*Note* **Action plan**—see s 99.

**Key threatening process**—see s 74.

**Relevant ecological community** and **relevant species**—see s 98.

- (f) if the activity involves a species for which a native species conservation plan is in force—the native species conservation plan;

*Note* **Native species conservation plan**—see s 115.

- (g) if the activity involves a native species and a controlled native species management plan is in force for the native species—the controlled native species management plan;

- (h) if the activity is to be carried out in a reserve—

- (i) the planning and development management objectives for the reserve; and

*Note* **Planning and development management objectives**—see the dictionary.

- (ii) for a reserve assigned to an IUCN category under section 172—the IUCN reserve management objectives identified for the reserve or area;

*Note* **IUCN category**—see s 171.

**IUCN reserve management objectives**—see s 173.



- (i) if the activity is to be carried out in a resource protection area—the purpose of the resource protection area declaration, including the environmental harm that the declaration is intended to reduce.

*Note* **Resource protection area declaration**—see s 254.

- (3) In deciding whether an activity to be carried out in a reserve is suitable for a licence, the conservator must consult the custodian of the reserve.

## 269 What is *suitability information* about an activity?

In this Act:

***suitability information***, about an activity, means information about—

- (a) the impact of the activity on the animal, plant or land; and

### Examples

- ecological survey
- action plan
- species conservation plan

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

- (b) the purpose of the activity; and

### Examples

- scientific research
- education
- commercial trade

- (c) the place where the activity is to be carried out; and
- (d) if the activity involves a native species—the number and species of each native species involved in the activity; and
- (e) any other matter prescribed by regulation.

*Note* The conservator must also consider suitability information for an activity when deciding to amend or renew a licence (see s 286, s 288 and s 292).

### **270 Suitability of activities—further information about activity**

- (1) This section applies if the conservator is making a decision about whether an activity is a suitable activity for a licence.
- (2) The conservator may, by written notice given to the applicant (an *activity information notice*), require the applicant to give the conservator stated information about the activity, not later than a stated reasonable time.
- (3) The conservator need not decide whether an activity is a suitable activity for a licence if—
  - (a) the conservator has given the applicant an activity information notice; and
  - (b) the applicant does not comply with the notice.

### **271 Suitability of activities—risk management plan**

- (1) This section applies if the conservator is—
  - (a) making a decision about whether an activity is a suitable activity for a licence; and
  - (b) satisfied that carrying on the activity in accordance with the licence is likely to cause undue risk to people or property.
- (2) The conservator may, by written notice given to the applicant (a *risk management plan notice*), require the applicant to prepare a risk management plan for the licence.

- (3) The risk management plan must—
  - (a) identify the risks to people and property; and
  - (b) set out the procedures, practices and arrangements for eliminating or minimising the risks.
- (4) The conservator need not decide an application for a licence if—
  - (a) the conservator has given the applicant a risk management plan notice; and
  - (b) the applicant does not comply with the notice.

**272 Suitability of activities—inspection of place**

- (1) This section applies if—
  - (a) the conservator is making a decision about whether an activity is suitable for a licence; and
  - (b) the activity involves keeping an animal.
- (2) The conservator may, by written notice given to the applicant (an *inspection notice*), require the applicant to allow the conservator to inspect the place where the animal is to be kept within a stated reasonable time.
- (3) The conservator need not decide whether an activity is a suitable activity for a licence if—
  - (a) the conservator has given the applicant an inspection notice; and
  - (b) the applicant does not comply with the notice.

## Part 11.3 Licences—decision

### 273 Licence—decision on application

- (1) This section applies if the conservator receives an application for a licence.
- (2) The conservator may issue the licence to the applicant only if reasonably satisfied that—
  - (a) the applicant is a suitable person to hold the licence; and
  - (b) if the applicant is a corporation—each influential person for the applicant is a suitable person to hold the licence; and
  - (c) if someone other than the applicant is to have management or control of the activity for the licence—each person who is to have management or control of the activity is a suitable person to hold the licence; and
  - (d) the activity is a suitable activity for the licence.

*Note* **Suitable activity**, for a licence—see s 268.  
**Suitable person**, to hold a licence—see s 265.

- (3) The conservator must, not later than the required time—
  - (a) decide the application; and
  - (b) tell the applicant about the decision on the application.
- (4) In this section:

**required time** means the latest of the following:

- (a) if the conservator gives the applicant a personal information notice under section 267—28 days after the day the conservator receives the stated information;
- (b) if the conservator gives the applicant an activity information notice under section 270—28 days after the day the conservator receives the information;

- (c) if the conservator gives the applicant a risk management plan notice under section 271—28 days after the day the conservator receives the risk management plan;
- (d) if the conservator gives the applicant an inspection notice under section 272—28 days after the day the conservator inspects the place;
- (e) 28 days after the day the conservator receives the application.

*Note* Failure to issue a licence within the required time is taken to be a decision not to issue the licence (see *ACT Civil and Administrative Tribunal Act 2008*, s 12).

## 274 Licence—conditions generally

A licence is subject to any condition—

- (a) prescribed by regulation; and
- (b) that the conservator reasonably believes is necessary to meet the objects of this Act.

### Examples—par (b)

- 1 that the licensee may carry on the activity only during a stated season
- 2 that the licensee may carry on the activity only for non-commercial purposes
- 3 a financial assurance condition (see s 278)

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

## 275 Licence—conditions about native species conservation plans etc

- (1) This section applies if—
  - (a) a licence is issued to carry out an activity on stated land; and
  - (b) the land is subject to a native species conservation plan.

*Note* *Native species conservation plan*, for a native species—see s 115.

- (2) The licence is subject to the condition that the activity must be carried out in accordance with the plan.

**276 Licence—term**

- (1) A licence starts on the day stated in the licence.
- (2) The conservator must not issue a licence for longer than 5 years.
- (3) A licence expires on the day stated in the licence.
- (4) However, if the licensed activity involves keeping a native animal and the animal escapes, the licence no longer applies in relation to the animal.

**277 Licence—form**

- (1) A licence must—
  - (a) be in writing; and
  - (b) include the following information:
    - (i) the name of the licensee;
    - (ii) a unique identifying number (the *licence number*);
    - (iii) the licensed activity;
    - (iv) the animal, plant or land for the licence;
    - (v) the term of the licence;
    - (vi) the conditions on the licence;
    - (vii) anything else prescribed by regulation.
- (2) A licence may include anything else the conservator considers relevant.

## Part 11.4 Licences—financial assurance conditions

### 278 What is a *financial assurance condition*?

In this Act:

*financial assurance condition*, on a licence, means a condition requiring the licensee to give the conservator a financial assurance of a stated kind and amount.

### 279 Financial assurance condition—imposition

- (1) The conservator may impose a financial assurance condition on a licence if satisfied that it is justified having regard to—
  - (a) the likelihood that the licensed activity will cause serious or material damage to—
    - (i) a population of a species or ecological community; or
    - (ii) a habitat of a species or ecological community; or
    - (iii) an ecosystem; and
  - (b) the likelihood that action will need to be taken in the future to repair the damage; and
  - (c) the financial assurance considerations (if any); and  
*Note* *Financial assurance considerations*—see s (5).
  - (d) any other relevant matter.
- (2) A financial assurance must be in the form of—
  - (a) a bank guarantee; or
  - (b) a bond; or
  - (c) an insurance policy; or

- (d) if the conservator reasonably believes that, in the circumstances, the forms of assurance in paragraphs (a), (b) and (c) are not appropriate—another form of security that the conservator considers appropriate.
- (3) The conservator must not require financial assurance of an amount greater than the total amount that the conservator reasonably believes is needed to repair the damage that could result from the activity.
- (4) A financial assurance must be given for the period stated in the financial assurance condition on the licence.
- (5) The Minister may determine matters to be considered by the conservator in deciding whether to impose a financial assurance condition on a licence (*financial assurance considerations*).
- (6) A determination is a disallowable instrument.

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

## **280 Financial assurance condition—show cause**

- (1) If the conservator proposes to impose a financial assurance condition on a licence, the conservator must give the applicant or licensee written notice of the intention to impose the condition.
- (2) The notice must state—
  - (a) the grounds for the proposed financial assurance condition; and
  - (b) the amount and form of the proposed financial assurance; and
  - (c) that the applicant or licensee may give a written submission to the conservator showing cause why the proposed financial assurance condition should not be imposed; and
  - (d) that submissions may be given to the conservator only during the 20 working days after the day the notice is given to the licensee (the *show cause period*).



- (3) The conservator must, within 20 working days after the end of the show cause period—
  - (a) consider any submissions received under subsection (2) (d); and
  - (b) decide whether to impose the financial assurance condition; and
  - (c) tell the applicant, or licensee, in writing (a *decision notice*)—
    - (i) about the decision; and
    - (ii) if the condition is to be imposed—when the financial assurance must be provided (the *due date*).
- (4) The conservator must not decide a due date that is earlier than 10 working days after the day the decision notice is given to the licensee.

#### **281 Financial assurance condition—licence cancellation**

- (1) This section applies if—
  - (a) the conservator imposes a financial assurance condition on a licence; and
  - (b) the licensee does not provide the financial assurance—
    - (i) in accordance with the financial assurance condition; or
    - (ii) by the due date.
- (2) The conservator must cancel the licence.

#### **282 Financial assurance condition—claim or realisation**

- (1) This section applies if—
  - (a) a licence is subject to a financial assurance condition; and
  - (b) a population, habitat or ecosystem is seriously or materially damaged because of the licensed activity; and

- (c) the conservator incurs, or will incur, expenses in repairing the damage; and
  - (d) the damage is the kind of harm for which the financial assurance may be claimed or realised; and
  - (e) the damage was not licensed under this Act.
- (2) The conservator may recover the reasonable expenses of repairing the damage by making a claim on or realising the financial assurance.

**283 Financial assurance condition—notice before claim or realisation**

- (1) Before acting under section 282, the conservator must give the licensee, a written notice stating—
- (a) the serious or material damage caused by the use of the licensed place; and
  - (b) details of the action taken, or to be taken, to repair the damage; and
  - (c) the amount of the financial assurance to be claimed or realised; and
  - (d) that the licensee may give a written submission to the conservator showing cause why the financial assurance should not be claimed or realised as proposed; and
  - (e) that a submission may be given to the conservator only during the 20 working days (the *show cause period*) after the day the notice is given to the licensee.
- (2) The conservator must, within 20 working days after the end of the show cause period—
- (a) consider any submission received under subsection (1) (e); and
  - (b) decide whether to make a claim on or realise the financial assurance; and

- (c) tell the licensee about the decision.

**284 Financial assurance condition—recovery of extra costs**

- (1) This section applies if—
- (a) the conservator makes a claim on or realises a financial assurance under a licence; and
  - (b) the amount recovered by the conservator (the *realised assurance*) is less than the reasonable expenses that the conservator incurred, or will incur, in repairing the damage.
- (2) The conservator may give the licensee written notice—
- (a) requiring the licensee to pay the stated amount, being the difference between the reasonable expenses and the realised assurance; and
  - (b) stating when the stated amount is required to be paid (the *due date*).
- (3) The conservator must not decide a due date that is earlier than 20 working days after the day the notice is given to the licensee.
- (4) If the licensee does not pay the stated amount on or before the due date, the amount that remains unpaid, together with interest on the unpaid amount, is a debt due to the Territory by the licensee.

*Note 1* A rate of interest may be determined under s 368 for this provision.

*Note 2* An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

## 285 Financial assurance condition—money held by Territory

- (1) If an amount of money is held by the Territory as a financial assurance, the following provisions apply:
- (a) interest accrues on so much of the original amount as from time to time remains unclaimed by the conservator under section 282 (Financial assurance condition—claim or realisation);  
*Note* A rate of interest may be determined under s 368 for this provision.
  - (b) for a claim made by the conservator under section 282—the financial assurance is taken to include any accrued interest other than interest to which the licensee is entitled to be paid under paragraph (c);
  - (c) during the period for which the financial assurance is required, on each anniversary of the payment of the original amount, the licensee is entitled to be paid by the Territory so much of the interest that accrued during the year that ended on the day before that anniversary as remains unclaimed by the conservator under section 282;
  - (d) the amount of the original amount and accrued interest that remains unclaimed by the conservator under section 282 must be paid by the Territory to the licensee if the financial assurance is no longer required by the conservator.
- (2) For this section, a financial assurance is *no longer required by the conservator* if—
- (a) the conservator is satisfied that a financial assurance condition is no longer justified under section 279 (Financial assurance condition—imposition); or
  - (b) the licence has ended and section 282 (Financial assurance condition—claim or realisation) does not apply.

## Part 11.5 Licences—amendment, transfer and renewal

### 286 Licence—amendment initiated by conservator

- (1) The conservator may, by written notice (an *amendment notice*) given to a licensee, amend the licence if satisfied that—
  - (a) the licensee is a suitable person to hold the licence as amended; and
  - (b) if the licensee is a corporation—each influential person for the licensee is a suitable person to hold the licence as amended; and
  - (c) the licensed activity is a suitable activity for the licence as amended.

*Note* *Suitable activity*, for a licence—see s 268.  
*Suitable person*, to hold a licence—see s 265.

- (2) However, the conservator may amend the licence only if—
  - (a) the conservator has given the licensee written notice of the proposed amendment (a *proposal notice*); and
  - (b) the proposal notice states that written submissions about the proposal may be made to the conservator before the end of a stated period of at least 14 days after the day the proposal notice is given to the licensee; and
  - (c) after the end of the stated period, the conservator has considered any submissions made in accordance with the proposal notice.
- (3) Subsection (2) does not apply to a person if the licensee applied for, or agreed in writing to, the amendment.
- (4) The amendment takes effect on the day the amendment notice is given to the licensee or a later day stated in the notice.

## 287 Licence—application to amend licence

- (1) A licensee may apply to the conservator to amend the licence.
- (2) A licensee must apply to the conservator for amendment of the licence if someone else (the *new person*) is to—
  - (a) have management or control of the licensed activity; or
  - (b) if the licensee is a corporation—become an influential person for the licensee.
- (3) The application must—
  - (a) be in writing; and
  - (b) if the application is under subsection (2)—include complete details of suitability information about the new person.

*Note 1* **Suitability information**, about a person—see s 266.

*Note 2* Giving false or misleading information is an offence against the [Criminal Code](#), s 338.

*Note 3* If a form is approved under s 369 for this provision, the form must be used.

*Note 4* A fee may be determined under s 368 for this provision.

## 288 Licence—decision on application to amend licence

- (1) This section applies if the conservator receives an application to amend a licence under section 287.
- (2) The conservator may amend the licence only if satisfied that—
  - (a) the licensee is a suitable person to hold the licence as amended; and
  - (b) if the licensee is a corporation—each influential person for the licensee is a suitable person to hold the licence as amended; and

- (c) if someone other than the proposed new licensee is to have management or control of the activity for the licence—each person who is to have management or control of the activity is a suitable person to hold the licence as amended; and
- (d) the licensed activity is a suitable activity for the licence as amended.

*Note*     **Suitable activity**, for a licence—see s 268.  
          **Suitable person**, to hold a licence—see s 265.

- (3) If the conservator decides to amend the licence, the conservator may impose or amend a condition on the licence.
- (4) The conservator must, not later than the required time—
  - (a) decide the application for amendment; and
  - (b) tell the licensee about the decision.
- (5) In this section:

**required time** means the latest of the following:

- (a) if the conservator gives a person mentioned in section 287 (2) a personal information notice under section 267—28 days after the day the conservator receives the stated information;
- (b) if the conservator gives the applicant an activity information notice under section 270—28 days after the day the conservator receives the information;
- (c) if the conservator gives the applicant a risk management plan notice under section 271—28 days after the day the conservator receives the risk management plan;
- (d) if the conservator gives the applicant an inspection notice under section 272—28 days after the day the conservator inspects the place;

- (e) 28 days after the day the conservator receives the application.

*Note* Failure to amend a licence within the required time is taken to be a decision not to amend the licence (see *ACT Civil and Administrative Tribunal Act 2008*, s 12).

## 289 Licence—application to transfer licence

- (1) A licensee may apply to the conservator to transfer the licence to someone else (the *proposed new licensee*).
- (2) The application must—
- (a) be in writing; and
  - (b) include complete details of suitability information about—
    - (i) the proposed new licensee; and
    - (ii) if the proposed new licensee is a corporation—each influential person for the proposed new licensee; and
    - (iii) if someone other than the proposed new licensee is to have management or control of the activity for the licence—each person who is to have management or control of the activity.

*Note 1* *Suitability information*, about a person—see s 266.

*Note 2* Giving false or misleading information is an offence against the [Criminal Code](#), s 338.

*Note 3* If a form is approved under s 369 for this provision, the form must be used.

*Note 4* A fee may be determined under s 368 for this provision.



## 290 Licence—decision on application to transfer licence

- (1) This section applies if the conservator receives an application to transfer a licence under section 289.
- (2) The conservator may transfer the licence to the proposed new licensee only if satisfied that each of the following people is a suitable person to hold the licence:
  - (a) the proposed new licensee;
  - (b) if the proposed new licensee is a corporation—each influential person for the proposed new licensee;
  - (c) if someone other than the proposed new licensee is to have management or control of the activity for the licence—each person who is to have management or control of the activity.

*Note* **Suitable person**, to hold a licence—see s 265.

- (3) If the conservator decides to transfer the licence, the conservator may impose or amend a condition on the licence.
- (4) The conservator must, not later than the required time—
  - (a) decide the application for transfer; and
  - (b) tell the old licensee and new licensee about the decision.
- (5) In this section:

**required time** means the latest of the following:

- (a) if the conservator gives a person mentioned in section 289 (2) (b) a personal information notice under section 267—28 days after the day the conservator receives the stated information;
- (b) 28 days after the day the conservator receives the application.

*Note* Failure to transfer a licence within the required time is taken to be a decision not to transfer the licence (see *ACT Civil and Administrative Tribunal Act 2008*, s 12).

## 291 Licence—application for renewal of licence

- (1) A licensee may apply to the conservator to renew the licence for a period not longer than 5 years.

*Note 1* If a form is approved under s 369 for an application, the form must be used.

*Note 2* A fee may be determined under s 368 for this provision.

- (2) The application must be—
- (a) in writing; and
  - (b) received by the conservator at least 30 days before the licence expires.
- (3) However, the conservator may extend the time for making an application.

*Note* A licensee may apply to the conservator for the time to be extended, and the conservator may extend the time, even though the time has ended (see [Legislation Act](#), s 151C).

- (4) If a licensee applies to renew a licence under this section, the licence remains in force until the application is decided.

## 292 Licence—decision on application for renewal of licence

- (1) This section applies if the conservator receives an application for renewal of a licence under section 291.
- (2) The conservator may renew the licence only if satisfied that—
- (a) the licensee continues to be a suitable person to hold the licence; and
  - (b) if the licensee is a corporation—each influential person for the licensee continues to be a suitable person to hold the licence; and

- (c) if someone other than the licensee has management or control of the licensed activity—each person who is to have management or control of the activity continues to be a suitable person to hold the licence; and
- (d) the licensed activity continues to be a suitable activity for the licence.

*Note*     **Suitable activity**, for a licence—see s 268.  
          **Suitable person**, to hold a licence—see s 265.

- (3) If the conservator decides to renew the licence, the conservator may impose or amend a condition on the licence.
- (4) The conservator must, not later than the required time—
  - (a) decide the application for renewal; and
  - (b) tell the licensee about the decision.
- (5) In this section:

**required time** means the latest of the following:

- (a) if the conservator gives the applicant a personal information notice under section 267—28 days after the day the conservator receives the stated information;
- (b) if the conservator gives the applicant an activity information notice under section 270—28 days after the day the conservator receives the information;
- (c) if the conservator gives the applicant a risk management plan notice under section 271—28 days after the day the conservator receives the risk management plan;
- (d) if the conservator gives the applicant an inspection notice under section 272—28 days after the day the conservator inspects the place;

(e) 28 days after the day the conservator receives the application.

*Note* Failure to renew a licence within the required time is taken to be a decision not to renew the licence (see *ACT Civil and Administrative Tribunal Act 2008*, s 12).

### 293 Licence—replacing when lost, stolen or destroyed

- (1) The conservator may issue a replacement licence to a licensee if satisfied that the licensee's original licence has been lost, stolen or destroyed.
- (2) For subsection (1), the conservator may require the licensee to give the conservator a statement verifying that the original licence has been lost, stolen or destroyed.

*Note 1* A fee may be determined under s 368 for this provision.

*Note 2* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see *Criminal Code*, pt 3.4).

### 294 Licence—surrender

- (1) A licensee may surrender the licence by giving written notice of the surrender (a *surrender notice*) to the conservator.

*Note* If a form is approved under s 369 for this provision, the form must be used.

- (2) The surrender notice must be accompanied by—
  - (a) the licence; or
  - (b) if the licence has been lost, stolen or destroyed—a statement by the licensee verifying that the licence has been lost, stolen or destroyed.

*Note* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see *Criminal Code*, pt 3.4).

**295 Offence—fail to notify change of name or address**

- (1) A person commits an offence if—
- (a) the person is a licensee; and
  - (b) the person's name or address changes; and
  - (c) the person does not, within 30 days after the change, give the conservator—
    - (i) written notice of the change; and
    - (ii) the licence.

Maximum penalty: 1 penalty unit.

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

**296 Licence—conservator to change name and address**

- (1) This section applies if a licensee gives the conservator—
- (a) written notice of a change to the person's name or address; and
  - (b) the licence.
- (2) The conservator must enter the changed details on the licence and return it to the licensee.

## Part 11.6 Licences—regulatory action

### 297 Licence—grounds for regulatory action

(1) Each of the following is a *ground for regulatory action* against a licensee:

(a) the licensee has contravened, or is contravening, a provision of this Act;

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

(b) the licensee has contravened a condition of the licence.

(2) In this section:

*licensee* includes, if the person is a corporation, each executive officer of the corporation.

### 298 Licence—regulatory action

Each of the following is *regulatory action* when taken against a licensee:

(a) imposing a condition on, or amending a condition on, the licence;

(b) suspending the licence for a stated period or until a stated thing happens;

(c) cancelling the licence;

(d) cancelling the licence and disqualifying the person from applying for a licence of that kind for a stated period or until a stated thing happens.

**299 Licence—taking regulatory action**

- (1) If the conservator proposes to take regulatory action in relation to a licensee, the conservator must give the licensee a written notice (a *show cause notice*) stating—
  - (a) details of the proposed regulatory action; and
  - (b) the grounds for the proposed regulatory action; and
  - (c) that the licensee may, not later than 14 days after the day the licensee is given the notice, give a written submission to the conservator about the proposed regulatory action.
- (2) In deciding whether to take the proposed regulatory action, the conservator must consider any submission given to the conservator in accordance with the show cause notice.
- (3) If the conservator believes on reasonable grounds that a ground for regulatory action has been established in relation to the licensee, the conservator may—
  - (a) take the regulatory action stated in the show cause notice; or
  - (b) if the proposed regulatory action is cancelling the licence and disqualifying the person from applying for a licence—
    - (i) cancel the licence; or
    - (ii) suspend the licence; or
    - (iii) impose a condition on, or amend a condition on, the licence; or
  - (c) if the proposed regulatory action is cancelling the licence—
    - (i) suspend the licence; or
    - (ii) impose a condition on, or amend a condition on, the licence; or

- (d) if the proposed regulatory action is suspending the licence—
  - (i) suspend the licence for a shorter period; or
  - (ii) impose a condition on, or amend a condition on, the licence.
- (4) Regulatory action under this section takes effect on—
  - (a) the day the licensee is given written notice of the decision; or
  - (b) if the written notice states a later date of effect—that date.

### **300 Licence—immediate suspension**

- (1) This section applies if—
  - (a) the conservator gives a show cause notice to a licensee; and
  - (b) having regard to the grounds stated in the notice, the conservator believes on reasonable grounds that the person’s licence should be suspended immediately because of a risk to—
    - (i) public safety; or
    - (ii) the safety of an animal or plant.
- (2) The conservator must give the licensee a written notice (an *immediate suspension notice*) suspending the person’s licence.
- (3) The suspension of a licence under this section takes effect when the immediate suspension notice is given to the licensee.
- (4) The suspension of a licence under this section ends—
  - (a) if regulatory action is taken against the person—at the earlier of the following times:
    - (i) when the regulatory action takes effect;
    - (ii) 30 days after the day the immediate suspension notice is given to the person; or



- (b) if regulatory action is not taken against the person—at the earlier of the following times:
  - (i) when the person is given written notice of the conservator’s decision not to take regulatory action;
  - (ii) 30 days after the day the immediate suspension notice is given to the person.

**301 Licence—effect of suspension**

- (1) A suspended licence does not authorise the carrying on of any activity under the licence during the suspension.
- (2) If the conservator suspends a licence, the licensee is, during the suspension—
  - (a) taken not to hold the licence; and
  - (b) disqualified from applying for a licence.

**302 Offence—fail to return amended, suspended or cancelled licences**

- (1) A person commits an offence if—
  - (a) the person is a licensee; and
  - (b) the licence is amended, suspended or cancelled under this division; and
  - (c) the person fails to return the licence to the conservator as soon as practicable (but not later than 7 days) after the day the person is given a reviewable decision notice under section 361.

Maximum penalty: 10 penalty units.

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

**303 Action by conservator in relation to amended or suspended licence**

- (1) This section applies if—
  - (a) a licence is amended or suspended under this part; and
  - (b) the licence is returned to the conservator.
- (2) For an amended licence, the conservator must—
  - (a) return the amended licence to the licensee; or
  - (b) give the licensee a replacement licence that includes the amendment.
- (3) If a licence is suspended under this part and the suspension ends before the end of the term of the licence, the conservator must return the licence to the licensee when the suspension ends.

## Part 11.7                      Licence—register, records and royalties

### 304                      Licence register

- (1) The conservator must keep a register of licences (the *licence register*).
- (2) The licence register must include the following details for each licence:
  - (a) the name of the licensee;
  - (b) the licence number;
  - (c) the licensed activity;
  - (d) the term of the licence;
  - (e) the conditions on the licence;
  - (f) anything else prescribed by regulation.
- (3) The licence register may include anything else the conservator considers relevant.
- (4) The licence register may be kept in any form, including electronically, that the conservator decides.

### 305                      Licence register—correction and keeping up to date

- (1) The conservator may correct a mistake, error or omission in the licence register.
- (2) The conservator may change a detail included in the register to keep the register up to date.

### 306 Offence—fail to keep records

- (1) A person commits an offence if—
- (a) the person is a licensee; and
  - (b) the licence authorises the person to carry on an activity involving an animal or plant; and
  - (c) the person does not keep the records required by regulation for the licence.

Maximum penalty: 10 penalty units.

- (2) A person commits an offence if—
- (a) the person is a licensee; and
  - (b) the licence authorises the person to carry on an activity involving an animal, or plant, that has special protection status; and
  - (c) the person does not keep the records required by regulation for the licence.

Maximum penalty: 20 penalty units.

*Note* **Special protection status**—see s 109.

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

*Note* A conservation officer may direct a licensee to produce records required to be kept under this Act (see s 321). It is an offence to fail to comply with the direction (see s 322).

### 307 Royalty

- (1) This section applies if a licence authorises a licensee to—
- (a) take a native animal; or
  - (b) take a native plant; or
  - (c) take native timber.

*Note* **Native timber**—see s 139.

- (2) If the licensee sells or otherwise disposes of an animal, plant or timber taken under the licence, the licensee must pay royalty for the animal, plant or timber to the Territory at the rate prescribed by regulation.

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

## Chapter 12      Management agreements with utility suppliers, land developers and others

### 308      What are *agencies* and *activities* of agencies?—ch 12

(1) In this chapter:

*agency*—

- (a) means an entity that is—
  - (i) a supplier of gas, electricity, water or sewerage services; or
  - (ii) responsible for the construction, repair and maintenance of navigation serving beacons and telecommunications facilities; or
  - (iii) responsible for a development of land; and
- (b) includes the Territory to the extent to which the Territory is an entity mentioned in paragraph (a).

*Note*      *Entity* includes a person (see [Legislation Act](#), dict, pt 1).

(2) In this chapter:

*activities*, of an agency means—

- (a) for an entity that supplies gas, electricity, water or sewerage services—construction, repair or maintenance carried out by the entity in association with the supply of the services; or
- (b) for an entity responsible for the construction, repair and maintenance of navigation serving beacons and telecommunications facilities—the construction, repair and maintenance of navigation serving beacons and telecommunications facilities carried out by the entity; or

(c) for an entity responsible for the development of land—the entity’s development activities.

(3) In this section:

*development*, of land—see the *Planning and Development Act 2007*, section 7 (Meaning of *development*).

*telecommunications facility*—see the *Utilities (Telecommunications Installations) Act 2001*, dictionary.

### 309 What are *management objectives*?—ch 12

(1) In this chapter:

*management objectives*, for public land or unleased territory land—

(a) means the objective of conserving the qualities of the natural environment on and near the land; and

(b) includes—

(i) any objectives, policies or purposes stated in the Territory plan for the land; and

(ii) for public land—the planning and development management objectives for the land.

*Note* *Planning and development management objectives*—see the dictionary.

(2) In this section:

*natural environment* means all biological, physical and visual elements of the earth and its atmosphere, whether natural or modified.

**310 What is a *management agreement*?—ch 12**

In this chapter:

*management agreement* means an agreement between the conservator and an agency, in relation to public land or unleased territory land, that—

- (a) sets out standards and conditions for avoiding or minimising any conflict with the management objectives for the land which may arise as a result of the agency's activities; and
- (b) may deal with the following matters:
  - (i) access to the public land or unleased territory land;
  - (ii) fire management on the public land or unleased territory land;
  - (iii) drainage on the public land or unleased territory land;
  - (iv) management and maintenance of public or private facilities on the public land or unleased territory land;
  - (v) rehabilitation of the public land or unleased territory land or public or private facilities on the land;
  - (vi) indemnities;
  - (vii) emergency procedures to be used on the public land or unleased territory land;
  - (viii) internal stockpiling on the public land or unleased territory land;
  - (ix) fencing on the public land or unleased territory land;
  - (x) feral animals and weed control on the public land or unleased territory land; but
- (c) does not conflict with a development approval given under the *Planning and Development Act 2007*, chapter 7.



**311 Management agreement—conservator may propose**

- (1) The conservator may propose a management agreement to an agency if—
  - (a) the agency's activities affect, or may affect, public land or unleased territory land; and
  - (b) the conservator reasonably believes the activities may conflict with the management objectives for the land.
- (2) If the conservator intends to propose a management agreement to an agency, the conservator must—
  - (a) consult the agency in developing the agreement; and
  - (b) consider any representations made by the agency about the agreement.
- (3) After consulting and considering any representations under subsection (2), the conservator must give the agreement (the *proposed agreement*) to the agency together with a notice stating—
  - (a) that the agency may—
    - (i) enter into the proposed agreement by signing the agreement and returning it to the conservator within 28 days after the date of the notice (the *due date*); or
    - (ii) refuse to enter into the proposed agreement by telling the conservator, in writing, of the refusal before the due date; and
  - (b) that if the agency does not act under paragraph (a) before the due date, that the agency will be taken to have refused to enter into the proposed agreement; and

- (c) the consequences under this part for the agency of—
  - (i) refusing to enter into the proposed agreement; and
  - (ii) if the agency enters the agreement—breaching a term of the agreement.

**312 Management agreement—agency may enter or refuse**

- (1) If the conservator has given a proposed agreement to an agency under section 311, the agency may—
  - (a) enter into the proposed agreement by signing the agreement and returning it to the conservator before the due date; or
  - (b) refuse to enter into the agreement by telling the conservator, in writing, of the refusal before the due date.
- (2) If an agency does not act under subsection (1), the agency is taken to have refused to enter into the proposed agreement.

**313 Management agreement—refusal and repairing damage**

- (1) This section applies if—
  - (a) an agency refuses to enter into a proposed agreement for public land or unleased territory land; and
  - (b) the agency’s activities damage the land.
- (2) The conservator may—
  - (a) repair the damage; and
  - (b) recover from the agency the reasonable costs of repairing the damage.

*Note* An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act, s 177](#)).

**314 Management agreement—breach of agreement and repairing damage**

- (1) This section applies if—
  - (a) an agency enters into a management agreement for public land or unleased territory land; and
  - (b) the agency carries on activities on the land that are inconsistent with the agreement; and
  - (c) the activities damage the land.
- (2) The conservator may—
  - (a) repair the damage; and
  - (b) recover from the agency the reasonable costs of repairing the damage.

*Note* An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

## Chapter 13 Land development applications

### 315 Meaning of *development*—ch 13

- (1) In this chapter:

*development* means a proposed development to which a development application applies.

- (2) In this section:

*development application*—see the *Planning and Development Act 2007*, dictionary.

### 316 Simplified outline

The following notes provide a simplified outline of this chapter and the *Planning and Development Act 2007*, chapter 7 (Development approvals):

*Note 1 Conservator to be given copy of certain development applications*

The planning and land authority is required to give the conservator a copy of each development application that is likely to have a significant adverse environmental impact on a protected matter (see *Planning and Development Act 2007*, s 147A). The planning and land authority may also be required to give the conservator a copy of each development application in the merit track or impact track (see *Planning and Development Act 2007*, s 148). This requirement does not apply to a development application for a development proposal in the code track (see *Planning and Development Act 2007*, s 117 (c)).

*Note 2 Conservator to give advice about development application*

The conservator gives advice to the planning and land authority about adverse environmental impacts of the proposed development (see s 317 and s 318) (see also *Planning and Development Act 2007*, s 149, s 150 and s 151).

*Note 3 Conservator's advice to be considered*

The conservator's advice must be considered by the planning and land authority (or the Minister) in approving or refusing to approve a development application (see *Planning and Development Act 2007*, s 119 (2), s 120 (d) and s 129 (e)).

*Note 4* Development approval by authority to be consistent with conservator's advice

If the authority is to decide the development application, development approval must not be given unless the development proposal is consistent with the conservator's advice (see *Planning and Development Act 2007*, s 128 (1) (b) (vi)).

*Note 5* Development approval by Minister may be inconsistent with conservator's advice

If the Minister is to decide the development application (using the Minister's call-in power (see *Planning and Development Act 2007*, div 7.3.5)), the development approval may be inconsistent with the conservator's advice if the Minister is satisfied that the approval is consistent with the offsets policy (see *Planning and Development Act 2007*, s 128 (2)).

### **317 Advice about adverse environmental impacts**

- (1) This section applies if the conservator is satisfied on reasonable grounds that a proposed development is likely to have an adverse environmental impact.
- (2) The conservator may give the planning and land authority written advice in accordance with section 318 about the development.

*Note* If the planning and land authority refers a development application to the conservator under the *Planning and Development Act 2007*, s 147A or s 148, the conservator must, not later than 15 working days after being given the application, give the planning and land authority its advice (see *Planning and Development Act 2007*, s 149).

### **318 Requirements for conservator's advice**

- (1) This section applies if the conservator gives advice—
  - (a) under section 317 about a development; or
  - (b) under the *Planning and Development Act 2007*, section 149 (Requirement to give advice in relation to development applications) about a development application.

- (2) The conservator's advice must include—
- (a) an outline of the environmental impact of the proposed development; and
  - (b) advice about ways to avoid or minimise the environmental impact of the proposed development; and
  - (c) an assessment of whether the proposed development is likely to have a significant adverse environmental impact on a protected matter; and
  - (d) if the proposed development is likely to have a significant adverse environmental impact on a protected matter—advice about suitable offsets for the proposed development.

*Note 1* If the proposed development is likely to have a significant adverse environmental impact, the development application may be declared to be in the impact track (see *Planning and Development Act 2007*, s 124), and may require an offset (see *Planning and Development Act 2007*, s 111C, def *offset*).

*Note 2* **Significant** adverse environmental impact—see the *Planning and Development Act 2007*, s 124A.

- (3) In preparing the advice, the conservator—
- (a) must consider—
    - (i) the policy statement ‘Significant Impact Guidelines—Matters of National Environmental Significance’ published by the Commonwealth, as in force from time to time; and
- Note* The policy statement is available at [www.environment.gov.au](http://www.environment.gov.au).
- (ii) the offsets policy; and

- (b) may consider any other guideline, plan or policy published by the Territory or the Commonwealth about—
- (i) protected matters; or
  - (ii) matters of national environmental significance.
- (4) In this section:

*offset*, for a development—see the *Planning and Development Act 2007*, section 111C.

*offsets policy*—see the *Planning and Development Act 2007*, section 111E.

*protected matter*—see the *Planning and Development Act 2007*, section 111A.

*significant* adverse environmental impact—see the *Planning and Development Act 2007*, section 124A.

## Chapter 13A Minor public works in reserves

### 318A Minor public works code

- (1) The conservator of flora and fauna may approve a code of practice (a *minor public works code*) for minor public works carried out by or for the Territory in a reserve.

*Note* A power given under an Act to make a statutory instrument (including a code of practice) includes power to amend or repeal the instrument (see [Legislation Act](#), s 46 (1)).

- (2) A minor public works code—
- (a) must set out standards and practices for carrying out minor public works in a reserve to ensure the works are not likely to have a significant adverse environmental impact; and
  - (b) may include the following:
    - (i) circumstances in which minor public works are not likely to have a significant adverse environmental impact;
    - (ii) conditions to apply to stated minor public works to ensure the works do not have a significant adverse environmental impact.

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



- (3) An approved minor public works code may apply, adopt or incorporate a law or instrument as in force from time to time.

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

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

*Note 3* A reference to an instrument includes a reference to a provision of an instrument (see [Legislation Act](#), s 14 (2)).

- (4) If the conservator of flora and fauna approves a minor public works code, the conservator must review the code at least once every 5 years.

- (5) An approved minor public works code is a disallowable instrument.

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

- (6) In this section:

***minor public works***—see the [Planning and Development Act 2007](#), schedule 4, section 4.1.

## Chapter 14      Enforcement

### Part 14.1      Directions

#### 319      Direction to give name and address

- (1) This section applies if a conservation officer believes on reasonable grounds that a person—
- (a) has committed, is committing or is about to commit an offence against this Act; or
  - (b) may be able to assist in the investigation of an offence against this Act.

*Note*      A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

- (2) The conservation officer may direct the person to give the conservation officer, immediately, any of the following personal details (a *name and address direction*):
- (a) the person's full name;
  - (b) the person's home address.

*Note 1*      The conservation officer must first show the person the conservation officer's identity card (see s 30).

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

- (3) If the conservation officer believes on reasonable grounds that a personal detail given by a person in response to a name and address direction is false or misleading, the conservation officer may direct the person to produce evidence immediately of the correctness of the detail (an *evidence direction*).

- (4) If a conservation officer gives a direction to a person, the officer must tell the person that it is an offence if the person fails to comply with the direction.
- (5) If a conservation officer gives a direction to a person, the officer must give the direction in a language, or way of communicating, that the person is likely to understand.

**320 Offence—fail to comply with direction to give name and address**

- (1) A person commits an offence if the person—
  - (a) is subject to—
    - (i) a name and address direction; or
    - (ii) an evidence direction; and
  - (b) fails to comply with the direction.

Maximum penalty: 5 penalty units.

*Note* It is an offence to make a false or misleading statement or give false or misleading information (see [Criminal Code](#), pt 3.4).

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a person if the conservation officer did not—
  - (a) produce the conservation officer's identity card for inspection by the person before giving the direction; or
  - (b) before giving the direction, warn the person that failure to comply with the direction is an offence.

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

### 321 Direction to produce licence or records

- (1) A conservation officer may direct a licensee to produce—
- (a) the licensee's nature conservation licence; or
  - (b) a record required to be kept by the licensee under this Act.
- Note 1* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).
- Note 2* It is an offence to make a false or misleading statement or give false or misleading information (see [Criminal Code](#), pt 3.4).
- Note 3* The power to make a direction includes the power to amend or repeal the direction. The power to amend or repeal the direction is exercisable in the same way, and subject to the same conditions, as the power to make the direction (see [Legislation Act](#), s 46).
- (2) The direction must be in writing and state—
- (a) the licence or record to be produced; and
  - (b) where and to whom the licence or record is to be produced; and
  - (c) when the direction must be complied with (the *due date*), being a day at least 2 days after the day the direction is given to the person; and
  - (d) that if the licence or record is not provided by the due date, the person may be committing an offence under section 322.
- (3) The conservation officer may do 1 or more of the following:
- (a) inspect the licence or record produced;
  - (b) make copies of, or take extracts from the licence or record produced;
  - (c) seize and remove the licence or record produced if the officer believes on reasonable grounds that it may provide evidence of an offence against this Act.

**322 Offence—fail to comply with direction to produce licence or record**

- (1) A person commits an offence if the person—
  - (a) is subject to a direction under section 321; and
  - (b) fails to comply with the direction.Maximum penalty: 10 penalty units.
- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a person if the person has a reasonable excuse for failing to comply with the direction.

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

**323 Direction to provide information**

- (1) This section applies if a conservation officer suspects on reasonable grounds that a person has information or documents reasonably required by the conservation officer for the administration or enforcement of this Act.
- (2) The conservation officer may direct the person to provide the information or documents to the conservation officer (an *information direction*).
- (3) The direction must be in writing and state—
  - (a) the name of the person to whom it is directed; and
  - (b) the information or documents required to be provided; and
  - (c) why the information or documents are required; and
  - (d) when the direction must be complied with (the *due date*), being a day at least 2 days after the day the direction is given to the person; and

- (e) that if the information is not provided by the due date the person may be committing an offence under section 324.

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

### **324      Offence—fail to comply with information direction**

- (1) A person commits an offence if the person—
- (a) is subject to an information direction; and
  - (b) fails to comply with the direction.

Maximum penalty: 50 penalty units.

*Note*      It is an offence to make a false or misleading statement or give false or misleading information (see [Criminal Code](#), pt 3.4).

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a person if the person—
- (a) did not know, and could not reasonably be expected to know or find out, the information required under the direction; or
  - (b) did not have reasonable access to the documents required under the direction.

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

### **325      Direction to leave reserve**

- (1) This section applies if a conservation officer believes on reasonable grounds that a person—
- (a) is in a reserve; and

- (b) either—
- (i) has acted in—
    - (A) an offensive way; or
    - (B) a way that creates a public nuisance; or
  - (ii) has committed, is committing or is about to commit an offence against this Act.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

- (2) The conservation officer may direct the person to immediately leave the reserve (a *leave reserve direction*).

*Note* The conservation officer must first show the person the conservation officer's identity card (see s 30).

- (3) A leave reserve direction must state—
- (a) the location of the reserve; and
  - (b) when the person may return to the reserve, being a time not more than 24 hours after the direction is given to the person.
- (4) If a conservation officer gives a direction to a person, the officer must tell the person that it is an offence if the person fails to comply with the direction.

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

**326      Offence—fail to comply with direction to leave reserve**

- (1) A person commits an offence if the person—
- (a) is subject to a leave reserve direction; and
  - (b) fails to comply with the direction.
- Maximum penalty: 10 penalty units.
- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a person if the conservation officer did not—
- (a) produce the conservation officer’s identity card for inspection by the person before giving the direction; or
  - (b) before giving the direction, warn the person that failure to comply with the direction is an offence.

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

**327      Direction to stop vehicle containing animal or plant**

- (1) This section applies if a conservation officer suspects on reasonable grounds that an animal or plant is in a vehicle in contravention of this Act.
- Note*      *In*, a vehicle, includes on the vehicle (see dict).  
*Vehicle* includes vessel (see dict).
- (2) The conservation officer may, to exercise a function under division 14.2.2 (Powers of conservation officers), direct the driver of the vehicle to stop the vehicle (a *stop vehicle direction*)—
- (a) without delay; or



- (b) at the nearest place that the vehicle can be safely stopped as indicated by the conservation officer.

*Note* A conservation officer can enter a vehicle stopped under this section (see s 338 (1) (g)) and inspect or examine, etc anything in the vehicle (see s 341).

- (3) A direction may be given to a driver orally or by means of a sign or signal (electronic or otherwise) or in any other way.
- (4) A direction to a driver ceases to be operative to the extent that a conservation officer—
- (a) gives the driver or other person a later inconsistent direction; or
- (b) indicates to the driver that the direction is no longer operative.
- (5) However, a conservation officer may direct a vehicle to be stopped only for the amount of time necessary for the conservation officer to exercise the function.

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

### **328 Offence—fail to comply with stop vehicle direction**

- (1) A person commits an offence if the person—
- (a) is subject to a stop vehicle direction under section 327; and
- (b) fails to comply with the direction.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a person if the conservation officer did not produce the conservation officer's identity card for inspection by the person as soon as practicable after giving the direction.

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

### 329      Urgent directions

- (1) This section applies if the conservator reasonably believes that a person—
- (a) has breached, is breaching or is about to breach a nature conservation licence; or
  - (b) has contravened, is contravening or is about to contravene a provision of this Act; or

**Examples—contravention of provision of Act**

- 1    contravention of an action plan
- 2    contravention of a native species conservation plan
- 3    contravention of a controlled native species management plan

*Note 1*    A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

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

- (c) has engaged in, is engaging in or is about to engage in conduct that may threaten—
  - (i) a native species that has special protection status; or  
*Note*      **Special protection status**—see s 109.
  - (ii) a threatened ecological community; or  
*Note*      **Threatened ecological community**—see s 67.
  - (iii) the habitat of—
    - (A) a native species that has protection status; or
    - (B) a threatened ecological community; or
  - (iv) a Ramsar wetland.

*Note*      **Ramsar wetland**—see s 190.

- (2) The conservator may direct (an *urgent direction*) the person to—
  - (a) take action to stop the breach, contravention or threat; or
  - (b) cease conduct causing the breach, contravention or threat.
- (3) An urgent direction must either—
  - (a) state—
    - (i) the action to be taken; and
    - (ii) when the direction must be complied with; or
  - (b) state—
    - (i) the conduct not to be undertaken; and
    - (ii) how long the direction is in force.
- (4) An urgent direction must not state a day or time for compliance that is earlier than the day or time the person is given the direction.

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

### **330 Offence—fail to comply with urgent direction**

- (1) A person commits an offence if the person—
  - (a) is subject to an urgent direction; and
  - (b) fails to take reasonable steps to comply with the direction.Maximum penalty: 50 penalty units.
- (2) An offence against this section is a strict liability offence.

- (3) This section does not apply to a person if the conservation officer did not produce the conservation officer's identity card for inspection by the person before giving the direction.

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

### 331      Conservator's directions

- (1) This section applies if—
- (a) 1 or more of the following is on occupied land:
- (i) a native species;
- Note*      *Native species*—see s 16.
- (ii) an ecological community;
- Note*      *Ecological community*—see s 17.
- (iii) the habitat of a native species or ecological community;  
and
- (b) the conservator reasonably believes that there is conduct that the occupier—
- (i) may engage in that may threaten the native species, community or habitat; or
- (ii) could engage in that would promote the protection or conservation of the native species, community or habitat.
- (2) The conservator may give the occupier a direction about the protection or conservation of the species, community or habitat on the land (a *conservator's direction*).
- (3) A conservator's direction must not be inconsistent with any of the following that apply to the species, community or habitat:
- (a) a conservation advice;

*Note*      *Conservation advice*—see s 90C (1).

- (b) an action plan;

*Note* **Action plan**, for a relevant species, relevant ecological community or key threatening process—see s 99.

- (c) a native species conservation plan;

*Note* **Native species conservation plan**, for a native species—see s 115.

- (d) a controlled native species management plan.

*Note* **Controlled native species management plan**, for a controlled native species—see s 158.

- (4) A conservator's direction must—

- (a) be in writing; and

- (b) state when the direction must be complied with, being a day at least 14 days after the day the direction is given to the occupier.

*Note* The power to make a direction includes the power to amend or repeal the direction (see [Legislation Act](#), s 46).

### **332 Offence—fail to comply with conservator's direction**

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

- (a) is subject to a conservator's direction; and

- (b) fails to comply with the direction.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—

- (a) the person is subject to a conservator's direction; and

- (b) the direction relates to—

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

- (ii) a threatened ecological community; or

- (iii) the habitat of—
  - (A) a native species that has special protection status; or
  - (B) a threatened ecological community; or
- (iv) a Ramsar wetland; and
- (c) the person fails to comply with the direction.

Maximum penalty: 100 penalty units.

*Note*      **Ramsar wetland**—see s 190.  
              **Special protection status**—see s 109.  
              **Threatened ecological community**—see s 67.

- (3) This section does not apply to a person if the person took reasonable steps to comply with the conservator's direction.

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

### 333      **Treatment directions**

- (1) This section applies if the conservator reasonably believes that—
  - (a) a person is keeping a native animal or native plant; and
  - (b) the animal or plant is suffering from a disease; and
  - (c) it is necessary or desirable for a particular kind of treatment to be carried out in connection with the disease.
- (2) The conservator may direct the keeper of the native animal or native plant to carry out a stated treatment on the animal or plant (a **treatment direction**).
- (3) In deciding whether to make a treatment direction, the conservator must consider the following matters:
  - (a) the likelihood of the disease infecting other animals or plants;
  - (b) the impact of the disease if it were to infect other animals or plants;

- (c) any matter prescribed by regulation;
  - (d) any other matter relevant to the protection or conservation of native animals and native plants.
- (4) A treatment direction must be in writing and state the following:
- (a) the native animal or native plant to which it relates;
  - (b) the disease to which it relates;
  - (c) the treatment to be carried out;
  - (d) when the direction must be complied with.

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

### **334 Offence—fail to comply with treatment direction**

A person commits an offence if the person—

- (a) is subject to a treatment direction; and
- (b) fails to comply with the direction.

Maximum penalty: 50 penalty units.

### **335 Treatment of animal or plant by Territory**

- (1) This section applies if a person—
- (a) is subject to a treatment direction; and
  - (b) either—
    - (i) fails to comply with the direction; or
    - (ii) complies with the direction but the native animal or native plant does not respond satisfactorily to the treatment within a reasonable time.

- (2) The conservator may direct the person to—
- (a) give the native animal or native plant to the conservator; or
  - (b) destroy the native animal or native plant.

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

- (3) If the person fails to comply with the direction under subsection (2), the conservator may—
- (a) enter the premises where the native animal or native plant is kept, with the assistance that the conservator considers necessary; and
  - (b) seize the native animal or native plant.

*Note*      **Premises** includes land (whether vacant or occupied), a vessel and a vehicle (see dict).

- (4) If the conservator seizes a native animal or native plant under subsection (3), the conservator may—
- (a) carry out the treatment, and dispose of the animal or plant in the way, that the conservator considers appropriate; and
  - (b) recover the reasonable costs of treating and disposing of the animal or plant from the person.

*Note 1*      General powers of entry and seizure are in pt 14.2.

*Note 2*      An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).



**336 Injunctions to restrain contravention of urgent directions and conservator's directions**

- (1) This section applies if a person (the *relevant person*) has engaged, is engaging, or proposes to engage, in conduct that was, is, or would be, a contravention of—
  - (a) an urgent direction; or  
*Note* **Urgent direction**—see s 329 (2).
  - (b) a conservator's direction.  
*Note* **Conservator's direction**—see s 331 (2).
- (2) The conservator or anyone else may apply to the Supreme Court for an injunction.
- (3) On application under subsection (2), the Supreme Court may grant an injunction—
  - (a) restraining the relevant person from engaging in the conduct; and
  - (b) if satisfied that it is desirable to do so—requiring the relevant person to do anything.
- (4) The Supreme Court may grant an injunction restraining a relevant person from engaging in conduct of a particular kind—
  - (a) if satisfied that the person has engaged in conduct of that kind, whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

- (b) if it appears to the court that, if an injunction is not granted, it is likely the person will engage in conduct of that kind, whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to someone else if the person engages in conduct of that kind.
- (5) This section applies whether or not a proceeding for an offence against this chapter has begun or is about to begin.

## Part 14.2                      Enforcement by conservation officers

### Division 14.2.1              Definitions—pt 14.2

#### 337                      Definitions—pt 14.2

In this part:

*connected*—a thing is *connected* with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

*occupier*, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises; and
- (c) for a vehicle—the driver of the vehicle.

*offence* includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

*warrant* means a warrant issued under division 14.2.3 (Search warrants).

## Division 14.2.2 Powers of conservation officers

### 338 Power to enter premises

- (1) For this Act, a conservation officer may—
- (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
- Note* **Premises** includes land (whether vacant or occupied), a vehicle, a vessel and an aircraft (see dict).
- (b) at any time, enter premises with the occupier's consent; or
  - (c) at any reasonable time, enter premises where an animal or plant is kept under a nature conservation licence; or
  - (d) at any reasonable time, enter premises if the conservation officer suspects that—
    - (i) an animal that is not an exempt animal is on the premises; or
    - (ii) a native plant is on the premises; or
  - (e) enter premises in accordance with a search warrant; or
  - (f) at any time, enter premises if the conservation officer believes on reasonable grounds that the circumstances are so serious and urgent that immediate entry to the premises without the authority of a search warrant is necessary; or
  - (g) if a vehicle is stopped under section 327—enter the vehicle.
- (2) However, subsection (1) (a) and (c) do not authorise entry into a part of premises that is being used only for residential purposes.
- (3) For subsection (1) (f), the conservation officer may enter the premises with any necessary and reasonable assistance and force.

- (4) A conservation officer may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.
- (5) To remove any doubt, a conservation officer may enter premises under subsection (1) without payment of an entry fee or other charge.
- (6) In this section:

*at any reasonable time* includes at any time when the public is entitled to use the premises or when the premises are open to or used by the public (whether or not on payment of money).

### **339 Production of identity card**

A conservation officer must not remain at premises entered under this part if the conservation officer does not produce his or her identity card when asked by the occupier.

*Note* **Premises** includes land (whether vacant or occupied), a vehicle, a vessel and an aircraft (see dict).

### **340 Consent to entry**

- (1) When seeking the consent of an occupier of premises to enter premises under section 338 (1) (b), a conservation officer must—
  - (a) produce his or her identity card; and
  - (b) tell the occupier—
    - (i) the purpose of the entry; and
    - (ii) that anything found and seized under this part may be used in evidence in court; and
    - (iii) that consent may be refused.

- (2) If the occupier consents, the conservation officer must ask the occupier to sign a written acknowledgment (an *acknowledgment of consent*)—
  - (a) that the occupier was told—
    - (i) the purpose of the entry; and
    - (ii) that anything found and seized under this part may be used in evidence in court; and
    - (iii) that consent may be refused; and
  - (b) that the occupier consented to the entry; and
  - (c) stating the time and date when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the conservation officer must immediately give a copy to the occupier.
- (4) A court must find that the occupier did not consent to entry to the premises by the conservation officer under this part if—
  - (a) the question arises in a proceeding in the court whether the occupier consented to the entry; and
  - (b) an acknowledgment of consent is not produced in evidence; and
  - (c) it is not proved that the occupier consented to the entry.

### **341 General powers on entry to premises**

- (1) A conservation officer who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises or anything on the premises:
  - (a) inspect or examine;
  - (b) take measurements or conduct tests;
  - (c) take samples;
  - (d) take photographs, films or audio, video or other recordings;

- (e) require the occupier, or anyone at the premises, to give the conservation officer reasonable help to exercise a power under this part.

*Note 1* **Premises** includes land (whether vacant or occupied), a vehicle, a vessel and an aircraft (see dict).

*Note 2* The [Legislation Act](#), s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

- (2) A person must take reasonable steps to comply with a requirement made of the person under subsection (1) (e).

Maximum penalty: 20 penalty units.

### **342 Power to seize things**

- (1) A conservation officer who enters premises under this part with the occupier's consent may seize anything at the premises if—
- (a) the conservation officer is satisfied on reasonable grounds that the thing is connected with an offence against this Act; and
  - (b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.
- (2) A conservation officer who enters premises under a warrant under this part may seize anything at the premises that the conservation officer is authorised to seize under the warrant.
- (3) A conservation officer who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if satisfied on reasonable grounds that—
- (a) the thing is connected with an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing from being—
    - (i) concealed, lost or destroyed; or
    - (ii) used to commit, continue or repeat the offence.

- (4) Also, a conservation officer who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if satisfied on reasonable grounds that the thing poses a risk to the health or safety of people or of damage to property or the environment.
- (5) The powers of a conservation officer under subsections (3) and (4) are additional to any powers of the conservation officer under subsection (1) or (2) or any other territory law.
- (6) Having seized a thing, a conservation officer may—
  - (a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or
  - (b) leave the thing at the place of seizure but restrict access to it.
- (7) A person commits an offence if—
  - (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (6); and
  - (b) the person does not have a conservation officer's approval to interfere with the thing.

Maximum penalty: 20 penalty units.

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

### **343 Seizure and release of distressed native birds**

- (1) This section applies if—
  - (a) a conservation officer suspects on reasonable grounds that—
    - (i) a person is in possession of a native bird; and
    - (ii) the bird is connected with the commission of an offence against this Act; and



- (b) the person does not, when asked by the conservation officer, produce for inspection by the conservation officer a nature conservation licence authorising the possession of the bird; and

*Note* **Nature conservation licence**—see s 262.

- (c) 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 the kind of captivity 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.

- (2) The conservation officer may—

- (a) seize the bird; and
- (b) if the conservation officer believes on reasonable grounds that the welfare of the bird is best provided for by releasing the bird—release the bird.

*Note* The Territory may be required to pay the owner of the animal reasonable compensation for its loss (see s 357).

- (3) However, a conservation officer must not seize or release a bird under subsection (2) if the conservation officer does not produce the conservation officer's identity card for inspection if asked by the person.

- (4) In this section:

**native bird** means a bird that is—

- (a) a native animal; but

*Note* **Native animal**—see s 12.

- (b) not an exempt animal.

*Note* **Exempt animal**—see s 154.

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

- (1) If the conservator considers that an animal seized under section 342 (Power to seize things) 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 must clearly state the reasons for seeking the order.
- (3) An application may only be made before a prosecution is begun for an offence against this Act in relation to the animal or during the prosecution.
- (4) The court may, before deciding an application, require notice of the application to be given to anyone that the court considers appropriate.
- (5) On deciding an application, the court may—
  - (a) order that the animal be released from captivity; or
  - (b) dismiss the application.
- (6) If the court makes an order for the release of an animal—
  - (a) the court may give the directions relating to observations to be made, and records to be kept, about the animal that the court considers appropriate; and
  - (b) the animal must not be released until the directions have been complied with.

*Note* The Territory may be required to pay the owner of the animal reasonable compensation for its loss (see s 357).

## **Division 14.2.3 Search warrants**

### **345 Warrants generally**

- (1) A conservation officer may apply to a magistrate for a warrant to enter premises.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the conservation officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity connected with an offence against this Act; and
  - (b) the thing or activity—
    - (i) is, or is being engaged in, at the premises; or
    - (ii) may be, or may be engaged in, at the premises within the next 7 days.
- (5) The warrant must state—
  - (a) that a conservation officer may, with any necessary assistance and force, enter the premises and exercise the conservation officer's powers under this part; and
  - (b) the offence for which the warrant is issued; and
  - (c) the things that may be seized under the warrant; and
  - (d) the hours when the premises may be entered; and
  - (e) the date, within 7 days after the day of the warrant's issue, the warrant ends.

### 346      Warrants—application made other than in person

- (1) A conservation officer may apply for a warrant by phone, fax, email, radio or other form of communication if the conservation officer considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances.
- (2) Before applying for the warrant, the conservation officer must prepare an application stating the grounds on which the warrant is sought.
- (3) The conservation officer may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately provide a written copy to the conservation officer if it is practicable to do so.
- (5) If it is not practicable to provide a written copy to the conservation officer—
  - (a) the magistrate must tell the conservation officer—
    - (i) the terms of the warrant; and
    - (ii) the date and time the warrant was issued; and
  - (b) the conservation officer must complete a form of warrant (the *warrant form*) and write on it—
    - (i) the magistrate’s name; and
    - (ii) the date and time the magistrate issued the warrant; and
    - (iii) the warrant’s terms.
- (6) The written copy of the warrant, or the warrant form properly completed by the conservation officer, authorises the entry and the exercise of the conservation officer’s powers under this part.

- (7) The conservation officer must, at the first reasonable opportunity, send to the magistrate—
  - (a) the sworn application; and
  - (b) if the conservation officer completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) A court must find that a power exercised by the conservation officer was not authorised by a warrant under this section if—
  - (a) the question arises in a proceeding in the court whether the exercise of power was authorised by a warrant; and
  - (b) the warrant is not produced in evidence; and
  - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

### **347 Search warrants—announcement before entry**

- (1) A conservation officer must, before anyone enters premises under a search warrant—
  - (a) announce that the conservation officer is authorised to enter the premises; and
  - (b) give anyone at the premises an opportunity to allow entry to the premises; and
  - (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify himself or herself to the person.

- (2) The conservation officer is not required to comply with subsection (1) if the conservation officer believes on reasonable grounds that immediate entry to the premises is required to ensure—
- (a) the safety of anyone (including the conservation officer or any person assisting); or
  - (b) that the effective execution of the warrant is not frustrated.

**348 Details of search warrant to be given to occupier etc**

If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the conservation officer or a person assisting must make available to the person—

- (a) a copy of the warrant; and
- (b) a document setting out the rights and obligations of the person.

**349 Occupier entitled to be present during search etc**

- (1) If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
  - (a) to do so would impede the search; or
  - (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

## **Division 14.2.4      Return and forfeiture of things seized**

### **350      Receipt for things seized**

- (1) As soon as practicable after a conservation officer seizes a thing under this part, the conservation officer must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the conservation officer must leave the receipt, secured conspicuously, at the place of seizure under section 342 (Power to seize things).
- (3) A receipt under this section must include the following:
  - (a) a description of the thing seized;
  - (b) an explanation of why the thing was seized;
  - (c) the conservation officer's name, and how to contact the conservation officer;
  - (d) if the thing is moved from the premises where it is seized—
    - (i) where the thing is to be taken; or
    - (ii) if the thing seized is an animal—how the animal is to be kept.

### **351      Moving things to another place for examination or processing under search warrant**

- (1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
  - (a) both of the following apply:
    - (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;

- (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining the thing at another place and the availability of expert assistance; or
  - (b) the occupier of the premises agrees in writing.
- (2) The thing may be moved to another place for examination for not longer than 72 hours.
- (3) A conservation officer may apply to a magistrate for an extension of time if the conservation officer believes on reasonable grounds that the thing cannot be examined within 72 hours.
- (4) The conservation officer must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.
- (5) If a thing is moved to another place under this section, the conservation officer must, if practicable—
  - (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and
  - (b) allow the occupier or the occupier's representative to be present during the examination or processing.
- (6) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

## **352 Access to things seized**

A person who would, apart from the seizure, be entitled to inspect a thing seized under this part may—

- (a) inspect it; and
- (b) if it is a document—take extracts from it or make copies of it.



### **353 Return of things seized**

- (1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing, unless—
  - (a) a prosecution for an offence against a territory law in connection with the thing is begun within 1 year after the day the seizure is made and the thing is required to be produced in evidence in the prosecution; or
  - (b) an application for the forfeiture of the seized thing is made to a court under the *Confiscation of Criminal Assets Act 2003* or another territory law within 1 year after the day the seizure is made; or
  - (c) all proceedings in relation to the offence with which the seizure was connected have ended and the court has not made an order about the thing.
- (2) However, this section does not apply to a thing—
  - (a) if the conservator believes on reasonable grounds that the only practical use of the thing in relation to the premises where it was seized would be an offence against this Act; or
  - (b) if possession of it by its owner would be an offence.

### **354 Forfeiture of things seized**

- (1) This section applies if—
  - (a) a thing seized under this part has not been—
    - (i) released under—
      - (A) section 343 (Seizure and release of distressed native birds); or
      - (B) section 344 (Release of distressed animals—court orders); or

- (ii) returned under section 353; and
- (b) an application for disallowance of the seizure under section 356—
  - (i) has not been made within 10 days after the day of the seizure; or
  - (ii) has been made within the 10-day period, but the application has been refused or withdrawn before a decision in relation to the application had been made.
- (2) The thing seized—
  - (a) is forfeited to the Territory; and
  - (b) may be sold, destroyed or otherwise disposed of as the conservator directs.

### **355 Power to destroy unsafe things**

- (1) This section applies to anything inspected or seized under this part by a conservation officer if the conservation officer is satisfied on reasonable grounds that the thing poses a risk to the health or safety of people or of damage to property or the environment.
- (2) The conservation officer may direct a person in charge of the premises where the thing is to destroy or otherwise dispose of the thing.

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

- (3) The direction may state 1 or more of the following:
  - (a) how the thing must be destroyed or otherwise disposed of;
  - (b) how the thing must be kept until it is destroyed or otherwise disposed of;

- (c) the period within which the thing must be destroyed or otherwise disposed of.
- (4) A person in charge of the premises where the thing is commits an offence if the person contravenes a direction given to the person under subsection (2).

Maximum penalty: 20 penalty units.

- (5) Alternatively, if the thing has been seized under this part, the conservation officer may destroy or otherwise dispose of the thing.
- (6) Costs incurred by the Territory in relation to the disposal of a thing under subsection (5) are a debt owing to the Territory by, and are recoverable together and separately from, the following people:
  - (a) the person who owned the thing;
  - (b) each person in control of the premises where the thing was.

*Note* An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

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

### **356 Application for order disallowing seizure**

- (1) A person claiming to be entitled to anything seized under this part may apply to the Magistrates Court within 10 days after the day of the seizure for an order disallowing the seizure.
- (2) The application may be heard only if the applicant has served a copy of the application on the conservator.
- (3) The conservator is entitled to appear as respondent at the hearing of the application.

### **357 Order for return of things seized**

- (1) This section applies if a person claiming to be entitled to anything seized under this part applies to the Magistrates Court under section 356 for an order disallowing the seizure.
- (2) The Magistrates Court must make an order disallowing the seizure if satisfied that—
  - (a) the applicant would, apart from the seizure, be entitled to the return of the thing seized; and
  - (b) the thing is not connected with an offence against this Act; and
  - (c) possession of the thing by the person would not be an offence.
- (3) The Magistrates Court may also make an order disallowing the seizure if satisfied there are exceptional circumstances justifying the making of the order.
- (4) If the Magistrates Court makes an order disallowing the seizure, the court may make 1 or more of the following ancillary orders:
  - (a) an order directing the conservator to return the thing to the applicant or to someone else who appears to be entitled to it;
  - (b) if the thing cannot be returned or has depreciated in value because of the seizure—an order directing the Territory to pay reasonable compensation;
  - (c) an order about the payment of costs in relation to the application.

## **Division 14.2.5      Enforcement—damage and compensation**

### **358      Damage etc to be minimised**

- (1) In the exercise, or purported exercise, of a function under this part, a conservation officer must take all reasonable steps to ensure that the officer causes as little inconvenience, detriment and damage as practicable.
- (2) If a conservation officer damages anything in the exercise or purported exercise of a function under this part, the conservation officer must give written notice of the particulars of the damage to the person the conservation officer believes on reasonable grounds is the owner of the thing.
- (3) The notice must state that—
  - (a) the person may claim compensation from the Territory if the person suffers loss or expense because of the damage; and
  - (b) compensation may be claimed and ordered in a proceeding for compensation brought in a court of competent jurisdiction; and
  - (c) the court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.
- (4) If the damage happens at premises entered under this part in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises.

**359 Compensation for exercise of enforcement powers**

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by a conservation officer.
- (2) Compensation may be claimed and ordered in a proceeding for—
  - (a) compensation brought in a court of competent jurisdiction; or
  - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

## Chapter 15 Notification and review of decisions

### 360 Meaning of *reviewable decision*—ch 15

In this chapter:

*reviewable decision* means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

### 361 Reviewable decision notices

If the conservator makes a reviewable decision, the conservator must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

*Note 1* The conservator must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

*Note 2* The requirements for a reviewable decision notice are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

### 362 Applications for review

The following may apply to the ACAT for review of a reviewable decision:

- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

*Note* If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

## Chapter 16 Miscellaneous

### 363 Certain information may be kept confidential

- (1) This section applies if a relevant person—
  - (a) is preparing a document under this Act; and
  - (b) considers that the survival of a native species or ecological community may be threatened by the disclosure of the precise location of—
    - (i) the species, or community, in the wild; or
    - (ii) if the species or community has a known critical habitat—the critical habitat for the species or community.
- (2) It is sufficient compliance with this Act if only a general description of the location of the species, community or habitat is included in the document.
- (3) In this section:  
*relevant person* means—
  - (a) the Minister; or
  - (b) the conservator; or
  - (c) the scientific committee.

### 364 Offences—use or divulge protected information

- (1) A person to whom this section applies commits an offence if—
  - (a) the person uses information; and
  - (b) the information is protected information about someone else; and



- (c) the person is reckless about whether the information is protected information about someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person to whom this section applies commits an offence if—
  - (a) the person does something that divulges information; and
  - (b) the information is protected information about someone else; and
  - (c) the person is reckless about whether—
    - (i) the information is protected information about someone else; and
    - (ii) doing the thing would result in the information being divulged to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subsections (1) and (2) do not apply to a person if the information is used or divulged—
  - (a) under this Act or another territory law; or
  - (b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law; or
  - (c) in a court proceeding.
- (4) Subsections (1) and (2) do not apply to the using or divulging of protected information about a person with the person's consent.

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

(5) A person to whom this section applies need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another law applying in the territory.

(6) In this section:

*court* includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

*divulge* includes—

- (a) communicate; or
- (b) publish.

*person to whom this section applies* means—

- (a) a person who is or has been the conservator; or
- (b) a person who is or has been a conservation officer; or
- (c) anyone else who has exercised a function under this Act.

*produce* includes allow access to.

*protected information* means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function under this Act by the person or someone else.

*use information* includes make a record of the information.

### **365 Acts and omissions of representatives**

- (1) This section applies to a prosecution for any offence against this Act.
- (2) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
  - (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and

- (b) the representative had the state of mind.
- (3) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (4) However, subsection (3) does not apply to a person if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (5) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (2) or (3).

- (6) In this section:

**person** means an individual.

*Note* See the [Criminal Code](#), pt 2.5 for provisions about corporate criminal responsibility.

**representative**, of a person, means an employee or agent of the person.

**state of mind**, of a person, includes—

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

### **366 Criminal liability of executive officers**

- (1) An executive officer of a corporation commits an offence if—
- (a) the corporation contravenes a provision of this Act; and
- (b) the contravention is an offence against this Act (a **relevant offence**); and
- (c) the officer was reckless about whether the contravention would happen; and

- (d) the officer was in a position to influence the conduct of the corporation in relation to the contravention; and
- (e) the officer failed to take all reasonable steps to prevent the contravention.

**Maximum penalty:** The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

- (2) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (3) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must have regard to the following:
  - (a) any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
    - (i) that the corporation arranges regular professional assessments of the corporation's compliance with the contravened provision;
    - (ii) that the corporation implements any appropriate recommendation arising from such an assessment;
    - (iii) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the contravened provision;
  - (b) any action the officer took when the officer became aware that the contravention was, or might be, about to happen.
- (4) Subsection (3) does not limit the matters to which the court may have regard.
- (5) This section does not apply if the corporation would have a defence to a prosecution for the relevant offence.

(6) In this section:

*executive officer*, of a corporation, means a person, however described and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

### **367 Evidentiary certificates**

- (1) The conservator may give a signed certificate—
  - (a) stating that on a stated date, or during a stated period, a stated person was or was not a licensee; and
  - (b) if the person was a licensee—including details of the person's nature conservation licence.
- (2) A certificate under this section is evidence of the matters stated in it.
- (3) Unless the contrary is proved, a document that purports to be a certificate under this section is taken to be a certificate.

### **368 Determination of fees etc**

- (1) The Minister may determine—
  - (a) fees for this Act; and
  - (b) the annual percentage rate at which interest payable under section 284 (4) (Financial assurance condition—recovery of extra costs) is to be calculated; and
  - (c) the annual percentage rate at which interest accruing under section 285 (1) (a) (Financial assurance condition—money held by Territory) is to be calculated.

*Note* The [Legislation Act](#) contains provisions about the making of determinations and regulations relating to fees, charges and other amounts (see pt 6.3).

- (2) A determination is a disallowable instrument.

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

### 369 Approved forms

- (1) The director-general may approve forms for this Act.
- (2) If the director-general approves a form for a particular purpose, the approved form must be used for that purpose.

*Note* For other provisions about forms, see the [Legislation Act](#), s 255.

- (3) An approved form is a notifiable instrument.

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

### 370 Regulation-making power

- (1) The Executive may make regulations for this Act.

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

- (2) A regulation may create offences and fix maximum penalties of not more than 30 penalty units for the offences.

### 371 Review of Act

The Minister must review the operation of this Act and present a report of the review to the Legislative Assembly as soon as practicable after the end of this Act's 10th year of operation.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

## Schedule 1      Reviewable decisions

(see ch 15)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	226 (2)	issue restore excavation direction	person directed
2	229 (2)	issue repair damage direction	person directed
3	273 (2)	issue nature conservation licence	
4	273 (2)	refuse to issue nature conservation licence	applicant for licence
5	274 (b)	issue nature conservation licence—impose condition	licensee
6	279	impose financial assurance condition on nature conservation licence	licensee
7	282	claim a financial assurance	licensee
8	286 (1)	amend nature conservation licence	licensee
9	288 (2)	refuse to amend nature conservation licence	licensee
10	288 (3)	amend nature conservation licence—impose or amend condition	licensee
11	290 (2)	refuse to transfer nature conservation licence	licensee proposed new licensee
12	290 (3)	transfer nature conservation licence—impose or amend condition	new licensee
13	292 (2)	refuse to renew nature conservation licence	licensee
14	292 (3)	renew nature conservation licence—impose or amend condition	licensee
15	299 (3)	take regulatory action	licensee
16	300	immediately suspend nature conservation licence	licensee
17	331 (2)	issue conservator's direction	person directed

**Schedule 1**      Reviewable decisions

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<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>	<b>column 4 entity</b>
18	333 (2)	issue treatment direction	person directed
19	335 (2) (a)	issue direction to give animal or plant to conservator	person directed
20	335 (2) (b)	issue direction to destroy animal or plant	person directed
21	355 (2)	issue direction to destroy or otherwise dispose of a thing	person directed



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## Dictionary

(see s 3)

*Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

*Note 2* For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- ACAT
- ACT legislation register
- ambulance service
- Australia
- chief officer (ambulance service)
- chief officer (fire and rescue service)
- chief officer (rural fire service)
- chief officer (SES)
- commissioner for sustainability and the environment
- contravene
- director-general (see s 163)
- disallowable instrument (see s 9)
- Executive
- exercise
- external territory
- fire and rescue service
- function
- notifiable instrument (see s 10)
- penalty unit (see s 133)
- police officer
- reviewable decision notice
- rural fire service
- SES
- State
- the Territory
- working day.

**accessing biological resources**, for part 8.5 (Access to biological resources in reserves)—see section 207.

**access provider**, for biological resources in a reserve, for part 8.5 (Access to biological resources in reserves)—see section 206.

**action plan**, for a relevant species, relevant ecological community or key threatening process, for part 4.5 (Action plans)—see section 99.

**activities**, of an agency, for chapter 12 (Management agreements with utility suppliers, land developers and others)—see section 308.

**activities declaration**, for a reserve—see section 256.

**activity information notice**, for an activity—see section 270.

**ACT parks and conservation service** means the ACT parks and conservation service established under section 27.

**agency**, for chapter 12 (Management agreements with utility suppliers, land developers and others)—see section 308.

**animal**—see section 11.

**animal reproductive material** means—

- (a) an embryo, an egg or sperm of an animal; or
- (b) any other part, or product, of an animal from which another animal could be produced.

**assessed at a national scale**, for an item, for part 4.4 (Including, transferring and omitting items in a list)—see section 80.

**biodiversity**—see section 19.

**biodiversity research and monitoring program**, for part 2.1 (Conservator of flora and fauna)—see section 24.

**biodiversity research and monitoring program report**—see section 26.

**biological resources**, for part 8.5 (Access to biological resources in reserves)—see section 204.

***built-up urban area***, for division 6.1.3 (Native plants)—see section 139.

***cause***, serious harm or material harm—

- (a) for part 9.4 (Reserves—offences about clearing native vegetation)—see section 235; and
- (b) for part 9.5 (Reserves—offences about damaging land)—see section 244.

***clearing*** native vegetation, for part 9.4 (Reserves—offences about clearing native vegetation)—see section 234.

***closed reserve declaration***, for a reserve, for part 10.2 (Prohibited and restricted activities)—see section 259.

***coastal sea***, of Australia or an external Territory—see the [Acts Interpretation Act 1901](#) (Cwlth), section 15B (4) (Application of Acts in coastal sea).

***common assessment method***, for part 4.4 (Including, transferring and omitting items in a list—general)—see section 80.

***connected***, for part 14.2 (Enforcement by conservation officers)—see section 337.

***conservation***—see section 10.

***conservation advice*** means an advice mentioned in section 90C.

***conservation dependent species*** means a species included in the conservation dependent category in the threatened native species list.

***conservation officer*** means a conservation officer mentioned in section 28.

***conservator***—see section 20.

***conservator guidelines***—see section 23.

***conservator's direction***—see section 331 (2).

**continental shelf**—see the *Seas and Submerged Lands Act 1973* (Cwlth), section 3.

**controlled native species**, for chapter 7 (Controlled native species management plans)—see section 157.

**controlled native species management plan**, for a controlled native species—see section 158.

**critical habitat**, for a species or ecological community, means a habitat that is critical to the survival of the species or ecological community.

**critically endangered ecological community** means an ecological community included in the critically endangered category in the threatened ecological communities list.

**critically endangered species** means a species included in the critically endangered category in the threatened native species list.

**custodian**, for an area of land—see the *Planning and Development Act 2007*, section 333 (What is a *custodian*?).

*Note* **Custodian** only applies to land that is unleased land or public land.

**damage**—

- (a) a tree, for division 6.1.3 (Native plants)—see section 139; and
- (b) to land, for part 9.5 (Reserves—offences about damaging land)—see section 243.

**data deficient species** means a species included in the data deficient category on the protected native species list.

**development**, for chapter 13 (Land development applications)—see section 315.

**draft action plan**, for a relevant species, relevant ecological community or key threatening process, for part 4.5 (Action plans)—see section 100.

***draft controlled native species management plan***, for a controlled native species, for chapter 7 (Controlled native species management plans)—see section 159.

***draft native species conservation plan***, for a native species on stated land, for part 5.3 (Native species conservation plans)—see section 116.

***draft nature conservation strategy***, for the ACT, for chapter 3 (Nature conservation strategy for the ACT)—see section 48.

***draft Ramsar wetland management plan***, for a Ramsar wetland, for part 8.4 (Ramsar wetlands management plans)—see section 192.

***draft reserve management plan***, for a reserve, for part 8.3 (Reserve management plans)—see section 176.

***due date***—

- (a) for when the financial assurance must be provided—see section 280; and
- (b) for when a proposed management agreement is to be signed and returned to the conservator—see section 311.

***ecological community***—see section 17.

***ecosystem*** means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.

***eligible species***—see section 95 (1).

***endangered ecological community*** means an ecological community included in the endangered category in the threatened ecological communities list.

***endangered species*** means a species included in the endangered category in the threatened native species list.

***evidence direction***—see section 319 (3).

***exclusive economic zone***—see the [Seas and Submerged Lands Act 1973](#) (Cwlth), section 3.

***exempt animal***—see section 154.

***export*** an item, means take the item to another place for any purpose.

**Examples—purpose**

- sale or trade
- personal use
- gift

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

***financial assurance condition***, on a licence—see section 278.

***financial assurance considerations***—see section 279.

***genetic resources***, for part 8.5 (Access to biological resources in reserves)—see section 205.

***ground for regulatory action***, against a licensee—see section 297.

***habitat*** means an area—

- (a) occupied (continuously, periodically or occasionally) by an organism or group of organisms; or
- (b) once occupied (continuously, periodically or occasionally) by an organism, or group of organisms, and into which organisms of that kind have the potential to be reintroduced.

**import** an item, means bring in the item from another place for any purpose.

**Examples—purpose**

- sale or trade
- personal use
- gift

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

**in**, a vehicle, includes on the vehicle.

**ineligible species**—see section 95 (1).

**information direction**—see section 323 (2).

**inspection notice**, for a licence—see section 272.

**interfere with** an item, for division 6.1.2 (Native animals)—see section 127.

**item**, for part 4.4 (Including, transferring and omitting items in list)—see section 80.

**IUCN category**, for a reserve, for part 8.2 (IUCN categories for reserves)—see section 171.

**IUCN reserve management objectives**, for an IUCN category, for part 8.2 (IUCN categories for reserves)—see section 173.

**keep**, an animal, means have charge or possession of the animal, either in captivity or in a domesticated state.

**key threatening process**—see section 74.

**key threatening processes list**—see section 75.

**key threatening processes list criteria**—see section 78.

**lease**—see the [Planning and Development Act 2007](#), section 235.

**leave reserve direction**, for part 14.1 (Directions)—see section 325 (2).

**licence** means a nature conservation licence.

**licence number**, for a licence—see section 277.

**licence register**—see section 304.

**licensed activity**, for a licence—see section 262.

**list**, for part 4.4 (Including, transferring and omitting items in list)—see section 80.

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

**listing assessment**, for part 4.4 (Including, transferring and omitting items in list)—see section 85 (2).

**management agreement**, for public land or unleased territory land, for chapter 12 (Management agreements with utility suppliers, land developers and others)—see section 310.

**management objectives**, for public land or unleased territory land, for chapter 12 (Management agreements with utility suppliers, land developers and others)—see section 309.

**material harm**, to a reserve—

- (a) for clearing native vegetation, for part 9.4 (Reserves—offences about clearing native vegetation)—see section 235; or
- (b) for damage to land, for part 9.5 (Reserves—offences about damaging land)—see section 244.

**member**—

- (a) for a species of animal—see section 18 (a); or
- (b) for a species of plant—see section 18 (b); or
- (c) for an ecological community—see section 18 (c).



**minor amendment**, for division 4.4.6 (Minor amendments of list)—see section 93.

**motor vehicle**—see the *Road Transport (General) Act 1999*, dictionary.

**name and address direction**—see section 319 (2).

**national category**, in the threatened native species list—see section 63 (2) (Threatened native species list—categories).

**nationally threatened**, in relation to an item, for part 4.4 (Including, transferring and omitting items in list)—see section 80.

**native animal**—see section 12.

**native plant**—see section 14.

**native species**—see section 16.

**native species conservation plan**, for a native species—see section 115.

**native timber**, for division 6.1.3 (Native plants)—see section 139.

**native tree**, for division 6.1.3 (Native plants)—see section 139.

**native vegetation**, for an area, for part 9.4 (Reserves—offences about clearing native vegetation)—see section 232.

**native vegetation area**, for part 9.4 (Reserves—offences about clearing native vegetation)—see section 233.

**nature**—see section 9.

**nature conservation licence**—see section 262.

**nature conservation strategy**, for the ACT—see section 47.

**nest**, of an animal, for division 6.1.2 (Native animals)—see section 127.

**nomination**, for part 4.4 (Including, transferring and omitting items in list)—see section 80.

**occupier**, of premises, for part 14.2 (Enforcement by conservation officers)—see section 337.

**offence**, for part 14.2 (Enforcement by conservation officers)—see section 337.

**organism** includes—

- (a) a virus; and
- (b) the reproductive material of an organism; and
- (c) an organism that has died.

**participating State**, for part 4.4 (Including, transferring and omitting items in list)—see section 80.

**personal information notice**—see section 267.

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

**pest plant**—see the [Pest Plants and Animals Act 2005](#), dictionary.

**planning and development management objectives**, for an area of public land, means the management objectives under the [Planning and Development Act 2007](#), section 317 (Management objectives for areas of public land).

*Note* The management objectives are stated in the following:

- the [Planning and Development Act 2007](#), sch 3;
- determinations made by the conservator under the [Planning and Development Act 2007](#), s 317 (2).

**plant**—see section 13.

**plant reproductive material** means—

- (a) a seed or spore of a plant; or
- (b) a cutting from a plant; or
- (c) any other part, or product, of a plant from which another plant can be produced.

**plant tag**, for a plant, for division 6.1.3 (Native plants)—see section 139.

**population**, of a species or ecological community, means an occurrence of the species or community in a particular area.

**premises** includes—

- (a) land (whether vacant or occupied); and
- (b) a vehicle; and
- (c) a vessel; and
- (d) an aircraft.

**prohibited activity**, for a reserve—see section 256.

**proposed agreement**—see section 311.

**proposed new licensee**, for a licence—see section 289.

**protected native species**—see section 110.

**protected native species list**—see section 111 (1).

**protected native species list criteria**—see section 113 (1).

**public consultation notice**, for a nomination, for part 4.4 (Including, transferring and omitting items in list)—see section 84 (1).

**public consultation period**—

- (a) for a draft action plan, for part 4.5 (Action plans)—see section 103 (2); and
- (b) for a draft controlled native animal management plan, for chapter 7 (Controlled native species management plans)—see section 162 (2); and
- (c) for a draft native species conservation plan, for part 5.3 (Native species conservation plans)—see section 120 (2); and
- (d) for a draft nature conservation strategy, for chapter 3 (Nature conservation strategy for the ACT)—see section 51 (2); and

- (e) for a draft Ramsar wetland management plan, for part 8.4 (Ramsar wetlands management plans)—see section 195 (2); and
- (f) for a draft reserve management plan, for part 8.3 (Reserve management plans)—see section 179 (2); and
- (g) for a nomination, for part 4.4 (Including, transferring and omitting items in list)—see section 84 (3).

**public land**—see the [Planning and Development Act 2007](#), dictionary.

**public unleased land permit**—see the [Public Unleased Land Act 2013](#), section 40.

**Ramsar wetland**—see section 190.

**Ramsar wetland management plan**, for a Ramsar wetland—see section 191.

**rare species** means a species included in the rare category on the protected native species list.

**regional category**, in the threatened native species list—see section 63 (3) (Threatened native species list—categories).

**regionally conservation dependent species** means a species included in the regionally conservation dependent category in the threatened native species list.

**regionally threatened species** means a species included in the regionally threatened category in the threatened native species list.

**regular migratory species**—see section 98.

**regulatory action**, against a licensee—see section 298.

**relevant ecological community**—see section 98.

**relevant species**—see section 98.

**repair damage direction**, for part 9.3 (Reserves—repairing damage)—see section 229 (2).

**reserve**—see section 169.

**reserve management plan**, for a reserve, for part 8.3 (Reserve management plans)—see section 175.

**resource protection area**, for chapter 10 (Reserves—prohibited and restricted activities)—see section 253.

**resource protection area declaration**, for a resource protection area—see section 254.

**restore excavation direction**, for part 9.2 (Reserves—offences in wilderness areas)—see section 226 (2).

**restricted activity**, for a reserve—see section 256.

**restricted trade species** means a species included in the restricted trade category on the protected native species list.

**reviewable decision**, for chapter 15 (Notification and review of decisions)—see section 360.

**risk management plan notice**, for a licence—see section 271.

**scientific committee** means the scientific committee established under section 31.

**seabed** includes—

- (a) the surface of a coral formation; and
- (b) subsoil of seabed (including coral beneath the surface of a coral formation).

**sell**, for part 6.1 (Offences)—see section 126.

**serious harm**, to a reserve—

- (a) for clearing native vegetation, for part 9.4 (Reserves—offences about clearing native vegetation)—see section 235; or
- (b) for damage to land, for part 9.5 (Reserves—offences about damaging land)—see section 244.

***show cause notice***, for a licensee, for part 11.6 (Licences—regulatory action)—see section 299.

***special protection status***, for a native species—see section 109.

***species***—see section 15.

***stop vehicle direction***, for part 14.1 (Directions)—see section 327 (2).

***suitability information***—

(a) about an activity—see section 269; or

(b) about a person—see section 266.

***suitable activity***, for a licence—see section 268.

***suitable person***, to hold a licence, for chapter 11 (Nature conservation licences)—see section 265.

***take***, for part 6.1 (Offences)—see section 126.

***threatened ecological communities list***—see section 68.

***threatened ecological communities list criteria***—see section 71.

***threatened ecological community***—see section 67.

***threatened native species***—see section 61.

***threatened native species list***—see section 62.

***threatened native species list criteria***—see section 65.

***threatening process***—see section 73.

***transfer***, an item within a list, for part 4.4 (Including, transferring and omitting items in list)—see section 80.

***treatment direction***, for part 14.1 (Directions)—see section 333.

***tree seedling***, for division 6.1.3 (Native plants)—see section 139.

***urgent direction***, for part 14.1 (Directions)—see section 329.

***vehicle*** includes vessel.

**vessel** includes hovercraft.

**vulnerable ecological community** means an ecological community included in the vulnerable category in the threatened ecological communities list.

**vulnerable species** means a species included in the vulnerable category in the threatened native species list.

**warrant**, for part 14.2 (Enforcement by conservation officers)—see section 337.

**wilderness area**—see section 170.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired



### 3 Legislation history

#### **Nature Conservation Act 2014 A2014-59**

notified LR 11 December 2014  
s 1, s 2 commenced 11 December 2014 (LA s 75 (1))  
ch 13, dict def **development** commenced 11 June 2015 (s 2 (2) (b))  
remainder commenced 11 June 2015 (s 2 (1) and LA s 79)

as modified by

#### **Nature Conservation (Transitional Provisions) Regulation 2015 SL2015-26 s 5**

notified LR 9 July 2015  
s 1, s 2 commenced 9 July 2015 (LA s 75 (1))  
s 5 commenced 10 July 2015 (s 2)

as amended by

#### **Red Tape Reduction Legislation Amendment Act 2015 A2015-33 sch 1 pt 1.46, sch 3 pt 3.2**

notified LR 30 September 2015  
s 1, s 2 commenced 30 September 2015 (LA s 75 (1))  
sch 1 pt 1.46, sch 3 pt 3.2 commenced 14 October 2015 (s 2)

#### **Planning, Building and Environment Legislation Amendment Act 2016 A2016-2 pt 6**

notified LR 23 February 2016  
s 1, s 2 commenced 23 February 2016 (LA s 75 (1))  
pt 6 commenced 24 February 2016 (s 2)

#### **Red Tape Reduction Legislation Amendment Act 2016 A2016-18 sch 3 pt 3.31**

notified LR 13 April 2016  
s 1, s 2 commenced 13 April 2016 (LA s 75 (1))  
sch 3 pt 3.31 commenced 27 April 2016 (s 2)

#### **Planning, Building and Environment Legislation Amendment Act 2016 (No 2) A2016-24 pt 8**

notified LR 11 May 2016  
s 1, s 2 commenced 11 May 2016 (LA s 75 (1))  
pt 8 commenced 12 May 2016 (s 2 (1))

## Endnotes

3 Legislation history

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### **Nature Conservation Amendment Act 2016 A2016-29**

notified LR 16 June 2016  
s 1, s 2 commenced 16 June 2016 (LA s 75 (1))  
remainder commenced 17 June 2016 (s 2)

### **Emergencies Amendment Act 2016 A2016-33 sch 1 pt 1.15**

notified LR 20 June 2016  
s 1, s 2 commenced 20 June 2016 (LA s 75 (1))  
sch 1 pt 1.15 commenced 21 June 2016 (s 2)

### **Planning, Building and Environment Legislation Amendment Act 2017 A2017-3 pt 4**

notified LR 22 February 2017  
s 1, s 2 commenced 22 February 2017 (LA s 75 (1))  
pt 4 commenced 23 February 2017 (s 2)

### **Statute Law Amendment Act 2017 A2017-4 sch 3 pt 3.19**

notified LR 23 February 2017  
s 1, s 2 commenced 23 February 2017 (LA s 75 (1))  
sch 3 pt 3.19 commenced 9 March 2017 (s 2)

### **Planning, Building and Environment Legislation Amendment Act 2017 (No 2) A2017-20 pt 8**

notified LR 15 June 2017  
s 1, s 2 commenced 15 June 2017 (LA s 75 (1))  
pt 8 commenced 16 June 2017 (s 2)

### **Nature Conservation (Minor Public Works) Amendment Act 2017 A2017-39**

notified LR 13 November 2017  
s 1, s 2 commenced 13 November 2017 (LA s 75 (1))  
remainder commenced 14 November 2017 (s 2)

### **Planning, Building and Environment Legislation Amendment Act 2018 A2018-18 pt 4**

notified LR 16 May 2018  
s 1, s 2 commenced 16 May 2018 (LA s 75 (1))  
pt 4 commenced 17 May 2018 (s 2)

**Veterinary Practice Act 2018 A2018-32 sch 3 pt 3.13**

notified LR 30 August 2018

s 1, s 2 commenced 30 August 2018 (LA s 75 (1))

sch 3 pt 3.13 commenced 21 December 2018 (s 2 and [CN2018-12](#))

**Red Tape Reduction Legislation Amendment Act 2018 A2018-33 pt 9, sch 1 pt 1.26**

notified LR 25 September 2018

s 1, s 2 commenced 25 September 2018 (LA s 75 (1))

pt 9 commenced 2 October 2018 (s 2 (1))

sch 1 pt 1.26 commenced 23 October 2018 (s 2 (4))

**Statute Law Amendment Act 2018 A2018-42 sch 3 pt 3.25**

notified LR 8 November 2018

s 1, s 2 taken to have commenced 1 July 2018 (LA s 75 (2))

sch 3 pt 3.25 commenced 22 November 2018 (s 2 (1))

## Endnotes

4 Amendment history

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### 4 Amendment history

#### Commencement

s 2 om LA s 89 (4)

#### Objects of Act

s 6 am [A2016-2](#) s 8, s 9

#### Application of Act to Emergencies Act 2004

s 7 am [A2016-33](#) amdt 1.37, amdt 1.38

#### What is a *species*?

s 15 am [A2016-29](#) s 4; pars renum R7 LA

#### What is a *native species*?

s 16 am [A2016-29](#) s 5

#### Conservator—functions

s 21 am [A2016-24](#) s 47, s 48

#### Draft nature conservation strategy—public consultation

s 51 am [A2017-3](#) s 6

#### What is a *threatened native species*?

s 61 am [A2016-29](#) s 56

#### Threatened native species list—categories

s 63 sub [A2016-29](#) s 6

#### Threatened native species list—eligibility for national categories

s 64 sub [A2016-29](#) s 6

#### Threatened native species list—eligibility for regional categories

s 64A ins [A2016-29](#) s 6  
am [A2018-42](#) amdt 3.81

#### Threatened native species list—eligibility criteria

s 65 am [A2016-29](#) s 56

#### Threatened native species list—criteria to review

s 66 am [A2016-29](#) s 56

#### Threatened ecological communities list—categories

s 69 am [A2016-29](#) s 7; pars renum R7 LA

#### Threatened ecological communities list—eligibility for categories

s 70 am [A2016-29](#) s 8; ss renum R7 LA

#### Threatened ecological communities list criteria—review

s 72 am [A2016-29](#) s 56

**Definitions—pt 4.3**

- s 72A ins [A2016-2](#) s 10  
om [A2018-33](#) s 89  
def **listing advice** ins [A2016-2](#) s 10  
om [A2016-29](#) s 89  
def **listing assessment** ins [A2016-2](#) s 10  
om [A2018-33](#) s 89  
def **public consultation notice** ins [A2016-2](#) s 10  
om [A2018-33](#) s 89

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

- s 75 am [A2016-2](#) s 11; [A2018-33](#) s 90

**Key threatening processes list**

- s 76 **orig s 76**  
om [A2016-2](#) s 12  
**pres s 76**  
ins [A2016-2](#) s 13  
reloc and renum as s 76 [A2018-33](#) s 91

**Key threatening processes list**

- s 79A reloc and renum as s 76

**Public may nominate items for list**

- s 79B ins [A2016-2](#) s 13  
om [A2018-33](#) s 92

**Scientific committee may reject nomination from public**

- s 79C ins [A2016-2](#) s 13  
om [A2018-33](#) s 92

**Scientific committee may nominate items for list**

- s 79D ins [A2016-2](#) s 13  
om [A2018-33](#) s 92

**Public consultation**

- s 79E ins [A2016-2](#) s 13  
om [A2018-33](#) s 92

**Listing assessment**

- s 79F ins [A2016-2](#) s 13  
om [A2018-33](#) s 92

**Listing advice**

- s 79G ins [A2016-2](#) s 13  
om [A2016-29](#) s 10

**Minister to decide whether to include item in list**

- s 79H ins [A2016-2](#) s 13  
am [A2016-29](#) s 11, s 12  
om [A2018-33](#) s 92

## Endnotes

### 4 Amendment history

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#### **Definitions—pt 4.4**

div 4.4.1 hdg ins [A2016-29](#) s 13

#### **Definitions—pt 4.4**

s 80 ins [A2016-2](#) s 14  
def **assessed at a national scale** ins [A2016-29](#) s 14  
def **common assessment method** ins [A2016-29](#) s 14  
def **listing advice** ins [A2016-2](#) s 14  
om [A2016-29](#) s 15  
def **listing assessment** ins [A2016-2](#) s 14  
def **nationally threatened** ins [A2016-29](#) s 16  
def **participating State** ins [A2016-29](#) s 16  
def **public consultation notice** ins [A2016-2](#) s 14

#### **Including, transferring and omitting items in list—general**

div 4.4.2 hdg ins [A2016-29](#) s 17

#### **Nominations—scientific committee may reject nomination**

s 82 am [A2016-29](#) s 18

#### **Nominations—public consultation**

s 84 am [A2016-29](#) s 19

#### **Nominations—scientific committee to carry out *listing assessment***

s 85 am [A2016-29](#) s 20; [A2018-33](#) s 93

#### **Scientific committee to prepare listing advice**

s 86 om [A2016-29](#) s 21

#### **Minister to decide whether to include, transfer or omit item**

s 87 am [A2016-29](#) ss 22-24; [A2018-33](#) s 94, s 95

#### **Minister's decision—include item**

s 88 am [A2016-29](#) s 25, s 26; [A2018-33](#) s 96

#### **Minister's decision—transfer item**

s 89 am [A2016-29](#) s 27, s 28; [A2018-33](#) s 96

#### **Minister's decision—omit item**

s 90 am [A2016-29](#) s 29, s 30; [A2018-33](#) s 96

#### **Including or transferring certain nationally threatened items**

div 4.4.3 hdg ins [A2016-29](#) s 31

#### **Minister may include or transfer nationally threatened items without nomination**

s 90A ins [A2016-29](#) s 31  
am [A2018-33](#) s 97

#### **Conservation advice**

div 4.4.4 hdg ins [A2016-29](#) s 31

**Conservation advice guidelines**s 90B ins [A2016-29](#) s 31**Conservation advice**s 90C ins [A2016-29](#) s 31  
sub [A2018-33](#) s 98**Conservation advice—scientific committee to prepare**s 90D ins [A2016-29](#) s 31  
om [A2018-33](#) s 98**Conservation advice—adopting advice for nationally threatened item**s 90E ins [A2016-29](#) s 31  
am [A2018-33](#) ss 99-101**Conservation advice—scientific committee to review**s 90F ins [A2016-29](#) s 31  
am [A2018-33](#) s 102**Final version of list and notification**div 4.4.5 hdg ins [A2016-29](#) s 31**Final version of list and notification**s 91 am [A2016-29](#) s 32, s 33**Scientific committee to prepare conservation advice**s 92 om [A2016-29](#) s 34**Minor amendments of list**div 4.4.6 hdg ins [A2016-29](#) s 35**What is a *minor amendment*?—div 4.4.6**s 93 sub [A2016-29](#) s 35**Minister may make minor amendments**s 94 am [A2017-4](#) amdt 3.103; [A2018-33](#) s 103**Minor amendment—including similar species**s 95 am [A2016-29](#) s 36; [A2018-33](#) s 104**Minor amendment—omitting similar species**s 96 am [A2016-29](#) s 37; [A2018-33](#) s 105**Definitions—Act**s 98 def *relevant species* sub [A2016-29](#) s 38**Minister to decide if action plan needed**s 100A ins [A2016-29](#) s 39  
am [A2017-3](#) s 7**Draft action plan—conservator to prepare**s 101 am [A2016-29](#) s 40

## Endnotes

4 Amendment history

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**Action plan—monitoring and review**

s 108 am [A2016-29](#) s 42

**Action plan—ending action plan after review**

s 108A ins [A2016-29](#) s 43

**Draft native species conservation plan—conservator to prepare**

s 117 am [A2016-29](#) s 44, s 56

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

s 119 sub [A2018-18](#) s 11

**Offence—take native animal**

s 132 am [A2018-32](#) amdt 3.53

**Offence—keep non-exempt animal**

s 133 am [A2018-32](#) amdt 3.53

**What is a *controlled native species*?—ch 7**

s 157 am [A2016-24](#) s 49

**What is a *draft controlled native species management plan*?—ch 7**

s 159 am [A2016-2](#) s 15

**Draft controlled native species management plan—consultation with lessee and custodian**

s 161 sub [A2016-24](#) s 50  
am [A2018-18](#) s 12, s 13; ss renum R14 LA

**Ramsar wetland management plan—monitoring and review**

s 203 am [A2017-20](#) s 15

**Offence—take plant or plant reproductive material into reserve**

s 219 am [A2017-20](#) s 16

**Chapter 9 exceptions**

s 252 am [A2017-39](#) s 4

**Conservator may make activities declarations**

s 256 am [A2015-33](#) amdt 1.153

**Conservator may close reserve**

s 259 am [A2015-33](#) amdt 1.154; [A2016-2](#) s 16

**Offence—enter closed reserve**

s 260 am [A2016-2](#) s 17

**Part 10.2 exceptions**

s 261 am [A2015-33](#) amdt 3.2; pars renum R2 LA

**Licence—replacing when lost, stolen or destroyed**

s 293 am [A2016-18](#) amdt 3.151, amdt 3.152



**Licence—surrender**

s 294 am [A2016-18](#) amdt 3.153, amdt 3.154

**Minor public works in reserves**

ch 13A hdg ins [A2017-39](#) s 5

**Minor public works code**

s 318A ins [A2017-39](#) s 5

**Conservator's directions**

s 331 am [A2016-29](#) s 45; [A2018-18](#) s 14

**Warrants—application made other than in person**

s 346 am [A2018-33](#) amdt 1.49, amdt 1.50

**Repeals and consequential amendments**

ch 17 hdg om LA s 89 (3)

**Legislation repealed**

s 372 om LA s 89 (3)

**Legislation amended—sch 2**

s 373 om LA s 89 (3)

**Transitional**

ch 20 hdg exp 11 June 2017 (s 415)

**Meaning of commencement day—ch 20**

s 400 exp 11 June 2017 (s 415)

**Nature conservation strategy**

s 401 exp 11 June 2017 (s 415)

**Endangered species**

s 402 exp 11 June 2017 (s 415)

**Vulnerable species**

s 403 exp 11 June 2017 (s 415)

**Endangered ecological communities**

s 404 exp 11 June 2017 (s 415)

**Notification of lists**

s 404A ins as mod [SL2015-26](#) s 5  
exp 11 June 2017 (s 404A (3) and see [SL2015-26](#) s 6)

**Threatening processes to be key threatening processes**

s 405 om [A2016-2](#) s 18

**Action plans**

s 406 exp 11 June 2017 (s 415)

**Protected fish, invertebrates, native plants and native animals to be protected species**

s 407 exp 11 June 2017 (s 415)

## Endnotes

### 4 Amendment history

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#### **Exempt animals**

s 408 exp 11 June 2017 (s 415)

#### **Plans of management for reserves to be reserve management plans**

s 409 exp 11 June 2017 (s 415)

#### **Draft plans of management for reserves—public consultation stage**

s 410 exp 11 June 2017 (s 415)

#### **Draft plans of management for reserves—submission to Minister stage**

s 411 exp 11 June 2017 (s 415)

#### **Licences**

s 412 exp 11 June 2017 (s 415)

#### **Management agreements**

s 413 exp 11 June 2017 (s 415)

#### **Transitional regulations**

s 414 exp 11 June 2017 (s 415)

#### **Expiry—ch 20**

s 415 exp 11 June 2017 (s 415)

#### **Transitional—Nature Conservation Amendment Act 2016**

ch 21 hdg ins [A2016-29](#) s 46  
exp 17 June 2018 (s 424)

#### **Meaning of *commencement day*—ch 21**

s 420 ins [A2016-29](#) s 46  
exp 17 June 2018 (s 424)

#### **Threatened native species list**

s 421 ins [A2016-29](#) s 46  
exp 17 June 2018 (s 424)

#### **Conservation advice not needed for species already on list**

s 422 ins [A2016-29](#) s 46  
exp 17 June 2018 (s 424)

#### **Transitional regulations**

s 423 ins [A2016-29](#) s 46  
exp 17 June 2018 (s 424)

#### **Expiry—ch 21**

s 424 ins [A2016-29](#) s 46  
exp 17 June 2018 (s 424)

#### **Consequential amendments**

sch 2 om LA s 89 (3)

## Dictionary

dict

- am [A2015-33](#) amdt 1.155; [A2016-29](#) s 47
- def **assessed at a national scale** ins [A2016-29](#) s 48
- def **coastal sea** ins [A2016-29](#) s 48
- def **common assessment method** ins [A2016-29](#) s 48
- def **conservation advice** sub [A2016-29](#) s 49
- def **conservation dependent species** am [A2016-29](#) s 56
- def **continental shelf** ins [A2016-29](#) s 50
- def **critically endangered ecological community** am [A2016-29](#) s 56
- def **critically endangered species** am [A2016-29](#) s 56
- def **endangered ecological community** am [A2016-29](#) s 56
- def **endangered species** am [A2016-29](#) s 56
- def **exclusive economic zone** ins [A2016-29](#) s 50
- def **extinct in the wild species** om [A2016-29](#) s 51
- def **extinct species** om [A2016-29](#) s 51
- def **listing advice** sub [A2016-2](#) s 19  
om [A2016-29](#) s 51
- def **listing assessment** sub [A2016-2](#) s 19; [A2018-33](#) s 106
- def **minor amendment** sub [A2016-29](#) s 52
- def **national category** ins [A2016-29](#) s 53
- def **nationally threatened** ins [A2016-29](#) s 53
- def **participating State** ins [A2016-29](#) s 53
- def **provisionally listed threatened ecological community**  
om [A2016-29](#) s 54
- def **provisionally listed threatened species** om [A2016-29](#)  
s 54
- def **public consultation notice** sub [A2016-2](#) s 19; [A2018-33](#)  
s 107
- def **regional category** ins [A2016-29](#) s 55
- def **regionally conservation dependent species** ins  
[A2016-29](#) s 55
- def **regionally threatened species** ins [A2016-29](#) s 55
- def **seabed** ins [A2016-29](#) s 55
- def **vulnerable ecological community** am [A2016-29](#) s 56
- def **vulnerable species** am [A2016-29](#) s 56

## Endnotes

### 5 Earlier republications

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#### 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R1 11 June 2015	11 June 2015– 9 July 2015	not amended	new Act
R2 10 July 2015	10 July 2015– 13 Oct 2015	not amended	modifications by <a href="#">SL2015-26</a>
R3 14 Oct 2015	14 Oct 2015– 23 Feb 2016	<a href="#">A2015-33</a>	amendments by <a href="#">A2015-33</a>
R4 24 Feb 2016	24 Feb 2016– 26 Apr 2016	<a href="#">A2016-2</a>	amendments by <a href="#">A2016-2</a>
R5 27 Apr 2016	27 Apr 2016– 11 May 2016	<a href="#">A2016-18</a>	amendments by <a href="#">A2016-18</a>
R6 12 May 2016	12 May 2016– 16 June 2016	<a href="#">A2016-24</a>	amendments by <a href="#">A2016-24</a>
R7 17 June 2016	17 June 2016– 20 June 2016	<a href="#">A2016-29</a>	amendments by <a href="#">A2016-29</a>
R8 21 June 2016	21 June 2016– 22 Feb 2017	<a href="#">A2016-33</a>	amendments by <a href="#">A2016-33</a>
R9 23 Feb 2017	23 Feb 2017– 8 Mar 2017	<a href="#">A2017-3</a>	amendments by <a href="#">A2017-3</a>
R10 9 Mar 2017	9 Mar 2017– 11 June 2017	<a href="#">A2017-4</a>	amendments by <a href="#">A2017-4</a>
R11 12 June 2017	12 June 2017– 15 June 2017	<a href="#">A2017-4</a>	expiry of modifications and transitional provisions (ch 20)

Republication No and date	Effective	Last amendment made by	Republication for
R12 16 June 2017	16 June 2017– 13 Nov 2017	<a href="#">A2017-20</a>	amendments by <a href="#">A2017-20</a>
R13 14 Nov 2017	14 Nov 2017– 16 May 2018	<a href="#">A2017-39</a>	amendments by <a href="#">A2017-39</a>
R14 17 May 2018	17 May 2018– 17 June 2018	<a href="#">A2018-18</a>	amendments by <a href="#">A2018-18</a>
R15 18 June 2018	18 June 2018– 1 Oct 2018	<a href="#">A2018-18</a>	expiry of transitional provisions (ch 21)
R16 2 Oct 2018	2 Oct 2018– 22 Oct 2018	<a href="#">A2018-33</a>	amendments by <a href="#">A2018-33</a>
R17 23 Oct 2018	23 Oct 2018– 21 Nov 2018	<a href="#">A2018-33</a>	amendments by <a href="#">A2018-33</a>
R18 22 Nov 2018	22 Nov 2018– 20 Dec 2018	<a href="#">A2018-42</a>	amendments by <a href="#">A2018-42</a>

## 6 Expired transitional or validating provisions

This Act may be affected by transitional or validating provisions that have expired. The expiry does not affect any continuing operation of the provisions (see [Legislation Act 2001](#), s 88 (1)).

Expired provisions are removed from the republished law when the expiry takes effect and are listed in the amendment history using the abbreviation ‘exp’ followed by the date of the expiry.

To find the expired provisions see the version of this Act before the expiry took effect. The ACT legislation register has point-in-time versions of this Act.