

EXPOSURE DRAFT

Minister for the Environment and Sustainable Development

(Prepared by Parliamentary Counsel's Office)

Nature Conservation Bill 2013

Contents

	Page
Chapter 1	Preliminary
Part 1.1	Preliminary
1	Name of Act 2
2	Commencement 2
3	Dictionary 3
4	Notes 3
5	Offences against Act—application of Criminal Code etc 3

J2011-969

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

	Page
6	4
Objects of Act	
Part 1.2	Relationships with other laws
7	6
Application to Emergencies Act 2004	
8	7
Relationship with environment laws	
Part 1.3	Important concepts
9	8
What is an <i>animal</i> ?	
10	9
What is a <i>native animal</i> ?	
11	9
What is a <i>plant</i> ?	
12	9
What is a <i>native plant</i> ?	
13	10
What is a <i>species</i> ?	
14	10
What is a <i>native species</i> ?	
15	12
What is an <i>ecological community</i> ?	
16	12
What is a <i>member</i> of a species or ecological community?	
Chapter 2	Administration
Part 2.1	Conservator of flora and fauna
17	14
Conservator—appointment	
18	14
Conservator—functions	
19	16
Conservator—delegation	
20	16
Conservator—guidelines	
21	16
Conservator—duty to monitor nature conservation	
Part 2.2	ACT parks and conservation service
22	18
ACT parks and conservation service	
Part 2.3	Conservation officers
23	19
Conservation officers—appointment	
24	19
Conservation officers—identity cards	

EXPOSURE DRAFT

	Page
25	20
Conservation officers—power not to be exercised before identity card shown	
Part 2.4	
Scientific committee	
26	21
Scientific committee—establishment	
27	21
Scientific committee—functions	
28	21
Scientific committee—Minister’s directions	
29	22
Scientific committee—membership	
30	22
Scientific committee—appointment of members	
31	23
Scientific committee—chair and deputy chair	
32	23
Scientific committee—secretary	
33	23
Scientific committee—ending appointments	
34	24
Scientific committee—disclosure of interests	
35	26
Scientific committee—meetings	
36	26
Scientific committee—presiding member at meetings	
37	26
Scientific committee—quorum at meetings	
38	26
Scientific committee—voting at meetings	
39	27
Scientific committee—conduct of meetings	
Part 2.5	
Advisory committees	
40	28
Advisory committees	
Chapter 3	
Nature conservation strategy for the ACT	
41	29
What is the <i>nature conservation strategy</i> for the ACT?	
42	29
What is a <i>draft nature conservation strategy</i> ?—ch 3	
43	30
Draft nature conservation strategy—conservator to prepare	
44	30
Draft nature conservation strategy—public consultation	
45	31
Draft strategy—revision and submission to Minister	
46	32
Draft strategy—Minister to approve, return or reject	
47	32
Draft strategy—Minister’s approval and notification	
48	33
Draft strategy—Minister’s direction to revise etc	

EXPOSURE DRAFT

	Page	
49	Draft strategy—Minister’s rejection	33
50	Nature conservation strategy—minor amendments	34
51	Nature conservation strategy—conservator to implement	35
52	Nature conservation strategy—monitoring and review	35
Chapter 4	Threatened native species and ecological communities	
Part 4.1	Threatened native species	
53	What is a <i>threatened native species</i> ?	36
54	What is a <i>threatened native species list</i> ?	36
55	Threatened native species list—categories	36
56	Threatened native species list—eligibility for categories	37
57	Threatened native species list—eligibility criteria	39
Part 4.2	Threatened ecological communities	
58	What is a <i>threatened ecological community</i> ?	40
59	What is a <i>threatened ecological communities list</i> ?	40
60	Threatened ecological communities list—categories	40
61	Threatened ecological communities list—eligibility for categories	41
62	Threatened ecological communities list—eligibility criteria	42
Part 4.3	Key threatening processes	
63	What is a <i>threatening process</i> ?	43
64	What is a <i>key threatening process</i> ?	43
65	What is a <i>key threatening processes list</i> ?	43
66	Key threatening processes list	43
67	Key threatening processes list—eligibility	44
68	Key threatening processes list—eligibility criteria	44

EXPOSURE DRAFT

	Page
Part 4.4	Including, transferring and omitting items in list
69	Definitions—pt 4.4 46
70	Nominations—public may nominate item at any time 46
71	Nominations—scientific committee may reject nomination 47
72	Nominations—scientific committee may nominate items itself 47
73	Nominations—public consultation 48
74	Nominations—scientific committee to carry out <i>listing assessment</i> 49
75	Scientific committee to prepare listing advice 50
76	Minister to decide whether to include, transfer or omit item 52
77	Minister's decision—include item 52
78	Minister's decision—transfer item 53
79	Minister's decision—omit item 54
80	Final version of list and notification 55
81	Scientific committee to prepare conservation advice 56
82	What is a <i>minor amendment?</i> —pt 4.4 56
83	Minister may make minor amendments 57
84	Minor amendment—including similar species 57
85	Minor amendment—omitting similar species 59
86	Minor amendment—rediscovery of extinct species 59
Part 4.5	Action plans
87	Definitions—pt 4.5 60
88	What is an <i>action plan?</i> —pt 4.5 60
89	What is a <i>draft action plan?</i> —pt 4.5 61
90	Draft action plan—conservator to prepare 62
91	Draft action plan—public consultation 63
92	Draft action plan—revision 64
93	Draft action plan—final version and notification 65
94	Action plan—minor amendments 65
95	Action plan—conservator to implement 66

EXPOSURE DRAFT

		Page
96	Action plans—monitoring and review	66
Chapter 5	Protection of native species—conservation plans etc	
Part 5.1	Special protection status	
97	What is <i>special protection status</i> ?	67
Part 5.2	Protected native species	
98	What is a <i>protected native species</i> ?	68
99	Minister to make protected native species list	68
100	Protected native species list eligibility	69
101	Minister to develop criteria and processes for protected native species list	70
Part 5.3	Native species conservation plans	
102	What is a <i>native species conservation plan</i> ?	71
103	What is a <i>draft native species conservation plan</i> ?—pt 5.3	71
104	Draft native species conservation plan—conservator to prepare	72
105	Draft native species conservation plan—consultation with lessee and custodian	73
106	Draft native species conservation plan—public consultation	74
107	Draft native species conservation plan—revision	75
108	Draft native species conservation plan—final version and notification	75
109	Native species conservation plan—minor amendments	76
110	Native species conservation plan—conservator etc to implement	77
111	Native species conservation plans—monitoring and review	77

EXPOSURE DRAFT

Chapter 6	Protection of native species—offences etc	
Part 6.1	Offences	
Division 6.1.1	Definitions—pt 6.1	
112	Definitions—pt 6.1	78
Division 6.1.2	Offences—native animals	
113	Definitions—div 6.1.2	78
114	Offence—interfere with nest of native animal	79
115	Offence—interfere with nest of native animal—endanger progeny or breeding	80
116	Offence—kill native animal	82
117	Offence—injure or endanger native animal	83
118	Offence—take native animal	84
119	Offence—keep non-exempt animal	86
120	Offence—sell non-exempt animal	87
121	Offence—offer to sell animal without disclosing licence	88
122	Offence—import non-exempt animal	88
123	Offence—export non-exempt animal	89
124	Offence—release animal from captivity	90
Division 6.1.3	Offences—native plants	
125	Definitions—div 6.1.3	90
126	Offence—take native plant—unleased land	92
127	Offence—take and sell native plant—unleased land	93
128	Offence—take native plant—protected native species	94
129	Offence—take native plant—special protection status	95
130	Offence—damage native tree—unleased land	96
131	Offence—damage native tree—leased land	97
132	Offence—damage or take fallen native timber	98
133	Offence—offer to sell native plant without disclosing licence	99
134	Offence—sell native plant—protected or special protection status	100

EXPOSURE DRAFT

	Page
135	Offence—sell native plant without plant tag—protected or special protection status 101
136	Offence—import native plant—protected or special protection status 102
137	Offence—export native plant—protected or special protection status 103
138	Offence—export plant without plant tag—protected or special protection status 103
Division 6.1.4 Exceptions to offences	
139	Chapter 6 exceptions 104
Part 6.2 Other matters	
140	What is an <i>exempt animal</i> ? 106
141	Declarations—exempt animals 106
142	Interest in native animal ends with escape 106
Chapter 7 Controlled native species management plans	
143	What is a <i>controlled native species</i> ?—ch 7 107
144	What is a <i>controlled native species management plan</i> ? 108
145	What is a <i>draft controlled native species management plan</i> ?—ch 7 108
146	Draft controlled native species management plan—conservator to prepare 109
147	Draft controlled native species management plan—consultation with lessee and custodian 110
148	Draft controlled native species management plan—public consultation 110
149	Draft controlled native species management plan—revision 111
150	Draft controlled native species management plan—emergencies 111
151	Draft controlled native species management plan—final version and notification 112
152	Controlled native species management plan—minor amendments 112
153	Controlled native species management plan—conservator etc to implement 114
154	Controlled native species management plans—monitoring and review 114

EXPOSURE DRAFT

	Page
Chapter 8	Reserves—management planning
Part 8.1	What is a reserve?
155	What is a <i>reserve</i> ? 115
156	What is a <i>wilderness area</i> ? 116
Part 8.2	IUCN categories for reserves
157	What is an <i>IUCN category</i> for a reserve?—pt 8.2 117
158	Assignment of reserves to IUCN categories 117
159	IUCN reserve management objectives 118
160	Management of reserve assigned to IUCN category if no reserve management plan 118
Part 8.3	Reserve management plans
161	What is a <i>reserve management plan</i> ? 119
162	What is a <i>draft reserve management plan</i> ?—pt 8.3 119
163	Draft reserve management plan—custodian to prepare 120
164	Draft reserve management plan—planning reports and strategic environmental assessments 121
165	Draft reserve management plan—public consultation 122
166	Draft reserve management plan—revision and submission to Minister 123
167	Draft reserve management plan—referral to Legislative Assembly committee 124
168	Draft reserve management plan—committee to report 124
169	Draft reserve management plan—Minister to approve, return or reject 125
170	Draft reserve management plan—Minister’s approval and notification 126
171	Draft reserve management plan—Minister’s direction to revise etc 126
172	Draft reserve management plan—Minister’s rejection 127
173	Reserve management plan—minor amendments 127
174	Reserve management plan—custodian to implement 128
175	Reserve management plan—review 128

EXPOSURE DRAFT

	Page
Part 8.4	Ramsar wetlands management plans
176	What is a <i>Ramsar wetland</i> ? 130
177	What is a <i>Ramsar wetland management plan</i> ? 130
178	What is a <i>draft Ramsar wetland management plan</i> ?—pt 8.4 131
179	Draft Ramsar wetland management plan—conservator to prepare 132
180	Draft Ramsar wetland management plan—consultation with Commonwealth and custodian 132
181	Draft Ramsar wetland management plan—public consultation 132
182	Draft Ramsar wetland management plan—revision and submission to Minister 133
183	Draft Ramsar wetland management plan—Minister to approve, return or reject 134
184	Draft Ramsar wetland management plan—Minister’s approval and notification 135
185	Draft Ramsar wetland management plan—Minister’s direction to revise etc 135
186	Draft Ramsar wetland management plan—Minister’s rejection 136
187	Ramsar wetland management plan—minor amendments 136
188	Ramsar wetland management plan—conservator etc to implement 137
189	Ramsar wetland management plan—monitoring and review 138
Part 8.5	Access to biological resources in reserves
190	What are <i>biological resources</i> ?—pt 8.5 139
191	What are <i>genetic resources</i> ?—pt 8.5 139
192	Who is an <i>access provider</i> ?—pt 8.5 139
193	What is <i>accessing biological resources</i> ?—pt 8.5 140
194	Application—certain biological resources 142
195	Offence—access biological resources 143
196	Benefit-sharing agreement—licensee required to enter 143
197	Benefit-sharing agreement—provisions 144
198	Benefit-sharing agreement—informed consent 144

EXPOSURE DRAFT

	Page
Chapter 9	Reserves—offences
Part 9.1	Reserves—offences
199	Offence—enter reserve without paying entry fee 146
200	Offence—take animal into reserve 146
201	Offence—interfere with trap or bait in reserve 147
202	Offence—weapons and traps in reserve 147
203	Offence—damage native plant in reserve 148
204	Offence—take plant or plant reproductive material into reserve 149
205	Offence—planting a plant in a reserve 149
206	Offence—remove soil or stone from reserve 149
207	Offence—damage, destroy or remove things in reserve 150
Part 9.2	Reserves—offences in wilderness areas
208	Offence—make road in wilderness area 152
209	Offence—use motor vehicle off road in wilderness area 152
210	Offence—excavate in wilderness area without licence 153
211	Direction to restore excavation site 153
212	Offence—fail to comply with restore excavation direction 154
213	Restoration of excavation site by Territory 154
Part 9.3	Reserves—repairing damage
214	Directions to repair damage to reserve 156
215	Offence—fail to comply with repair damage direction 157
216	Repair of damage by Territory 157
Part 9.4	Reserves—offences about clearing native vegetation
217	What is <i>native vegetation</i> ?—pt 9.4 158
218	What is a <i>native vegetation area</i> ?—pt 9.4 158
219	What is <i>clearing</i> native vegetation?—pt 9.4 159

EXPOSURE DRAFT

	Page	
220	When does clearing native vegetation <i>cause serious harm or material harm</i> to a reserve?—pt 9.4	159
221	Offence—clear vegetation causing serious harm	160
222	Offence—clear vegetation causing material harm	162
223	Offence—clear vegetation	164
224	Defence of appropriate diligence for offences—pt 9.4	164
225	Alternative verdicts for offences—pt 9.4	164
226	Order to restore cleared vegetation etc	166
Part 9.5	Reserves—offences about damaging land	
227	What is <i>damage</i> to land?—pt 9.5	167
228	When does damage to land <i>cause serious harm or material harm</i> to a reserve?—pt 9.5	168
229	Offence—damage land causing serious harm	169
230	Offence—damage land causing material harm	170
231	Offence—damage land causing harm	171
232	Defence of appropriate diligence for offences—pt 9.5	172
233	Alternative verdicts for offences—pt 9.5	172
234	Order to rehabilitate land etc	174
Part 9.6	Exceptions to offences	
235	Chapter 9 exceptions	175
Chapter 10	Reserves—prohibited and restricted activities	
Part 10.1	Resource protection areas	
236	What is a <i>resource protection area</i> ?—ch 10	177
237	Resource protection area—declaration	177
238	Resource protection area—review	179
Part 10.2	Prohibited and restricted activities	
239	Conservator may make activities declarations	179

EXPOSURE DRAFT

	Page	
240	Offence—carry on restricted activity in reserve	180
241	Offence—carry on prohibited activity in reserve	181
242	Conservator may close reserve	182
243	Offence—enter closed reserve	183
244	Part 10.2 exceptions	183
Chapter 11	Nature conservation licences	
Part 11.1	Licences—preliminary	
245	What is a <i>nature conservation licence</i> ?	185
246	Offence—fail to comply with condition of licence	185
Part 11.2	Licences—application and suitability	
247	Licence—application	186
248	Who is a <i>suitable person</i> to hold a licence?—ch 11	187
249	What is <i>suitability information</i> about a person?—ch 11	187
250	Suitability of people—further information about people	189
251	What is a <i>suitable activity</i> for a licence?	189
252	What is <i>suitability information</i> about an activity?	191
253	Suitability of activities—further information about activity	191
254	Suitability of activities—risk management plan	192
255	Suitability of activities—inspection of place	193
Part 11.3	Licences—decision	
256	Licence—decision on application	194
257	Licence—conditions generally	195
258	Licence—conditions about native species conservation plans etc	196
259	Licence—term	196
260	Licence—form	196

EXPOSURE DRAFT

	Page
Part 11.4	Licences—financial assurance conditions
261	What is a <i>financial assurance condition</i> ? 198
262	Financial assurance condition—imposition 198
263	Financial assurance condition—show cause 199
264	Financial assurance condition—licence cancellation 200
265	Financial assurance condition—claim or realisation 201
266	Financial assurance condition—notice before claim or realisation 201
267	Financial assurance condition—recovery of extra costs 202
268	Financial assurance condition—money held by Territory 203
Part 11.5	Licences—amendment, transfer, renewal, etc
269	Licence—amendment initiated by conservator 205
270	Licence—application to amend licence 206
271	Licence—decision on application to amend licence 206
272	Licence—application to transfer licence 208
273	Licence—decision on application to transfer licence 209
274	Licence—application for renewal of licence 210
275	Licence—decision on application for renewal of licence 210
276	Licence—replacing when lost, stolen or destroyed 212
277	Licence—surrender 213
278	Offence—fail to notify change of name or address 213
279	Licence—conservator to change name and address 214
Part 11.6	Licences—regulatory action
280	Licence—grounds for regulatory action 215
281	Licence—regulatory action 215
282	Licence—taking regulatory action 216
283	Licence—immediate suspension 217
284	Licence—effect of suspension 218
285	Offence—fail to return amended, suspended or cancelled licences 218
286	Action by conservator in relation to amended or suspended licence 219

EXPOSURE DRAFT

	Page
Part 11.7	Licence—register, records and royalties
287	Licence register 220
288	Licence register—correction and keeping up-to-date 220
289	Offence—fail to keep records 221
290	Royalty 222
Chapter 12	Management agreements with utility suppliers, land developers, etc for public or unleased land
291	What are <i>agencies</i> and <i>activities</i> of agencies?—ch 12 223
292	What is <i>public or unleased land</i> ?—ch 12 224
293	What are <i>management objectives</i> ?—ch 12 225
294	What is a <i>management agreement</i> ?—ch 12 225
295	Management agreement—conservator may propose 226
296	Management agreement—agency may enter or refuse 227
297	Management agreement—refusal and repairing damage 228
298	Management agreement—breach of agreement and repairing damage 228
Chapter 13	Enforcement
Part 13.1	Directions
299	Direction to give name and address 230
300	Offence—fail to comply with direction to give name and address 231
301	Direction to produce licence or records 232
302	Offence—fail to comply with direction to produce licence or record 233
303	Direction to provide information 233
304	Offence—fail to comply with information direction 234
305	Direction to leave reserve 235
306	Offence—fail to comply with direction to leave reserve 236
307	Direction to stop vehicle containing animal or plant 236

EXPOSURE DRAFT

	Page	
308	Offence—fail to comply with stop vehicle direction	237
309	Urgent directions	238
310	Offence—fail to comply with urgent direction	240
311	Conservator's directions	240
312	Offence—fail to comply with conservator's direction	241
313	Treatment directions	242
314	Offence—fail to comply with treatment direction	244
315	Treatment of animal or plant by Territory	244
316	Injunctions to restrain contravention of urgent directions and conservator's directions	245
Part 13.2	Enforcement by conservation officers	
Division 13.2.1	Definitions	
317	Definitions—pt 13.2	247
Division 13.2.2	Powers of conservation officers	
318	Power to enter premises	248
319	Production of identity card	249
320	Consent to entry	249
321	General powers on entry to premises	250
322	Power to seize things	251
323	Seizure and release of distressed native birds	253
324	Release of distressed animals—court orders	254
Division 13.2.3	Search warrants	
325	Warrants generally	255
326	Warrants—application made other than in person	256
327	Search warrants—announcement before entry	258
328	Details of search warrant to be given to occupier etc	258
329	Occupier entitled to be present during search etc	259
Division 13.2.4	Return and forfeiture of things seized	
330	Receipt for things seized	259

EXPOSURE DRAFT

	Page	
331	Moving things to another place for examination or processing under search warrant	260
332	Access to things seized	261
333	Return of things seized	261
334	Forfeiture of seized things	262
335	Power to destroy unsafe things	263
336	Application for order disallowing seizure	264
337	Order for return of seized thing	264
Division 13.2.5 Enforcement—damage, compensation, etc		
338	Damage etc to be minimised	265
339	Compensation for exercise of enforcement powers	266
Chapter 14 Notification and review of decisions		
340	What is a <i>reviewable decision</i> ?—ch 14	267
341	Reviewable decision notices	267
342	Applications for review	267
Chapter 15 Miscellaneous		
343	Certain information may be kept confidential	268
344	Offences—use or divulge protected information	268
345	Acts and omissions of representatives	270
346	Criminal liability of executive officers	272
347	Evidentiary certificates	273
348	Determination of fees etc	273
349	Approved forms	274
350	Regulation-making power	274
Chapter 16 Repeals and consequential amendments		
351	Legislation repealed	275

EXPOSURE DRAFT

	Page
352 Legislation amended—sch 2	276
Chapter 20 Transitional	
400 Meaning of <i>commencement day</i> —ch 20	277
401 Nature conservation strategy	277
402 Endangered species	277
403 Vulnerable species	278
404 Endangered ecological communities	278
405 Threatening processes to be key threatening processes	279
406 Action plans	279
407 Protected fish, invertebrates, native plants and native animals to be protected species	279
408 Exempt animals	280
409 Plans of management for reserves to be reserve management plans	280
410 Licences	281
411 Management agreements	281
412 Transitional regulations	282
413 Expiry—ch 20	282
 Schedule 1 Reviewable decisions	 283
 Schedule 2 Consequential amendments	 285
Part 2.1 Animal Welfare Act 1992	285
Part 2.2 Common Boundaries Act 1981	286
Part 2.3 Emergencies Act 2004	287
Part 2.4 Environment Protection Regulation 2005	287
Part 2.5 Firearms Act 1996	288
Part 2.6 Firearms Regulation 2008	289

EXPOSURE DRAFT

Contents

		Page
Part 2.7	Fisheries Act 2000	290
Part 2.8	Heritage Act 2004	293
Part 2.9	Legislation Act 2001	294
Part 2.10	Magistrates Court (Fisheries Infringement Notices) Regulation 2004	294
Part 2.11	Planning and Development Act 2007	295
Part 2.12	Planning and Development Regulation 2008	320
Part 2.13	Public Unleased Land Act 2013	323
Part 2.14	Tree Protection Act 2005	325
Dictionary		330

EXPOSURE DRAFT

EXPOSURE DRAFT

Minister for the Environment and Sustainable Development

(Prepared by Parliamentary Counsel's Office)

Nature Conservation Bill 2013

A Bill for

An Act to make provision for the protection and conservation of native animals and native plants, for the management of reserves, and for other purposes

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

Chapter 1 Preliminary

Part 1.1 Preliminary

1 Name of Act

This Act is the *Nature Conservation Act 2013*.

2 Commencement

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

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

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

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

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

The objects of this Act are to—

- (a) protect, conserve, enhance, restore and improve nature conservation, including—
 - (i) native species of animals and plants and their habitats; and
 - (ii) ecological communities; and
 - (iii) diversity within native species and communities; and
 - (iv) 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) promote and support the management, maintenance and enhancement of biodiversity of local, regional and national significance; and

- (c) promote the involvement of, and cooperation between, Aboriginal and Torres Strait Islander people, landholders, other community members and governments in protecting, conserving, enhancing, restoring and improving biodiversity; and
- (d) encourage public appreciation, understanding and enjoyment of biodiversity; and
- (e) ensure that decisions about the protection, conservation, enhancement, restoration and improvement of biodiversity take into account cultural, social and economic values and the best available knowledge; and
- (f) promote the principles of ecologically sustainable development mentioned in the *Environment Protection Act 1997*, section 2 (2).

EXPOSURE DRAFT

Part 1.2 Relationships with other laws

7 Application 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 fire and rescue; 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); or
 - (iii) the chief officer (rural fire service); or
 - (iv) the chief officer (SES); or
 - (f) a police officer.

8 Relationship with 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.

EXPOSURE DRAFT

Part 1.3 Important concepts

9 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—part of an animal

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 that is not a protected native species; or

Note **Protected native species**—see s 98.

 - (iii) an invertebrate that is not a protected native species.

10 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.

11 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.

12 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.

13 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 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.

14 What is a *native species*?

(1) 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.
- (2) In this section:
- coastal sea*, of Australia or an external Territory—see the [Acts Interpretation Act 1901](#) (Cwlth), section 15B (4) (Application of Acts in coastal sea).
- continental shelf*—see the [Seas and Submerged Lands Act 1973](#) (Cwlth), section 3.
- exclusive economic zone*—see the [Seas and Submerged Lands Act 1973](#) (Cwlth), section 3.
- seabed* includes—
- (a) the surface of a coral formation; and

EXPOSURE DRAFT

- (b) subsoil of seabed (including coral beneath the surface of a coral formation).

15 *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).

16 *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.

EXPOSURE DRAFT

Chapter 2 Administration

Part 2.1 Conservator of flora and fauna

17 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) An appointment is a notifiable instrument.

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

18 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.
- (2) The conservator has any other function given to the conservator under this Act or another territory law.

Note The conservator may commission or carry out monitoring programs (see s 21).

- (3) In exercising a function, the conservator must have regard to—
- (a) the objects of this Act; and
Note The objects of this Act are set out in s 6.
 - (b) any conservator guidelines.
Note **Conservator guidelines**—see s 20.
- (4) In exercising a function, the conservator may have regard to any other relevant matter, including the following:
- (a) the findings of monitoring programs under section 21 (Conservator—duty to monitor nature conservation);
 - (b) the nature conservation strategy for the ACT;
Note **Nature conservation strategy**, for the ACT—see s 41.
 - (c) an action plan for a species, ecological community or process;
Note **Action plan**—see s 88.
 - (d) a reserve management plan for a reserve;
Note **Reserve management plan**—see s 161.
 - (e) any other government policy or plan relating to nature conservation.

Example—par (e)

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).

EXPOSURE DRAFT

19 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.

20 Conservator—guidelines

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

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) A conservator guideline is a notifiable instrument.

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

21 Conservator—duty to monitor nature conservation

- (1) The conservator must monitor the—
 - (a) state of nature conservation generally in the ACT; and
 - (b) effective management of nature conservation in the ACT.
- (2) The conservator may—
 - (a) carry out a nature conservation monitoring program; or
 - (b) commission another entity to carry out a nature conservation monitoring program.
- (3) The conservator may make guidelines for carrying out a nature conservation monitoring program.

- (4) A guideline is a notifiable instrument.

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

- (5) The conservator must make the findings of a nature conservation monitoring program publicly accessible.

Example—publically 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).

- (6) 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.

EXPOSURE DRAFT

Part 2.2 ACT parks and conservation service

22 ACT parks and conservation service

- (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 23.

- (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

23 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.

24 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).

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

25 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

26 Scientific committee—establishment

The scientific committee is established (the *scientific committee*).

27 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*).

28 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).

29 Scientific committee—membership

The scientific committee is made up of 7 members appointed by the Minister under section 30.

30 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 2 members 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 biodiversity or ecology.
- (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 notifiable instrument.

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

31 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 30.
- (2) However, the chair and deputy chair must not be public servants.

32 Scientific committee—secretary

The director-general must nominate a public servant who is not a member appointed under section 30 to be the secretary of the scientific committee.

33 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 34; 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).

34 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.

EXPOSURE DRAFT

35 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.

36 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.

37 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 members appointed are present.

38 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 a deciding vote.

39 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.

EXPOSURE DRAFT

Part 2.5 **Advisory committees**

40 **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

41 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 47 (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).

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

In this chapter:

draft nature conservation strategy, for the ACT—

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

Note *Conservator guidelines*—see s 20.

EXPOSURE DRAFT

43 Draft nature conservation strategy—conservator to prepare

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).

44 Draft nature conservation strategy—public consultation

- (1) If the conservator prepares a draft nature conservation strategy, the conservator must also prepare a notice (a *public consultation notice*) about the draft nature conservation strategy.
- (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 plan.

45 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.

EXPOSURE DRAFT

46 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—relevant report

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.

47 Draft strategy—Minister’s approval and notification

- (1) A draft nature conservation strategy approved by the Minister under section 46 (a) or section 50 (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 50.

48 Draft strategy—Minister’s direction to revise etc

- (1) This section applies if the Minister gives the conservator a direction under section 46 (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 46, what to do with the resubmitted draft strategy.

49 Draft strategy—Minister’s rejection

- (1) If the Minister rejects a draft nature conservation strategy under section 46 (c), the Minister must prepare a notice (a *rejection notice*) stating that the draft strategy is rejected.
- (2) A rejection notice is a notifiable instrument.

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

EXPOSURE DRAFT

50 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 47).

- (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).

51 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.

52 Nature conservation strategy—monitoring and review

- (1) The conservator must monitor the effectiveness of the nature conservation strategy for the ACT.
- (2) The conservator must review the nature conservation strategy every 10 years after the plan commences.
- (3) However, the Minister may extend the time for conducting the review.
- (4) In reviewing a nature conservation strategy, the conservator may—
 - (a) consult the scientific committee; and
 - (b) make recommendations to the Minister about the strategy.

EXPOSURE DRAFT

Chapter 4 Threatened native species and ecological communities

Part 4.1 Threatened native species

53 What is a *threatened native species*?

In this Act:

threatened native species means a native species listed on the threatened native species list.

Note *Native species*—see s 14.

54 What is a *threatened native species list*?

In this Act:

threatened native species list means a list of species notified under section 80 (Final version of list and notification).

55 Threatened native species list—categories

The Minister must make a threatened native species list—

- (a) containing the species eligible to be included on the list; and
- (b) divided into the following categories:
 - (i) extinct;
 - (ii) extinct in the wild;
 - (iii) critically endangered;
 - (iv) endangered;
 - (v) vulnerable;

- (vi) conservation dependent;
- (vii) provisional.

56 Threatened native species list—eligibility for categories

- (1) A native species is eligible to be included in the extinct category on the threatened native species list if 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 on the threatened native species list if—
 - (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 on the threatened native species list if 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 on the threatened native species 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.
- (5) A native species is eligible to be included in the vulnerable category on the threatened native species list if—
 - (a) it is not critically endangered or endangered; but

EXPOSURE DRAFT

- (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 on the threatened native species list if the species is the subject of a native species conservation plan and the ending of the plan may result in the species becoming vulnerable, endangered or critically endangered.
 - (7) A native species is eligible to be included in the provisional category on the threatened native species list if—
 - (a) there is a strong decline in the number of members of the species in the ACT; or
 - (b) the species—
 - (i) occurs or is likely to occur in the ACT; 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 since it was last listed as extinct.
- Note* See also s 86 about rediscovery of species that were extinct.
- (8) A native species is no longer eligible to be included in the provisional category on the threatened native species list if it has been in the category for 18 months.

57 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 on the threatened native species list (the *threatened native species list criteria*).
- (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 with—
 - (a) the conservator; and
 - (b) the scientific committee.
- (5) The threatened native species list criteria are a notifiable instrument.

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

Part 4.2 Threatened ecological communities

58 **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 15.

59 **What is a *threatened ecological communities list*?**

In this Act:

threatened ecological communities list means a list of ecological communities notified under section 80 (Final version of list and notification).

60 **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) critically endangered;
 - (ii) endangered;
 - (iii) vulnerable;
 - (iv) provisional.

61 Threatened ecological communities list—eligibility for categories

- (1) 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.
- (2) 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.
- (3) 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.
- (4) 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; 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.

EXPOSURE DRAFT

- (5) 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.

62 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 with—
- (a) the conservator; and
 - (b) the scientific committee.
- (5) The threatened ecological communities list criteria are a notifiable instrument.

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

Part 4.3 Key threatening processes

63 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 15.

Native species—see s 14.

64 What is a *key threatening process*?

In this Act:

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

65 What is a *key threatening processes list*?

In this Act:

key threatening processes list means a list of threatening processes notified under section 80 (Final version of list and notification).

66 Key threatening processes list

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

67 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.

68 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 in 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 with—
- (a) the conservator; and
 - (b) the scientific committee.
- (5) The key threatening processes list criteria are a notifiable instrument.

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

EXPOSURE DRAFT

Part 4.4 Including, transferring and omitting items in list

69 Definitions—pt 4.4

In this part:

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.

nomination means a nomination mentioned in—

- (a) section 70; or
- (b) section 72.

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

70 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 349 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.

71 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.
- (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.

72 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

EXPOSURE DRAFT

- (c) omitted from a list.

73 Nominations—public consultation

- (1) This section applies if the scientific committee—
- (a) receives a nomination under section 70 that is not rejected under section 71; or
 - (b) nominates an item itself under section 72.
- (2) The scientific committee may prepare a notice (a **public consultation notice**) about the nomination.
- (3) A public consultation notice must—
- (a) 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) include the nomination.

Note The public consultation notice need not contain the precise location of the species (see s 343).

- (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.

74 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 73 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

EXPOSURE DRAFT

- (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 threatened native species list is dealt with in s 56.
Eligibility for threatened ecological communities list is dealt with in s 61.
Eligibility for key threatening processes list is dealt with in s 67.

- (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 73—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 57.
Threatened ecological communities list criteria—see s 62.
Key threatening processes list criteria—see s 68.

- (c) the effect that including, transferring or omitting the item could have on the survival of the species or ecological community concerned.

75 Scientific committee to prepare listing advice

- (1) This section applies if the scientific committee—

- (a) has carried out a listing assessment of a nominated item; and

- (b) considers that the item is eligible to be—
- (i) included in a list; or
 - (ii) transferred within a list; or
 - (iii) omitted from a list.
- (2) The scientific committee must prepare an advice about the item (a **listing advice**) for the Minister.
- Note* The listing advice need not contain the precise location of a species or community (see s 343).
- (3) A listing advice must set out—
- (a) the grounds on which the item is eligible to be included in, transferred within, or omitted from, the list; and
 - (b) the main factors that make it eligible.
- Note 1* Eligibility for threatened native species list is dealt with in s 56.
Eligibility for threatened ecological communities list is dealt with in s 61.
Eligibility for key threatening processes list is dealt with in s 67.
- Note 2* **Key threatening processes list criteria**—see s 68.
Threatened ecological communities list criteria—see s 62.
Threatened native species list criteria—see s 57.
- (4) A listing advice 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) The scientific committee must give the listing advice to the Minister not later than 1 year after the end of the 4-week period, or public consultation period, mentioned in section 74 (1).

EXPOSURE DRAFT

76 Minister to decide whether to include, transfer or omit item

- (1) Not later than 3 months after the Minister receives a listing advice for an item, the Minister must decide whether to—
 - (a) include, or refuse to include, an item in a list under section 77; or
 - (b) transfer, or refuse to transfer, an item within a list under section 78; or
 - (c) omit, or refuse to omit, an item from a list under section 79.
- (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.
- (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 70—the person who made the nomination;
 - (b) if a person made a submission to the Minister under section 73—the person who made the submission.

77 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 threatened native species list is dealt with in s 56.
Eligibility for threatened ecological communities list is dealt with in s 61.
Eligibility for key threatening processes list is dealt with in s 67.

- (2) In deciding whether to include an item, the Minister may only consider—
- (a) the listing advice 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 57.
Threatened ecological communities list criteria—see s 62.
Key threatening processes list criteria—see s 68.
- (c) if the item is a species or ecological community—the effect that including the item may have on the survival of the item.

78 Minister's decision—transfer item

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

Note 1 Eligibility for threatened native species list is dealt with in s 56.
Eligibility for threatened ecological communities list is dealt with in s 61.

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 advice for the item; and

EXPOSURE DRAFT

- (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 57.
 Threatened ecological communities list criteria—see s 62.

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

79 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 threatened native species list is dealt with in s 56.
 Eligibility for threatened ecological communities list is dealt with in s 61.
 Eligibility for key threatening processes list is dealt with in s 67.

- (2) In deciding whether to omit an item from a list, the Minister may only consider—
 - (a) the listing advice 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 57.
 Threatened ecological communities list criteria—see s 62.
 Key threatening processes list criteria—see s 68.

- (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.

80 Final version of list and notification

- (1) The final version of—
 - (a) a list of species prepared under section 76 or section 83 is a threatened native species list; and
 - (b) a list of ecological communities prepared under section 76 or section 83 is a threatened ecological communities list; and
 - (c) a list of processes prepared under section 76 or section 83 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).

EXPOSURE DRAFT

81 Scientific committee to prepare conservation advice

- (1) This section applies if a species or community is included in, or transferred within, a list.
- (2) The scientific committee must prepare an advice (a *conservation advice*) about the species or community that sets out what (if anything) may be done to stop the decline of, or support the recovery of, the species or community.
- (3) A conservation advice 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).

82 What is a *minor amendment*?—pt 4.4

In this part:

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 84 (Minor amendment—including similar species); or
- (b) omit a species from the threatened native species list in the circumstances mentioned in section 85 (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 86 (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.

83 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 73 (Nominations—public consultation) to section 81 (Scientific committee to prepare conservation advice); 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 80).

84 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 (the *ineligible species*) in a certain category of the list 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 consider—
- (a) the listing advice for the eligible species; and
Note Listing advice—see s 75.
 - (b) the conservation advice for the eligible species.
Note Conservation advice—see s 81.
- (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 56 (3) to (5)).

85 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 84 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 consider—
 - (a) the listing advice for the eligible species; and
 - (b) the conservation advice for the eligible species.

Note Listing advice—see s 75.

Note Conservation advice—see s 81.

86 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

87 Definitions—pt 4.5

In this part:

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 the following:

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

88 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, community or process, notified under section 93 (Draft action plan—final version and notification).

Note **Key threatening process**—see s 64.

89 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) for regular migratory species—may include maps of critical habitats and potential habitats of the species; and
 - (C) may propose management strategies to ensure the persistence of the species; and
 - (D) may state requirements for monitoring the species and its habitats; and
 - (ii) for a relevant ecological community—sets out proposals to ensure, as far as practicable, the identification, protection and survival of the community; 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 20.

- (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 (see s 102)
- 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).

90 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 or community (see s 343).

- (2) However, the conservator need not prepare a draft action plan—
- (a) for a relevant species or relevant ecological community—if the conservator reasonably believes that the species or ecological community does not occur in the ACT; or

- (b) for a vulnerable species or vulnerable ecological community—
if the conservator reasonably believes that the conservation
advice for the species or community provides adequate
guidance about the appropriate management of the species or
community; or

Note **Conservation advice**—see s 81.

- (c) for a relevant native species—if the species is the subject of a
native species conservation plan.

Note **Native species conservation plan**—see s 102.

91 Draft action plan—public consultation

- (1) If the conservator prepares a draft action plan, the conservator must
also prepare a notice (a **public consultation notice**) about the draft
action plan.
- (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](#).

EXPOSURE DRAFT

- (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.

92 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.

93 Draft action plan—final version and notification

- (1) The final version of a draft action plan prepared under section 92 or section 94 is an action plan.
- (2) An action plan is a notifiable instrument.

Note 1 A notifiable instrument must be notified 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).

94 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 91 (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 notifiable instrument (see s 93).

EXPOSURE DRAFT

- (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).

95 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.

96 Action plans—monitoring and review

- (1) The conservator must monitor the effectiveness of action plans.
- (2) The conservator must report to the Minister about each action plan at least once every 5 years.
- (3) 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.
- (4) However, the Minister may extend the time for conducting the review under subsection (3) (a).
- (5) In reviewing an action plan, the scientific committee may make recommendations to the conservator about the plan.

Chapter 5 Protection of native species— conservation plans etc

Part 5.1 Special protection status

97 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 53.

(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 protection status (see pt 5.3).

Note 2 The conservator must make an action plan for regular migratory species (see s 88).

Part 5.2 Protected native species

98 What is a *protected native species*?

In this Act:

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

99 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 14.

- (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).

100 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 53.
 - (b) it does not have special protection status; and
Note Special protection status—see s 97.
 - (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 53.
 - (b) included in any other category in the protected native species list.

EXPOSURE DRAFT

101 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 in 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 with the scientific committee.
- (4) The protected native species list criteria are a notifiable instrument.

Note A notifiable instrument must be notified 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 notifiable instrument.

Part 5.3 Native species conservation plans

102 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 108 (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).

103 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 20.

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

Example

a native species conservation plan may incorporate 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 disappplied (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).

104 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 97.

- (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 on the threatened native species list if the ending of the plan may result in the species becoming vulnerable, endangered or critically endangered (see s 56).

Note 3 The draft native species conservation plan need not contain the precise location of the species (see s 343).

105 Draft native species conservation plan—consultation with lessee and custodian

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

- (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.

EXPOSURE DRAFT

106 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 (a *public consultation notice*) about the draft native species conservation plan.
- (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.

107 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.

108 Draft native species conservation plan—final version and notification

- (1) The final version of a draft native species conservation plan prepared under section 107 or section 109 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).

109 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 105 to section 107; 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 108).

- (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).

110 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.

111 Native species conservation plans—monitoring and review

- (1) The conservator must monitor the effectiveness of native species conservation plans.
- (2) The conservator may ask the scientific committee to review a native species conservation plan.
- (3) 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 etc

Part 6.1 Offences

Division 6.1.1 Definitions—pt 6.1

112 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 Offences—native animals

113 Definitions—div 6.1.2

In this division:

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

nest, of a native 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.

114 Offence—interfere with nest of native animal

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

Maximum penalty: 20 penalty units.

Note **Interfere with** an item—see s 113.
Nest of a native animal—see s 113.

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

Maximum penalty: 30 penalty units.

Note **Special protection status**—see s 97.

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

EXPOSURE DRAFT

- (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 139.

115 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 a native animal; or
 - (ii) something in the immediate environment of the nest of a native 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.

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

Note **Interfere with** an item—see s 113.
Nest of a native animal—see s 113.
Progeny—see s (5).

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

- (ii) something in the immediate environment of the nest of a native 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 native animal has special protection status.

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

Note **Special protection status**—see s 97.

- (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 139.

EXPOSURE DRAFT

(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.

116 Offence—kill native animal

(1) A person commits an offence if the person engages in conduct that causes the death of 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 that causes the death of a native animal; and
- (b) the native animal has special protection status.

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

Note *Special protection status*—see s 97.

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

- (a) the death of the native animal was caused—
 - (i) in circumstances in which the animal was a danger to the person; or
 - (ii) by an accidental collision with a motor vehicle; or

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

- (i) a fish; and
- (ii) a protected native species.

Note 1 **Native species conservation plan**, for a native species—see s 102.
Protected native species—see s 98.

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 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 139.

117 Offence—injure or endanger native animal

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

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—
- (a) the person engages in conduct that places an animal in danger of injury or death; and
 - (b) the animal is a native animal.

Maximum penalty: 50 penalty units.

- (3) An offence against subsection (1) is a strict liability offence.

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

Note 1 **Native species conservation plan**, for a native species—see s 102.
Protected native species—see s 98.

Note 2 The defendant has an evidential burden in relation to the matters mentioned in 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 139.

118 Offence—take native animal

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

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

Note **Take**—see s 112.

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

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

Note **Special protection status**—see s 97.

- (3) This section does not apply to a person if—
- (a) the native animal is suffering from a disease, illness or injury and the person takes the animal to give it to—
 - (i) a conservation officer; or
 - (ii) a veterinary surgeon; or
 - (iii) someone licensed to keep the animal; or
 - (b) the conduct constituting the offence is consistent with a native species conservation plan for the native animal and the native animal is—
 - (i) a fish; and
 - (ii) a protected native species.

Note 1 **Nature conservation licence**—see s 245.

Native species conservation plan, for a native species—see s 102.

Protected native species—see s 98.

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 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 139.

EXPOSURE DRAFT

119 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 140.

- (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 97.

- (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 surgeon; 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 139.

120 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 *Sell* includes offer for sale (see s 112).
Exempt animal—see s 140.

- (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 97.

- (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 139.

EXPOSURE DRAFT

121 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 245.
Sell—see s 112.

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

122 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 140.

- (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 97.

(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 139.

123 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 140.

(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 97.

(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 139.

EXPOSURE DRAFT

124 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) 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 139.

Division 6.1.3 Offences—native plants

125 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 native 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.

EXPOSURE DRAFT

126 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 112.

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

(3) 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 (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 139.

127 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 **Take**—see s 112.
Sell includes offer for sale (see s 112).

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

Note 1 **Native timber**—see s 125.

Note 2 It is an offence to damage a native tree on unleased land (see s 130). It is also an offence to take fallen native timber from unleased land (see s 132).

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 139.

128 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 98.

Take—see s 112.

- (2) An offence against this section is a strict liability offence.
- (3) 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 125.

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 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 139.

129 Offence—take native plant—special protection status

- (1) A person commits an offence if—
- (a) the person takes a native plant; and
 - (b) the native plant has special protection status.

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

Note **Protected native species**—see s 98.

Take—see s 112.

- (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).

EXPOSURE DRAFT

- (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 139.

130 Offence—damage native tree—unleased land

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

Maximum penalty: 400 penalty units.

Note **Damage** a native tree includes fell the tree—see s 125.
Native tree—see s 125.

- (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 139.

- (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 (5) as if it were a judgment of the Magistrates Court in a civil proceeding.

131 Offence—damage native tree—leased land

- (1) A person commits an offence if—
- (a) the person damages a native tree; and
 - (b) the tree is 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 125.

Damage a native tree includes fell the tree—see s 125.

Native tree—see s 125.

- (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**—see s 112.

- (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).

EXPOSURE DRAFT

- (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 139.

132 Offence—damage or take fallen native timber

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

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—
- (a) the person takes fallen native timber from land; and
 - (b) 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 125.

Native timber—see s 125.

Take—see s (8).

- (3) An offence against subsection (2) is a strict liability offence.
- (4) 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 (4) (see [Criminal Code](#), s 58).

- (5) 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 139.

- (6) 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.

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

- (8) 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.

133 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

EXPOSURE DRAFT

- (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 245.
Sell—see s 112.

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

134 Offence—sell native plant—protected or special protection status

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

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

Note **Protected native species**—see s 98.
Sell includes offer for sale (see s 112).

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

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

Note **Special protection status**—see s 97.

- (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 139.

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

- (1) A person commits an offence if—
- (a) the person sells a native plant; and
 - (b) the plant is a protected native species; and
 - (c) the plant is not a seed or 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 98.
Sell includes offer for sale (see s 112).

- (2) A person commits an offence if—
- (a) the person sells a native plant; and
 - (b) the native plant has special protection status; and
 - (c) the native plant is not a seed or 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 97.

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

136 Offence—import native plant—protected or special protection status

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

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

Note **Protected native species**—see s 98.

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

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

Note **Special protection status**—see s 97.

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

Note 1 **Native timber**—see s 125.

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 139.

137 Offence—export native plant—protected or special protection status

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

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

Note **Protected native species**—see s 98.

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

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

Note **Special protection status**—see s 97.

- (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 139.

138 Offence—export plant without plant tag—protected or special protection status

- (1) A person commits an offence if—
- (a) the person exports a native plant from the ACT; and
 - (b) the plant is a protected native species; and
 - (c) the native plant is not a seed or 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 98.

- (2) A person commits an offence if—
- (a) the person exports a native plant from the ACT; and
 - (b) the native plant has special protection status; and
 - (c) the native plant is not a seed or 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 97.

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

Division 6.1.4 Exceptions to offences

139 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 239.
Restricted activity—see s 241.

- (ii) authorised under the *Utilities Act 2000*—
 - (A) section 106 (Maintenance of network facilities); or
 - (B) section 232 (Maintenance of territory network facilities); or
- (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 245.
 - (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).

EXPOSURE DRAFT

Part 6.2 Other matters

140 What is an *exempt animal*?

In this Act:

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

141 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](#).

142 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 259 (4)).

Chapter 7 Controlled native species management plans

143 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 an unacceptable impact on an environmental, social or economic asset.

Example—unacceptable impact on social asset

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](#).

EXPOSURE DRAFT

144 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 151 (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).

145 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 20.

EXPOSURE DRAFT

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

Example

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 disappled (see s 47 (7)).

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

Note 3 A controlled native species management 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.

- (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.

146 **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).

EXPOSURE DRAFT

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

In preparing a draft controlled native species management plan for a controlled native species on stated land, the conservator must consult with—

- (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.

148 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 (a *public consultation notice*) about the draft plan.
- (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](#).

EXPOSURE DRAFT

- (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.

**149 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.

**150 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.

EXPOSURE DRAFT

- (2) The conservator—
- (a) need not comply with the consultation requirements in section 148 (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 151).

151 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 149, section 150 or section 152 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).

152 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 148 (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 151).

- (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).

EXPOSURE DRAFT

**153 Controlled native species management plan—
conservator etc to implement**

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

**154 Controlled native species management plans—
monitoring and review**

- (1) The conservator must monitor the effectiveness of controlled native species management plans.
- (2) The conservator must review each controlled native species management plan at least once every 5 years.

EXPOSURE DRAFT

Chapter 8 Reserves—management planning

Part 8.1 What is a reserve?

155 What is a *reserve*?

(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).

156 **What is a *wilderness area*?**

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.

157 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).

158 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 with 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).

159 IUCN reserve management objectives

A regulation may prescribe objectives (the *IUCN reserve management objectives*) for each IUCN category.

160 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 318, a management plan must be prepared for each area of public land identified in the [territory plan](#). If the area is a reserve, the management plan is a reserve management plan under this part.

161 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 170 (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 176.
Ramsar wetland management plan—see s 177.

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).

162 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

- (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 157.
IUCN reserve management objectives—see s 159.

163 Draft reserve management plan—custodian to prepare

- (1) The custodian of a reserve must prepare a draft reserve management plan for the reserve.

Note 1 Under the *Planning and Development Act 2007*, s 318, a management plan must be prepared for each area of public land identified in the [territory plan](#). If the area is a reserve, the management plan is a reserve management plan.

Note 2 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 with—
 - (a) the conservator; and
 - (b) the planning and land authority.

164 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 169 (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*?).

165 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 (a *public consultation notice*) about the draft reserve management plan.
- (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.

166 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.

EXPOSURE DRAFT

167 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 166 (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.

168 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 167.
- (2) The Minister must not take action under section 169 in relation to the draft plan until—
 - (a) the committee has referred the draft plan back to the Minister under section 167 (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 169 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 169 in relation to the draft plan.

169 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 167 (4); or
 - (b) the Minister may take action under section 168 (3); or
 - (c) a custodian resubmits a draft plan to the Minister under section 171 (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—
 - (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;

EXPOSURE DRAFT

- (iii) consider a revision suggested by the Minister;
- (iv) revise the draft plan in a stated way; or
- (c) reject the draft plan.

170 Draft reserve management plan—Minister’s approval and notification

- (1) A draft reserve management plan approved by the Minister under section 169 (3) (a) or section 173 (3) (a) is a reserve management plan.
- (2) A reserve management plan is a notifiable instrument.

Note 1 A notifiable instrument must be notified 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 173.

171 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 169 (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 169, what to do with the resubmitted draft plan.

172 Draft reserve management plan—Minister’s rejection

- (1) If the Minister rejects a draft reserve management plan under section 169 (3) (c), the Minister must prepare a notice (a *rejection notice*) stating that the draft plan is rejected.
- (2) A rejection notice is a notifiable instrument.

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

173 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 notifiable instrument (see s 170).

- (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).

174 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.

175 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 must consult with the conservator.

EXPOSURE DRAFT

Part 8.4 Ramsar wetlands management plans

Note Ramsar wetlands are wetlands of international importance.

176 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*?).

177 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 184 (Draft Ramsar wetland management plan—Minister’s approval and notification).

178 **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 20.

(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 disapplied (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).

179 Draft Ramsar wetland management plan—conservator to prepare

The conservator may prepare a draft Ramsar wetland management plan for a Ramsar wetland.

180 Draft Ramsar wetland management plan—consultation with Commonwealth and custodian

In preparing a draft Ramsar wetland management plan, the conservator must consult with—

- (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.

181 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 (a *public consultation notice*) about the draft Ramsar wetland management plan.
- (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.

182 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.

EXPOSURE DRAFT

- (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.

183 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—

- (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.

184 Draft Ramsar wetland management plan—Minister’s approval and notification

- (1) A draft Ramsar wetland management plan approved by the Minister under section 183 (a) or section 187 (3) is a Ramsar wetland management plan.
- (2) A Ramsar wetland management plan is a notifiable instrument.

Note 1 A notifiable instrument must be notified 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 187.

185 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 183 (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 183, what to do with the resubmitted draft plan.

186 Draft Ramsar wetland management plan—Minister’s rejection

- (1) If the Minister rejects a draft nature conservation Ramsar wetland management plan under section 183 (c), the Minister must prepare a notice (a *rejection notice*) stating that the draft plan is rejected.
- (2) A rejection notice is a notifiable instrument.

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

187 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 notifiable instrument (see s 184).

(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).

188 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.

189 Ramsar wetland management plan—monitoring and review

- (1) The conservator must monitor the effectiveness of Ramsar wetland management plans.
- (2) The conservator must report to the Minister about each Ramsar wetland management plan at least once every 5 years.

Part 8.5 Access to biological resources in reserves

190 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.

191 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.

192 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.

193 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) access to 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) access to biological resources mentioned in a declaration under section 194.
- (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](#).
- 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.

EXPOSURE DRAFT

194 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 the 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 349 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](#).

195 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 245.

- (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).

196 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 196 (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).

197 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](#).

198 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 with 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.

EXPOSURE DRAFT

Chapter 9 Reserves—offences

Part 9.1 Reserves—offences

199 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 348 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.

200 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 235.

- (5) In this section:

assistance animal—see the [Domestic Animals Act 2000](#), dictionary.

201 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 155.

- (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 235.

202 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

EXPOSURE DRAFT

- (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 235.

- (4) In this section:

firearm—see the *Firearms Act 1996*, section 6.

203 Offence—damage native plant in reserve

- (1) A person commits an offence if—
 - (a) the person engages in conduct that causes damage to a native plant; and
 - (b) the native plant is in a reserve.

Maximum penalty: 50 penalty units.

Note **Reserve**—see s 155.

- (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 235.

204 Offence—take plant or plant reproductive material into reserve

- (1) A person commits an offence if the person takes a pest plant into a reserve.

Maximum penalty: 30 penalty units.

- (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.

205 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 235.

206 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 155.

- (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 235.

207 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) a site, or object, of historical, archaeological, palaeontological or geological interest; or
 - (iii) infrastructure; and
 - (b) the structure, feature, site, object 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 the person removes from a reserve—
- (a) an object, of historical, archaeological, palaeontological or geological interest; or
 - (b) infrastructure.

Maximum penalty: 50 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 235.

- (5) 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, 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).

EXPOSURE DRAFT

Part 9.2 Reserves—offences in wilderness areas

208 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.

209 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.

210 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 245.

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

211 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).

212 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).

213 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).

EXPOSURE DRAFT

Part 9.3 Reserves—repairing damage

214 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—Territory property on reserve

- 1 fence
- 2 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 245.

- (2) The conservator may direct (a *repair damage direction*) the person to repair the damage.
- (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).

215 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.

216 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

217 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.

218 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.

219 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.

220 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 176.
- (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 60.

- (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 176.
- (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.

221 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

EXPOSURE DRAFT

- (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 235.

222 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 235.

EXPOSURE DRAFT

223 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: 100 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 235.

- (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).

224 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.

225 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 225, column 3, for the offence.

relevant offence means an offence mentioned in table 225, column 2.

Table 225 Alternative verdicts for offences—pt 9.4

column 1 item	column 2 relevant offence	column 3 alternative offence
1	s 221 (1) (Offence—knowingly clear vegetation—serious harm)	s 221 (2) (Offence—recklessly clear vegetation—serious harm) s 221 (3) (Offence—negligently clear vegetation—serious harm)
2	s 221 (2) (Offence—recklessly clear vegetation—serious harm)	s 221 (3) (Offence—negligently clear vegetation—serious harm)
3	s 222 (1) (Offence—knowingly clear vegetation—material harm)	s 222 (2) (Offence—recklessly clear vegetation—material harm) s 222 (3) (Offence—negligently clear vegetation—material harm)
4	s 222 (2) (Offence—recklessly clear vegetation—material harm)	s 222 (3) (Offence—negligently clear vegetation—material harm)

EXPOSURE DRAFT

226 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—
 - (i) to mitigate the effect of the clearing; or
 - (ii) to 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.

Part 9.5 Reserves—offences about damaging land

227 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

- 1 crushing rocks
- 2 contaminating soil
- 3 heaping rocks, stones, gravel, sand, clay or soil
- 4 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).

228 **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 60.
- (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.

229 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 235.

230 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 235.

231 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: 100 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 235.

- (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.

232 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.

233 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 233, column 3, for the offence.

relevant offence means an offence mentioned in table 233, column 2.

Table 233 Alternative verdicts for offences—pt 9.5

column 1 item	column 2 relevant offence	column 3 alternative offence
1	s 229 (1) (Offence—knowingly damage land—serious harm)	s 229 (2) (Offence—recklessly damage land—serious harm) s 229 (3) (Offence—negligently damage land—serious harm)
2	s 229 (2) (Offence—recklessly damage land—serious harm)	s 229 (3) (Offence—negligently damage land—serious harm)
3	s 230 (1) (Offence—knowingly damage land—material harm)	s 230 (2) (Offence—recklessly damage land—material harm) s 230 (3) (Offence—negligently damage land—material harm)
4	s 230 (2) (Offence—recklessly damage land—material harm)	s 230 (3) (Offence—negligently damage land—material harm)

234 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—
 - (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; 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.

Part 9.6 Exceptions to offences

235 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 239.
 Restricted activity—see s 241.
 - (ii) authorised under the *Utilities Act 2000*—
 - (A) section 106 (Maintenance of network facilities); or
 - (B) section 232 (Maintenance of territory network facilities); or
 - (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 245.
 - (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

EXPOSURE DRAFT

(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

236 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 237.

237 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 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
 - (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 157.
IUCN reserve management objectives—see s 159.

- (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.

238 Resource protection area—review

- (1) The conservator must review a resource protection area declaration at least once every 5 years after the declaration commences.
- (2) In reviewing a resource protection area declaration, the conservator must consider the effectiveness of the declaration in achieving its stated purpose.

Part 10.2 Prohibited and restricted activities

239 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

- 1 driving a motor vehicle
- 2 parking a motor vehicle
- 3 mooring a vessel
- 4 taking a dog
- 5 riding a horse
- 6 lighting, maintaining or using a fire
- 7 camping

8 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) An activities declaration is a notifiable instrument.

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

(4) If the conservator makes an activities declaration for a reserve, the conservator must—

- (a) publish a notice about the declaration in a daily newspaper; and
- (b) display a notice about the declaration in a conspicuous place at the reserve.

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

240 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 236.

- (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 244.

241 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 236.

- (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 244.

242 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) publish a notice about the declaration in a daily newspaper; and
 - (b) display a notice about the declaration in a conspicuous place at the reserve.

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

243 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 took reasonable steps to ensure that the contravention did not happen.

Note The defendant has a legal burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 59).

244 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 245.

 - (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) a licence to park and use a vehicle on the land to sell goods or services under the *Hawkers Act 2003*; or
 - (vii) 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 section 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

245 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 251).

246 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*—see s 261.

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

Part 11.2 Licences—application and suitability

247 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 249.
Suitability information, about an activity—see s 252.

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 349 for this provision, the form must be used.

Note 4 A fee may be determined under s 348 for this provision.

248 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 250 (Suitability of people—further information about people).

249 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 (i) 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 313)

- (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.

250 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.

251 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 253 (Suitability of activities—further information about activity);
 - (c) any risk management plan given to the conservator under section 254 (Suitability of activities—risk management plan);
 - (d) the results of any inspection of a place by the conservator under section 255 (Suitability of activities—inspection of place);
 - (e) if the activity is to be carried out in a reserve—
 - (i) the planning and development management objectives for the reserve; and
 - (ii) for a reserve assigned to an IUCN category under section 158—the IUCN reserve management objectives identified for the reserve or area;
- Note* **IUCN category**—see s 157.
IUCN reserve management objectives—see s 159.
- (f) 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 237.
- (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.

252 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
- (b) the purpose of the activity; and

Examples

- 1 scientific research
- 2 education
- 3 commercial trade

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) 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 269, s 271 and s 275).

253 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.

254 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.

255 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.

EXPOSURE DRAFT

Part 11.3 Licences—decision

256 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 251.
Suitable person, to hold a licence—see s 248.

- (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 250—28 days after the conservator receives the stated information;

- (b) if the conservator gives the applicant an activity information notice under section 253—28 days after the conservator receives the information;
- (c) if the conservator gives the applicant a risk management plan notice under section 254—28 days after the conservator receives the risk management plan;
- (d) if the conservator gives the applicant an inspection notice under section 255—28 days after 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).

257 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 objectives of this Act.

Examples

- 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 261)

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).

EXPOSURE DRAFT

258 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—
 - (i) a native species conservation plan; or
Note Native species conservation plan—see s 102.
 - (ii) a controlled native species management plan.
Note Controlled native species management plan—see s 144.
- (2) The licence is subject to the condition that the activity must be carried out in accordance with the plan.

259 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.

260 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.

EXPOSURE DRAFT

Part 11.4 Licences—financial assurance conditions

261 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.

262 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 condition on the licence.
 - (5) The Minister may determine matters to be considered by the conservator in deciding whether to impose financial assurance conditions on licences (*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](#).

263 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 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 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 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 *due date*) the financial assurance must be provided.
- (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.

264 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 condition; or
 - (ii) by the due date mentioned in section 263 (3) (c) (ii).
- (2) The conservator must cancel the licence.

265 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.

266 Financial assurance condition—notice before claim or realisation

- (1) Before acting under section 265, 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.

267 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 *due date*) the stated amount is required to be paid.
- (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 348 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).

268 Financial assurance condition—money held by Territory

If an amount of money is held by the Territory as a financial assurance, the following provisions apply:

- (a) interest accrues on as much of the original amount as from time to time remains unclaimed by the conservator under section 265 (Financial assurance condition—claim or realisation);

Note A rate of interest may be determined under s 348 for this provision.

- (b) for a claim made by the conservator under section 265—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 as 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 265;

EXPOSURE DRAFT

- (d) the amount of the original amount and accrued interest that remains unclaimed by the conservator under section 265 must be paid by the Territory to the licensee if—
 - (i) the financial assurance is no longer required by the conservator; or
 - (ii) the licence is—
 - (A) surrendered under section 277 (Licence—surrender);
or
 - (B) cancelled under section 282 (Licence—taking regulatory action).

Part 11.5 Licences—amendment, transfer, renewal, etc

269 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 251.
Suitable person, to hold a licence—see s 248.

- (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.

EXPOSURE DRAFT

- (4) The amendment takes effect on the day the amendment notice is given to the licensee or a later day stated in the notice.

270 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 249.

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 349 for this provision, the form must be used.

Note 4 A fee may be determined under s 348 for this provision.

271 Licence—decision on application to amend licence

- (1) This section applies if the conservator receives an application to amend a licence under section 270.
- (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 251.
 Suitable person, to hold a licence—see s 248.

- (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 270 (2) a personal information notice under section 250—28 days after the conservator receives the stated information;
- (b) if the conservator gives the applicant an activity information notice under section 253—28 days after the conservator receives the information;
- (c) if the conservator gives the applicant a risk management plan notice under section 254—28 days after the conservator receives the risk management plan;

EXPOSURE DRAFT

- (d) if the conservator gives the applicant an inspection notice under section 255—28 days after 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).

272 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 249.

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 349 for this provision, the form must be used.

Note 4 A fee may be determined under s 348 for this provision.

273 Licence—decision on application to transfer licence

- (1) This section applies if the conservator receives an application to transfer a licence under section 272.
- (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 248.

- (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 272 (2) (b) a personal information notice under section 250—28 days after 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).

274 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 349 for an application, the form must be used.

Note 2 A fee may be determined under s 348 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.

275 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 274.

- (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 251.
 Suitable person, to hold a licence—see s 248.

- (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 250—28 days after the conservator receives the stated information;
- (b) if the conservator gives the applicant an activity information notice under section 253—28 days after the conservator receives the information;

EXPOSURE DRAFT

- (c) if the conservator gives the applicant a risk management plan notice under section 254—28 days after the conservator receives the risk management plan;
- (d) if the conservator gives the applicant an inspection notice under section 255—28 days after 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).

276 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 statutory declaration signed by the licensee, stating that the original licence has been lost, stolen or destroyed.

Note 1 A fee may be determined under s 348 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).

Note 3 The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

277 Licence—surrender

- (1) A licensee may surrender the licence by giving written notice (a *surrender notice*) of the surrender to the conservator.

Note If a form is approved under s 349 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 statutory declaration signed by the licensee stating that the licence has been lost, stolen or destroyed.

Note The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

278 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.

279 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

280 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.

281 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.

282 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.

283 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;

EXPOSURE DRAFT

- (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.

284 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.

285 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 341.

Maximum penalty: 10 penalty units.

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

286 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

287 Licence register

- (1) The conservator must keep a register of licences (the *licence register*).
- (2) The 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.

288 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.

289 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 97.

- (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 301). It is an offence to fail to comply with the direction (see s 302).

290 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 125.

- (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, etc for public or unleased land

291 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.

292 What is *public or unleased land*?—ch 12

- (1) In this chapter:
- public or unleased land* means—
- (a) public land; or
 - (b) unleased territory land.
- (2) In this section:
- public land* means land identified by the [territory plan](#) as public land.

293 What are *management objectives*?—ch 12

(1) In this chapter:

management objectives, for public or unleased 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.

(2) In this section:

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

294 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 or unleased 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 or unleased land;
 - (ii) fire management on the public or unleased land;

- (iii) drainage on the public or unleased land;
 - (iv) management and maintenance of public or private facilities on the public or unleased land;
 - (v) rehabilitation of the public or unleased land or public or private facilities on the public or unleased land;
 - (vi) indemnities;
 - (vii) emergency procedures to be used on the public or unleased land;
 - (viii) internal stockpiling on the public or unleased land;
 - (ix) fencing on the public or unleased land;
 - (x) feral animals and weed control on the public or unleased land; but
- (c) does not conflict with a development approval given under the *Planning and Development Act 2007*, chapter 7.

295 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 or unleased 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 with 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.

296 Management agreement—agency may enter or refuse

- (1) If the conservator has given a proposed agreement to an agency under section 295, 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.

EXPOSURE DRAFT

- (2) If an agency does not act under subsection (1), the agency is taken to have refused to enter into the proposed agreement.

297 Management agreement—refusal and repairing damage

- (1) This section applies if—
- (a) an agency refuses to enter into a proposed agreement for public or unleased 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](#)).

298 Management agreement—breach of agreement and repairing damage

- (1) This section applies if—
- (a) an agency enters into a management agreement for public or unleased 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](#)).

EXPOSURE DRAFT

Chapter 13 Enforcement

Part 13.1 Directions

299 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 25).

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.

300 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).

301 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 302.

- (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.

302 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 301; 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).

303 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 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 304.

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).

304 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 be reasonably 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).

305 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 25).

- (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).

306 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: 5 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).

307 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 13.2.2 (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 318 (1) (g)) and inspect or examine, etc anything in the vehicle (see s 321).

- (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).

308 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 307; and
 - (b) fails to comply with the direction.

Maximum penalty: 5 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).

309 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 97.

- (ii) a threatened ecological community; or

Note **Threatened ecological community**—see s 58.

- (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 176.

- (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).

EXPOSURE DRAFT

310 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).

311 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 14.
 - (ii) an ecological community;
Note *Ecological community*—see s 15.
 - (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 be consistent with each of the following (if any) that applies to the species, community or habitat:
- (a) a conservation advice;
Note *Conservation advice*—see s 81 (2).
- (b) an action plan;
Note *Action plan*—see s 88.
- (c) a native species conservation plan;
Note *Native species conservation plan*—see s 102.
- (d) a controlled native species management plan.
Note *Controlled native species management plan*—see s 144.
- (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 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).

312 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 176.
 Special protection status—see s 97.
 Threatened ecological community—see s 58.

- (3) An offence against this section is a strict liability offence.
- (4) 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 (4) (see [Criminal Code](#), s 58).

313 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).

EXPOSURE DRAFT

314 Offence—fail to comply with treatment direction

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

315 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 13.2.

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).

316 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
 - (b) a conservator's direction.

Note **Urgent direction**—see s 309 (2).

Note **Conservator's direction**—see s 311 (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 13.2 Enforcement by conservation officers

Division 13.2.1 Definitions

317 Definitions—pt 13.2

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 13.2.3 (Search warrants).

EXPOSURE DRAFT

Division 13.2.2 Powers of conservation officers

318 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 vessel and a vehicle (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 307—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.

EXPOSURE DRAFT

- (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).

319 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 vessel and a vehicle (see dict).

320 Consent to entry

- (1) When seeking the consent of an occupier of premises to enter premises under section 318 (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.

EXPOSURE DRAFT

- (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.

321 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 vessel and a vehicle (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.

322 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

EXPOSURE DRAFT

- (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.

323 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 245.
- (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.
- (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 10.

- (b) not an exempt animal.

Note ***Exempt animal***—see s 140.

324 Release of distressed animals—court orders

- (1) If the conservator considers that an animal seized under section 322 (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

EXPOSURE DRAFT

- (b) the animal must not be released until the directions have been complied with.
- (7) Reasonable compensation must be paid by the Territory for loss suffered by a person as a result of the release of an animal from captivity under this section if—
 - (a) a prosecution for an offence against this Act relating to the animal is not started within 6 months after the seizure; or
 - (b) a prosecution is started within 6 months after the seizure but the court does not find the offence proved.

Division 13.2.3 Search warrants

325 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

EXPOSURE DRAFT

- (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.

326 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 fax a copy to the conservation officer if it is practicable to do so.

- (5) If it is not practicable to fax a 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 faxed 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

EXPOSURE DRAFT

- (c) it is not proved that the exercise of power was authorised by a warrant under this section.

327 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.

328 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.

329 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 13.2.4 Return and forfeiture of things seized

330 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 322 (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;

EXPOSURE DRAFT

- (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.

331 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.

332 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.

333 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

EXPOSURE DRAFT

- (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.

334 Forfeiture of seized things

- (1) This section applies if—
 - (a) anything seized under this part has not been returned under section 333; and
 - (b) an application for disallowance of the seizure under section 336—
 - (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 seized thing—
 - (a) is forfeited to the Territory; and
 - (b) may be sold, destroyed or otherwise disposed of as the conservator directs.

335 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;

EXPOSURE DRAFT

(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.

336 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.

337 Order for return of seized thing

- (1) This section applies if a person claiming to be entitled to anything seized under this part applies to the Magistrates Court under section 336 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 seized thing; 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 13.2.5 Enforcement—damage, compensation, etc

338 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

EXPOSURE DRAFT

- (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.

339 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 14 Notification and review of decisions

340 What is a *reviewable decision*?—ch 14

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.

341 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*.

342 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.

EXPOSURE DRAFT

Chapter 15 Miscellaneous

343 **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 the species, or community, in the wild.
- (2) It is sufficient compliance with this Act if only a general description of the location of the species or community is included in the document.
- (3) In this section:
relevant person means—
 - (a) the Minister; or
 - (b) the conservator; or
 - (c) the scientific committee.

344 **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.

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

- (4) Subsections (1) and (2) do not apply to the using or divulging of protected information about a person with the person's consent.

EXPOSURE DRAFT

(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 an official visitor; or
- (b) 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.

345 Acts and omissions of representatives

(1) 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.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) 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.
- (4) 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.
- (5) However, subsection (4) 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.
- (6) 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 (3) or (4).

EXPOSURE DRAFT

346 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.

347 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.

348 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 267 (4) (Financial assurance condition—recovery of extra costs) is to be calculated; and

EXPOSURE DRAFT

- (c) the annual percentage rate at which interest accruing under section 268 (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](#).

349 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](#).

350 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.

Chapter 16 Repeals and consequential amendments

351 Legislation repealed

- (1) The following legislation is repealed:
- *Nature Conservation Act 1980* (A1980-20)
 - *Nature Conservation Regulation 1982* (SL1982-11)
 - *Magistrates Court (Nature Conservation Infringement Notices) Regulation 2005* (SL2005-33).

- (2) All other legislative instruments, other than the following instruments, under the *Nature Conservation Act 1980* are repealed:

- (a) a nature conservation strategy under the *Nature Conservation Act 1980*, division 3.1 (Nature conservation strategy);

Note Section 401 (Transitional—nature conservation strategy) provides that a nature conservation strategy made under the *Nature Conservation Act 1980* is taken to be made under this Act and continues in force.

- (b) an action plan under the *Nature Conservation Act 1980*, section 42 (Preparation of action plan);

Note Section 406 (Transitional—action plans) provides that an action plan made under the *Nature Conservation Act 1980* is taken to be made under this Act and continues in force.

- (c) a management agreement under the *Nature Conservation Act 1980*, part 10 (Management agreements).

Note Section 411 (Transitional—management agreements) provides that a management agreement made under the *Nature Conservation Act 1980* is taken to be made under this Act and continues in force.

EXPOSURE DRAFT

352 **Legislation amended—sch 2**

This Act amends the legislation mentioned in schedule 2.

Chapter 20 Transitional

400 **Meaning of *commencement day*—ch 20**

In this chapter:

commencement day means the day section 3 commences.

401 **Nature conservation strategy**

- (1) This section applies if, immediately before the commencement day, a nature conservation strategy for the ACT is in force under the [Nature Conservation Act 1980](#) (an *old nature conservation strategy*).
- (2) The old nature conservation strategy is, on the commencement day, taken to be a nature conservation strategy (a *new nature conservation strategy*).

Note *Nature conservation strategy*, for the ACT—see s 41.

- (3) A new nature conservation strategy is, for section 52 (Nature conservation strategy—monitoring and review), taken to have commenced on the day the old nature conservation strategy commenced.

402 **Endangered species**

- (1) This section applies if, immediately before the commencement day, a species is declared to be an endangered species under the [Nature Conservation Act 1980](#), section 38 (Declaration of species, community or process).

EXPOSURE DRAFT

- (2) The species is, on the commencement day, taken to be eligible to be included in the endangered category on the threatened native species list under section 56 (4) (Threatened native species list—eligibility for categories).

Note The Minister must make a threatened native species list that includes an endangered category (see s 55).

403 Vulnerable species

- (1) This section applies if, immediately before the commencement day, a species is declared to be a vulnerable species under the *Nature Conservation Act 1980*, section 38 (Declaration of species, community or process).
- (2) The species is, on the commencement day, taken to be eligible to be included in the vulnerable category on the threatened native species list under section 56 (5) (Threatened native species list—eligibility for categories).

Note The Minister must make a threatened native species list that includes a vulnerable category (see s 55).

404 Endangered ecological communities

- (1) This section applies if, immediately before the commencement day, an ecological community is declared to be an endangered ecological community under the *Nature Conservation Act 1980*, section 38 (Declaration of species, community or process).
- (2) The ecological community is, on the commencement day, taken to be eligible to be included in the endangered category on the threatened ecological communities list under section 61 (2) (Threatened ecological communities list—eligibility for categories).

Note The Minister must make a threatened ecological communities list that includes an endangered category (see s 55).

405 Threatening processes to be key threatening processes

- (1) This section applies if, immediately before the commencement day, a process is declared to be a threatening process under the *Nature Conservation Act 1980*, section 38 (Declaration of species, community or process).
- (2) The process is, on the commencement day, taken to be eligible to be included on the key threatening processes list under section 67 (Key threatening processes list—eligibility).

Note The Minister must make a key threatening processes list (see s 66).

406 Action plans

- (1) This section applies if, immediately before the commencement day, an action plan for a species, ecological community or process (an *old action plan*) is in force under the *Nature Conservation Act 1980*, section 42 (Preparation of action plan).
- (2) The old action plan is, on the commencement day, taken to be an action plan (a *new action plan*).

Note *Action plan*, for a relevant species, relevant ecological community or key threatening process—see s 88.

- (3) A new action plan is, for section 96 (Action plans—monitoring and review), taken to have commenced on the day the old action plan commenced.

407 Protected fish, invertebrates, native plants and native animals to be protected species

- (1) This section applies if, immediately before the commencement day, under the *Nature Conservation Act 1980*, section 34 (Declaration of protected and exempt flora and fauna)—
 - (a) a fish is declared to be a protected fish; or

EXPOSURE DRAFT

- (b) an invertebrate is declared to be a protected invertebrate; or
 - (c) a native plant is declared to be a protected native plant; or
 - (d) a native animal is declared to be a protected native animal.
- (2) The fish, invertebrate, native plant or native animal is, on the commencement day, taken to be eligible to be included in the restricted trade category on the protected native species list under section 100 (Protected native species list eligibility).

Note The Minister must make a protected native species list that includes a rare category (see s 99).

408 Exempt animals

- (1) This section applies if, immediately before the commencement day, an animal is declared to be an exempt animal under the *Nature Conservation Act 1980*, section 34 (1) (b) (Declaration of protected and exempt flora and fauna).
- (2) The animal is, on the commencement day, taken to be eligible to be declared as an exempt animal under section 141 (Declarations—exempt animals).

409 Plans of management for reserves to be reserve management plans

- (1) This section applies if, immediately before the commencement day, a plan of management for a reserve (an *old plan of management*) is in force under the *Planning and Development Act 2007*, part 10.4 (Plans of management for public land).
- (2) The old plan of management is, on the commencement day, taken to be a reserve management plan (a *new reserve management plan*).

Note **Reserve management plan**, for a reserve—see s 161.

- (3) A new reserve management plan is, for section 175 (Reserve management plan—review), taken to have commenced on the day the old plan of management commenced under the *Planning and Development Act 2007*.

Note An old plan of management for an area of land that is not a reserve is taken to be a land management plan under the *Planning and Development Act 2007*, s 330 (see *Planning and Development Act 2007*, s 474).

410 Licences

- (1) This section applies if, immediately before the commencement day, a person holds a licence (an *old licence*) under the *Nature Conservation Act 1980*, section 104 (Grant of licence).
- (2) The old licence is, on the commencement day, taken to be a nature conservation licence under section 245 (What is a *nature conservation licence*)—
- (a) in the same terms as the old licence; and
 - (b) subject to the same conditions as the old licence.
- (3) The nature conservation licence—
- (a) is taken to expire on the day stated in the old licence; and
 - (b) must not be amended, transferred or renewed.

411 Management agreements

- (1) This section applies if, immediately before the commencement day, a management agreement (an *old management agreement*) between the conservator and an agency, in relation to controlled land, is in force under the *Nature Conservation Act 1980*.

EXPOSURE DRAFT

- (2) The old management agreement is, on the commencement day, taken to be a management agreement between the conservator and the agency, in relation to the land, under section 294 (What is a *management agreement*?—ch 12).

412 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this chapter (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this chapter.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

413 Expiry—ch 20

This chapter expires 2 years after the day it commences.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

Schedule 1 Reviewable decisions

(see ch 14)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	211 (2)	issue restore excavation direction	person directed
2	214 (2)	issue repair damage direction	person directed
3	256 (2)	refuse to issue nature conservation licence	applicant for licence
4	256 (3)	issue nature conservation licence—impose condition	licensee
5	262	impose financial assurance condition on nature conservation licence	licensee
6	265	claim a financial assurance	licensee
7	269 (1)	amend nature conservation licence	licensee
8	271 (2)	refuse to amend nature conservation licence	licensee
9	271 (3)	amend nature conservation licence—impose or amend condition	licensee
10	273 (2)	refuse to transfer nature conservation licence	licensee proposed new licensee
11	273 (3)	transfer nature conservation licence—impose or amend condition	new licensee
12	275 (2)	refuse to renew nature conservation licence	licensee
13	275 (3)	renew nature conservation licence—impose or amend condition	licensee
14	282 (3)	take regulatory action	licensee
15	283	immediately suspend nature conservation licence	licensee

EXPOSURE DRAFT

Schedule 1 Reviewable decisions

column 1 item	column 2 section	column 3 decision	column 4 entity
16	311 (2)	issue conservator's direction	person directed
17	313 (2)	issue treatment direction	person directed
18	315 (2) (a)	issue direction to give animal or plant to conservator	person directed
19	315 (2) (b)	issue direction to destroy animal or plant	person directed
20	335 (2)	issue direction to destroy or otherwise dispose of a thing	person directed

EXPOSURE DRAFT

Schedule 2 Consequential amendments

(see s 352)

Part 2.1 Animal Welfare Act 1992

[2.1] Section 2, note 1, paragraph 2

substitute

For example, the signpost definition '*native animal*—see the *Nature Conservation Act 2013*, section 10.' means that the term 'native animal' is defined in that section and the definition applies to this regulation.

[2.2] Section 27 (2) (e)

omit

Nature Conservation Act 1980

substitute

Nature Conservation Act 2013

[2.3] Section 38 (2) (c)

omit

Nature Conservation Act 1980

substitute

Nature Conservation Act 2013

[2.4] Section 55 (4) (e)

omit

Nature Conservation Act 1980

substitute

Nature Conservation Act 2013

[2.5] Dictionary, definition of *native animal*

substitute

native animal—see the *Nature Conservation Act 2013*, section 10 (What is a *native animal*?).

Part 2.2 Common Boundaries Act 1981

[2.6] Section 2B (b)

substitute

(b) the land is a reserve; or

[2.7] New section 2B (2)

insert

(2) In this section:

reserve—see the *Nature Conservation Act 2013*, section 155 (What is a *reserve*?).

Note Reserves include wilderness areas, national parks, nature reserves, catchment areas and other areas of public land.

EXPOSURE DRAFT

Part 2.3 Emergencies Act 2004

[2.8] Section 77 (3)

omit

plan of management in force under the *Planning and Development Act 2007*, part 10.4 (Plans of management for public land)

substitute

public land management plan in force under the under the *Planning and Development Act 2007*, section 318 (What is a *public land management plan* for an area of public land?)

Part 2.4 Environment Protection Regulation 2005

[2.9] Schedule 2, section 2.2 (1), new definition of *reserve*

insert

reserve—see the *Nature Conservation Act 2013*, section 155 (What is a *reserve*?).

Note Reserves include wilderness areas, national parks, nature reserves, catchment areas and other areas of public land.

[2.10] Schedule 2, section 2.2 (1), definition of *reserved area* and note

omit

[2.11] Schedule 2, section 2.2, table 2.3, item 2, column 2

omit

reserved area

substitute

reserve

[2.12] Dictionary, new definition of *reserve*

insert

reserve—for schedule 2, part 2.3 (Noise conditions)—see the *Nature Conservation Act 2013*, section 155 (What is a *reserve*?).

Note Reserves include wilderness areas, national parks, nature reserves, catchment areas and other areas of public land.

[2.13] Dictionary, definition of *reserved area*

omit

Part 2.5 Firearms Act 1996

[2.14] New section 61 (4)

insert

(4) In this section:

nature conservation licence—see the *Nature Conservation Act 2013*, section 245.

public unleased land permit—see the [Public Unleased Land Act 2013](#), section 40.

reserve—see the *Nature Conservation Act 2013*, section 155 (What is a *reserve*?).

Note Reserves include wilderness areas, national parks, nature reserves, catchment areas and other areas of public land.

[2.15] Table 61, column 3, item 2.2

substitute

		2.2 For vermin control in a reserve—the applicant holds a nature conservation licence, or a public unleased land permit, authorising the applicant to use a firearm in a reserve to kill animals.
--	--	---

Part 2.6 Firearms Regulation 2008

[2.16] Section 3, note 1, paragraph 2

substitute

For example, the signpost definition '*reserve*—see the *Nature Conservation Act 2013*, section 155.' means that the term '*reserve*' is defined in that section and the definition applies to this regulation.

[2.17] Table 15, item 3, column 2

omit

on land within a reserved area

substitute

in a reserve

[2.18] Table 15, item 3, column 3

omit

on land within a stated reserved area

substitute

in a stated reserve

[2.19] Dictionary, new definition of *reserve*

insert

reserve—see the *Nature Conservation Act 2013*, section 155 (What is a *reserve*?).

Note Reserves include wilderness areas, national parks, nature reserves, catchment areas and other areas of public land.

[2.20] Dictionary, definition of *reserved area*

omit

Part 2.7 Fisheries Act 2000

[2.21] Section 26 (1) (a)

substitute

- (a) whether the applicant has been convicted, or found guilty, of an offence against—
- (i) this Act; or
 - (ii) the *Nature Conservation Act 2013*, division 6.1.2 (Offences—native animals); or

- (iii) a law of another jurisdiction corresponding, or substantially corresponding, to this Act or that division; and

[2.22] Section 28 (1) (a)

substitute

- (a) whether the applicant has been convicted, or found guilty, of an offence against—
 - (i) this Act; or
 - (ii) the *Nature Conservation Act 2013*, division 6.1.2 (Offences—native animals); or
 - (iii) a law of another jurisdiction corresponding, or substantially corresponding, to this Act or that division; and

[2.23] Section 28 (1) (d)

substitute

- (d) whether fish that may be imported or exported under the licence—
 - (i) are an endangered species; or
 - (ii) are a vulnerable species; or
 - (iii) have special protection status; or
 - (iv) are a protected native species; or
 - (v) are exempt animals; and

EXPOSURE DRAFT

[2.24] New section 28 (3)

insert

(3) In this section:

endangered species—see the *Nature Conservation Act 2013*, dictionary.

exempt animal—see the *Nature Conservation Act 2013*, section 140 (What is an *exempt animal*?).

protected native species—see the *Nature Conservation Act 2013*, section 98 (What is a *protected native species*?).

special protection status—see the *Nature Conservation Act 2013*, section 97 (What is *special protection status*?).

vulnerable species—see the *Nature Conservation Act 2013*, dictionary.

[2.25] Section 28A (1) (a)

substitute

- (a) whether the applicant has been convicted, or found guilty, of an offence against—
- (i) this Act; or
 - (ii) the *Nature Conservation Act 2013*, division 6.1.2 (Offences—native animals); or
 - (iii) a law of another jurisdiction corresponding, or substantially corresponding, to this Act or that division; and

[2.26] Section 34 (1) (b)

substitute

- (b) the licensee is convicted, or found guilty, of an offence against—
- (i) this Act; or
 - (ii) the *Nature Conservation Act 2013*, division 6.1.2 (Offences—native animals); or
 - (iii) a law of another jurisdiction corresponding, or substantially corresponding, to this Act or that division; or

[2.27] Dictionary, definition of *conservation officer*

substitute

conservation officer—see the *Nature Conservation Act 2013*, dictionary.

Part 2.8 Heritage Act 2004

[2.28] Section 76 (1), definition of *conservation officer*

substitute

conservation officer—see the *Nature Conservation Act 2013*, dictionary.

EXPOSURE DRAFT

Part 2.9 Legislation Act 2001

[2.29] Dictionary, part 1, definition of *conservator of flora and fauna*

omit

Nature Conservation Act 1980

substitute

Nature Conservation Act 2013

Part 2.10 Magistrates Court (Fisheries Infringement Notices) Regulation 2004

[2.30] Section 12

omit

under the *Nature Conservation Act 1980*, section 8

[2.31] New section 12 (2)

insert

(2) In this section:

conservation officer—see the *Nature Conservation Act 2013*, dictionary.

Part 2.11 **Planning and Development Act 2007**

[2.32] Section 119 (1) (c)

omit

conservator of flora and fauna

substitute

tree curator

[2.33] Section 119 (3) (a)

omit

conservator of flora and fauna

substitute

tree curator

[2.34] Section 119 (3) (b)

omit

conservator's

substitute

tree curator's

[2.35] Section 120 (e)

omit

plan of management

substitute

public land management plan

[2.36] Section 128 (1) (b) (iii)

omit

conservator of flora and fauna

substitute

tree curator

[2.37] Section 128 (3) (a)

omit

conservator of flora and fauna

substitute

tree curator

[2.38] Section 128 (3) (b)

omit

conservator's

substitute

tree curator's

[2.39] Section 129 (f)

omit

plan of management

substitute

public land management plan

[2.40] Section 138AA (1) (b)

substitute

(b) schedule 4, part 4.3, item 1A, item 2 (a) or (b), item 3 or item 6.

[2.41] Part 10.1

omit

[2.42] Section 316 (b)

omit

any plan of management

substitute

the public land management plan

EXPOSURE DRAFT

[2.43] Part 10.4

substitute

Part 10.4 Public land management plans for public land

Division 10.4.1 Public land management plans

318 What is a *public land management plan* for an area of public land?

(1) In this Act:

public land management plan, for an area of public land, means—

- (a) if the area is a reserve—a reserve management plan for the area; or
- (b) if the area is not a reserve—a land management plan for the area.

Note 1 Reserves include wilderness areas, national parks, nature reserves, catchment areas and other prescribed areas of public land.

Note 2 Public land that is not a reserve may include special purpose reserves, urban open spaces, cemeteries, lakes, sport and recreation reserves and heritage areas

(2) In this section:

reserve—see the *Nature Conservation Act 2013*, section 155 (What is a *reserve*?).

reserve management plan, for a reserve—see the *Nature Conservation Act 2013*, section 161.

Division 10.4.2 Land management plans

319 What is a *land management plan*?—pt 10.4

In this part:

land management plan, for an area of public land, means a management plan for the area, notified under section 328 (Land management plan—Minister’s approval and notification).

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).

320 What is a *draft land management plan*?—div 10.4.2

In this division:

draft land management plan, for an area of public land, means a draft management plan for the area that—

- (a) identifies the area; and
- (b) describes how the planning and development management objectives for the area are to be implemented or promoted in the area.

321 Draft land management plan—custodian to prepare

- (1) The custodian of an area of public land must prepare a draft land management plan for the area.

Note 1 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).

Note 2 Under the *Nature Conservation Act 2013*, s 163, the custodian of a reserve must prepare a draft reserve management plan for the reserve.

- (2) In preparing a draft land management plan, the custodian must consult with—
- (a) the conservator; and
 - (b) the planning and land authority.

322 Draft land management plan—planning reports and strategic environmental assessments

- (1) At any time before a draft land management plan for an area of public land is approved by the Minister under section 327 (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 area of public land must consider the report or assessment in preparing the draft land management plan for the area.

323 Draft land management plan—public consultation

- (1) If the custodian of an area of public land prepares a draft land management plan for the area, the custodian must also prepare a notice (a *public consultation notice*) about the draft land management plan.
- (2) A public consultation notice must—
- (a) state that—
 - (i) anyone may give a written submission to the custodian about the draft land 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 land 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 notifies a public consultation notice for a draft land 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 land management plan.

324 Draft land management plan—revision and submission to Minister

- (1) If the public consultation period for a draft land management plan has ended, the custodian of the area of public land 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.

EXPOSURE DRAFT

- (2) The custodian of the area 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.

325 Draft land management plan—referral to Legislative Assembly committee

- (1) This section applies if the custodian of an area of public land submits a draft land 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 324 (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.

326 Draft land 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 325.
- (2) The Minister must not take action under section 327 in relation to the draft plan until—
 - (a) the committee has referred the draft plan back to the Minister under section 325 (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 327 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 327 in relation to the draft plan.

327 Draft land 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 325 (4); or
 - (b) the Minister may take action under section 326 (3); or
 - (c) a custodian resubmits a draft plan to the Minister under section 329 (Draft land management plan—Minister’s direction to revise etc).

EXPOSURE DRAFT

- (2) If the Legislative Assembly committee has made a recommendation about the draft plan, the Minister must consider the recommendation.
- (3) The Minister must—
 - (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.

328 Land management plan—Minister’s approval and notification

- (1) A draft land management plan approved by the Minister under section 327 (3) (a) or section 331 (3) (a) is a land management plan.
- (2) A land management plan is a notifiable instrument.

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

Note 2 The power to make a land 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 331.

329 Draft land management plan—Minister’s direction to revise etc

- (1) This section applies if the Minister gives the custodian of an area of public land a direction under section 327 (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 327, what to do with the resubmitted draft plan.

330 Draft land management plan—Minister’s rejection

- (1) If the Minister rejects a draft land management plan under section 327 (3) (c), the Minister must prepare a notice (a *rejection notice*) stating that the draft plan is rejected.
- (2) A rejection notice is a notifiable instrument.

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

331 Land management plan—minor amendments

- (1) This section applies if—
 - (a) a land management plan for an area of public land 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 land management plan for the area, 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 land management plan to the Minister for approval.

(3) If the custodian submits a new draft land management plan to the Minister for approval, the Minister must—

(a) approve the plan; or

(b) reject the plan.

Note The new draft land management plan is a land management plan and is a notifiable instrument (see s 328).

(4) In this section:

minor amendment, of a land management plan for an area of public land, 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).

332 Land management plan—custodian to implement

If a land management plan is in force for an area of public land, the custodian of the area of public land must take reasonable steps to implement the plan.

332A Land management plan—review

- (1) This section applies if a land management plan is in force for an area of public land.
- (2) The custodian of the area of public land must report to the Minister about the implementation of the plan at least once every 5 years.
- (3) The custodian of the area of public land 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 must consult with the conservator.

[2.44] Section 359 (1) (e)

omit

conservator of flora and fauna

substitute

tree curator

[2.45] New chapter 18

insert

Chapter 18 Transitional—Nature Conservation Act 2013—plans of management

473 Definitions—ch 18

In this chapter:

commencement day means the day the *Nature Conservation Act 2013*, section 3 commences.

474 Certain plans of management to be land management plans

- (1) This section applies if, immediately before the commencement day, a plan of management for an area of land that is not a reserve (an *old plan of management*) is in force under part 10.4 (Plans of management for public land).
- (2) The old plan of management is, on the commencement day, taken to be a land management plan (a *new land management plan*).
Note *Land management plan*, for an area of public land—see s 319.
- (3) A new land management plan is, for section 332A (Land management plan—review), taken to have commenced on the day the old plan of management commenced.

- (4) In this section:

reserve—see the *Nature Conservation Act 2013*, section 155.

Note 1 Reserves include wilderness areas, national parks, nature reserves, catchment areas and other areas of public land.

Note 2 A plan of management for an area of land that is a reserve is taken to be a reserve management plan under the *Nature Conservation Act 2013*, s 409.

475 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Nature Conservation Act 2013*.
- (2) A regulation may modify this chapter (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this chapter.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

476 Expiry—ch 18

This chapter expires 2 years after the day it commences.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

[2.46] Schedule 4, part 4.1, section 4.1, new definition of *action plan*

insert

action plan—see the *Nature Conservation Act 2013*, section 88.

[2.47] Schedule 4, part 4.1, section 4.1, definition of *biodiversity corridor*

substitute

biodiversity corridor means a river corridor or wildlife corridor identified in the [territory plan](#), the nature conservation strategy for the ACT or an action plan.

[2.48] Schedule 4, part 4.1, section 4.1, definition of *clearing*

substitute

clearing native vegetation—see the *Nature Conservation Act 2013*, section 219.

[2.49] Schedule 4, part 4.1, section 4.1, new definitions

insert

conservation dependent species—see the *Nature Conservation Act 2013*, dictionary.

critically endangered species—

- (a) see the *Nature Conservation Act 2013*, dictionary; and
- (b) includes a species included in the critically endangered category of the list of threatened native species under the [Environment Protection and Biodiversity Conservation Act 1999](#) (Cwlth).

[2.50] Schedule 4, part 4.1, section 4.1, definitions of *ecological community* and *endangered*

omit

[2.51] Schedule 4, part 4.1, section 4.1, new definition of *endangered species*

insert

endangered species—

- (a) see the *Nature Conservation Act 2013*, dictionary; and
- (b) includes a species included in the endangered category of the list of threatened native species under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth).

[2.52] Schedule 4, part 4.1, section 4.1, definition of *flora and fauna committee*

omit

[2.53] Schedule 4, part 4.1, section 4.1, new definitions

insert

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

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

native species conservation plan—see the *Nature Conservation Act 2013*, section 102.

[2.54] Schedule 4, part 4.1, section 4.1, definition of *native vegetation*

substitute

native vegetation—see the *Nature Conservation Act 2013*, section 217.

[2.55] Schedule 4, part 4.1, section 4.1, new definitions

insert

native vegetation area—see the *Nature Conservation Act 2013*, section 218 (What is a *native vegetation area*?—pt 9.4).

nature conservation strategy, for the ACT—see the *Nature Conservation Act 2013*, section 41.

[2.56] Schedule 4, part 4.1, section 4.1, definition of *protected*

omit

[2.57] Schedule 4, part 4.1, section 4.1, new definitions

insert

protected native species—see the *Nature Conservation Act 2013*, section 98.

provisionally listed threatened species—see the *Nature Conservation Act 2013*, dictionary.

Ramsar wetland—see the *Nature Conservation Act 2013*, section 176.

Note The *Nature Conservation Act 2013*, s 176 defines a Ramsar wetland to be a declared Ramsar wetland under the [Environment Protection and Biodiversity Conservation Act 1999](#) (Cwlth), s 17.

[2.58] Schedule 4, part 4.1, section 4.1, definition of *special protection status*

omit

**[2.59] Schedule 4, part 4.1, section 4.1, new definition of
*threatened ecological community***

insert

threatened ecological community—

- (a) see the *Nature Conservation Act 2013*, section 58; and
- (b) includes a listed threatened ecological community.

Note Threatened ecological communities are divided into the following categories (see *Nature Conservation Act 2013*, s 60):

- critically endangered ecological communities;
- endangered ecological communities;
- vulnerable ecological communities;
- provisionally listed threatened ecological communities.

**[2.60] Schedule 4, part 4.1, section 4.1, definitions of
*threatening process and vulnerable***

omit

**[2.61] Schedule 4, part 4.1, section 4.1, new definition of
*vulnerable species***

insert

vulnerable species—

- (a) see the *Nature Conservation Act 2013*, dictionary; and
- (b) includes a species included in the vulnerable category of the list of threatened native species under the [Environment Protection and Biodiversity Conservation Act 1999](#) (Cwlth).

[2.62] Schedule 4, part 4.3, item 1

substitute

1	<p>proposal that is likely to have a significant adverse environmental impact on 1 or more of the following, unless the conservator of flora and fauna provides an environmental significance opinion indicating that the proposal is not likely to have a significant adverse environmental impact:</p> <ul style="list-style-type: none">(a) a critically endangered species;(b) an endangered species;(c) a vulnerable species;(d) a conservation dependent species;(e) a provisionally listed threatened species;(f) a listed migratory species;(g) a threatened ecological community;(h) a protected native species;(i) a Ramsar wetland
---	---

[2.63] Schedule 4, part 4.3, item 2 (a)

omit

native vegetation other than on land that is designated as a future urban area under the [territory plan](#)

substitute

native vegetation in a native vegetation area, other than on land that is designated as a future urban area under the [territory plan](#),

[2.64] Schedule 4, part 4.3, item 2 (b)

omit

native vegetation on land that is designated as a future urban area under the [territory plan](#)

substitute

native vegetation in a native vegetation area, on land that is designated as a future urban area under the [territory plan](#),

[2.65] Dictionary, new definition of *action plan*

insert

action plan, for schedule 4 (Development proposals in impact track because of need for EIS)—see the *Nature Conservation Act 2013*, section 88.

[2.66] Dictionary, definition of *clearing*

substitute

clearing native vegetation, for schedule 4 (Development proposals in impact track because of need for EIS)—see the *Nature Conservation Act 2013*, section 219.

[2.67] Dictionary, new definitions

insert

conservation dependent species, for schedule 4 (Development proposals in impact track because of need for EIS)—see the *Nature Conservation Act 2013*, dictionary.

critically endangered species, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, part 4.1, section 4.1.

draft land management plan, for an area of public land, for division 10.4.2 (Land management plans)—see section 320.

[2.68] Dictionary, definitions of *ecological community* and *endangered*

omit

[2.69] Dictionary, new definition of *endangered species*

insert

endangered species, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, part 4.1, section 4.1.

[2.70] Dictionary, definition of *flora and fauna committee*

omit

[2.71] Dictionary, new definitions

insert

land management plan, for an area of public land, for part 10.4 (Public land management plans for public land)—see section 319.

listed migratory species, for schedule 4 (Development proposals in impact track because of need for EIS)—see the [Environment Protection and Biodiversity Conservation Act 1999](#) (Cwlth), section 528.

listed threatened ecological community, for schedule 4 (Development proposals in impact track because of need for EIS)—see the [Environment Protection and Biodiversity Conservation Act 1999](#) (Cwlth), section 528.

native species conservation plan, for schedule 4 (Development proposals in impact track because of need for EIS)—see the *Nature Conservation Act 2013*, section 102.

[2.72] Dictionary, definition of *native vegetation*

substitute

native vegetation, for schedule 4 (Development proposals in impact track because of need for EIS)—see the *Nature Conservation Act 2013*, section 217.

[2.73] Dictionary, new definitions

insert

native vegetation area, for schedule 4 (Development proposals in impact track because of need for EIS)—see the *Nature Conservation Act 2013*, section 218 (What is a *native vegetation area*?).

nature conservation strategy, for the ACT, for schedule 4 (Development proposals in impact track because of need for EIS)—see the *Nature Conservation Act 2013*, section 41.

[2.74] Dictionary, definition of *plan of management*

omit

[2.75] Dictionary, definition of *proponent*

substitute

proponent, for a development proposal, for chapter 8 (Environmental impact statements and inquiries)—see section 206.

[2.76] Dictionary, definition of *protected*

omit

[2.77] Dictionary, new definitions

insert

protected native species, for schedule 4 (Development proposals in impact track because of need for EIS)—see the *Nature Conservation Act 2013*, section 98.

provisionally listed threatened species, for schedule 4 (Development proposals in impact track because of need for EIS)—see the *Nature Conservation Act 2013*, dictionary.

public consultation period, for a draft land management plan, for division 10.4.2 (Land management plans)—see section 323.

public land management plan, for an area of public land—see section 318.

Ramsar wetland, for schedule 4 (Development proposals in impact track because of need for EIS)—see the *Nature Conservation Act 2013*, section 176.

[2.78] Dictionary, definitions of *special protection status* and *technical variation*

omit

[2.79] Dictionary, new definition of *threatened ecological community*

insert

threatened ecological community, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, part 4.1, section 4.1.

[2.80] Dictionary, definition of *threatening process*

omit

[2.81] Dictionary, new definition of *tree curator*

insert

tree curator—see the [Tree Protection Act 2005](#), section 11A.

[2.82] Dictionary, definition of *variation*

substitute

variation, of a lease—

- (a) includes the surrender of the lease and the grant of a new lease to the same lessee, subject to different provisions, over land that—
 - (i) is all or part of the land comprised in the surrendered lease; and
 - (ii) is not in an area identified in the [territory plan](#) as a future urban area; and
- (b) without limiting paragraph (a), includes the surrender of a concessional lease and the grant of a new lease to the same lessee as a market value lease; and
- (c) includes the consolidation, or subdivision, of the lease within the meaning of section 234; but
- (d) does not include—
 - (i) the surrender of the lease and the grant of a further lease under section 254 (Grant of further leases); or

EXPOSURE DRAFT

- (ii) a variation to a deed that is incorporated into, or referred to in, the lease, if the deed is varied in a way that is provided for in the deed.

Note The terms ‘vary’ a lease and ‘lease variation’ have meanings corresponding to ‘variation of a lease’ (see [Legislation Act](#), s 157 (Defined terms—other parts of speech and grammatical forms)).

[2.83] Dictionary, definition of *vulnerable*

omit

[2.84] Dictionary, new definition of *vulnerable species*

insert

vulnerable species, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, part 4.1, section 4.1.

Part 2.12 Planning and Development Regulation 2008

[2.85] Schedule 1, section 1.1, definition of *clearing*

substitute

clearing native vegetation—see the *Nature Conservation Act 2013*, section 219 (What is *clearing* native vegetation?—pt 9.4).

[2.86] Schedule 1, section 1.1, definition of *native vegetation*

substitute

native vegetation—see the *Nature Conservation Act 2013*, section 217 (What is *native vegetation*?—pt 9.4).

[2.87] Schedule 1, section 1.4 (1), examples, 3rd dot point

substitute

- *Nature Conservation Act 2013*

[2.88] Schedule 1, section 1.85 (2) (b) and note

substitute

- (b) the development does not result in the clearing of more than 0.5ha of native vegetation in a native vegetation area; and

Note **Clearing** native vegetation—see the *Nature Conservation Act 2013*, s 219.
Native vegetation—see the *Nature Conservation Act 2013*, s 217.
Native vegetation area—see the *Nature Conservation Act 2013*, s 218.

[2.89] Schedule 1, section 1.90 (2), definition of *landscaping*, paragraph (a) and note

substitute

- (a) clearing more than 0.5ha of native vegetation in a native vegetation area;

Note **Clearing** native vegetation—see the *Nature Conservation Act 2013*, s 219.
Native vegetation—see the *Nature Conservation Act 2013*, s 217.
Native vegetation area—see the *Nature Conservation Act 2013*, s 218.

[2.90] Schedule 1, section 1.93 (1) (b) and note

substitute

- (b) the work does not result in the clearing of more than 0.5ha of native vegetation in a native vegetation area; and

Note **Clearing** native vegetation—see the *Nature Conservation Act 2013*, s 219.
Native vegetation—see the *Nature Conservation Act 2013*, s 217.
Native vegetation area—see the *Nature Conservation Act 2013*, s 218.

[2.91] Dictionary, definition of *clearing*

substitute

clearing native vegetation, for schedule 1 (Exemptions from requirement for development approval)—see the *Nature Conservation Act 2013*, section 219 (What is *clearing* native vegetation?—pt 9.4).

[2.92] Dictionary, definition of *native vegetation*

substitute

native vegetation, for an area, for schedule 1 (Exemptions from requirement for development approval)—see the *Nature Conservation Act 2013*, section 217 (What is *native vegetation*?—pt 9.4).

[2.93] Dictionary, new definition of *native vegetation area*

insert

native vegetation area, for schedule 1 (Exemptions from requirement for development approval)—see the *Nature Conservation Act 2013*, section 218 (What is a *native vegetation area*?—pt 9.4).

Part 2.13 Public Unleased Land Act 2013

[2.94] New section 19 (2A)

insert

- (2A) If the public unleased land is a reserve, the director-general must consult the conservator about the application.

[2.95] Section 21 (1) (b)

substitute

- (b) the damage is not authorised under—
- (i) an approval under this Act; or
- Examples—approvals that may authorise damage**
- 1 closed road approval
 - 2 work approval
- (ii) a public unleased land permit; or
 - (iii) a nature conservation licence under the *Nature Conservation Act 2013*, section 245 (What is a *nature conservation licence*?).

[2.96] Section 43 (4) (a)

substitute

- (a) holds a licence under—
- (i) the *Planning and Development Act 2007*, section 303 (Decision on licence applications for unleased land), to occupy or use the public unleased land; or

EXPOSURE DRAFT

- (ii) the *Nature Conservation Act 2013*, section 245 (What is a *nature conservation licence?*), authorising the person to carry on an activity on the land; and

[2.97] New section 43 (4A)

insert

- (4A) This section does not apply to a person carrying out an activity in a reserve if—
 - (a) an activities declaration under the *Nature Conservation Act 2013* is in force for the reserve, providing that the activity may be carried out in the reserve if stated directions or requirements are complied with; and
 - (b) the person complies with the stated directions or requirements.

[2.98] Section 45 (2) (b) (i), new note

insert

Note Some activities are not permitted in wilderness areas (see s 57 (2A)).

[2.99] New section 52A

insert

52A Suitability of activities—consultation with conservator

- (1) This section applies if—
 - (a) the director-general is making a decision about whether an activity is a suitable activity for a public unleased land permit; and
 - (b) the public unleased land is a reserve.

- (2) In making the decision, the director-general must consult the conservator.

[2.100] New section 57 (2A)

after the note, insert

- (2A) However, the director-general must not issue a public unleased land permit to carry on any of the following activities in a wilderness area:
- (a) erect a building, booth, stall, post, sign or other structure;
 - (b) supply goods or services.

[2.101] Dictionary, new definitions

insert

conservator—see the *Nature Conservation Act 2013*, dictionary.

reserve—see the *Nature Conservation Act 2013*, section 155 (What is a *reserve*?).

Note Reserves include wilderness areas, national parks, nature reserves, catchment areas and other areas of public land.

Part 2.14 Tree Protection Act 2005

[2.102] New section 7 (2A)

insert

- (2A) In deciding whether an area of land is to be declared as a built-up urban area under subsection (2), the Minister must consult the Minister administering the *Nature Conservation Act 2013*.

EXPOSURE DRAFT

[2.103] New part 2A

insert

Part 2A Tree curator

11A Tree curator—appointment

The director-general must appoint a public servant as the Tree Curator (the *tree curator*).

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

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

11B Tree curator—functions

- (1) The tree curator's main functions are—
 - (a) to coordinate and oversee the effective management and protection of trees in built-up urban areas; and
 - (b) to review proposals to remove trees from built-up urban areas.
- (2) The tree curator has any other function given to the tree curator under this Act or another territory law.
- (3) In exercising a function, the tree curator must have regard to—
 - (a) the objects of this Act; and
 - (b) the likelihood of—
 - (i) harm being caused to a member of the public; and
 - (ii) damage being caused to property.

[2.104] Section 111 (1)

after

Act

insert

or any other law

[2.105] Section 111 (as amended)

relocate as section 11C

[2.106] Dictionary, note 2

omit

- conservator of flora and fauna

[2.107] Dictionary, definition of *conservator*

omit

[2.108] Dictionary, new definition of *tree curator*

insert

tree curator—see section 11A.

EXPOSURE DRAFT

[2.109] Further amendments, mentions of *conservator*

omit

conservator

substitute

tree curator

in

- section 20
- sections 22 to 29
- sections 31 to 36
- sections 41 to 44
- sections 46 to 61
- sections 63 and 64
- sections 66 and 67
- section 70
- section 72
- sections 74 to 76
- section 79
- sections 81 to 83
- sections 105 to 107
- section 111

[2.110] Further amendments, mentions of *conservator's*

omit

conservator's

substitute

tree curator's

in

- section 32
- section 37
- section 53
- section 59
- sections 63 and 64
- section 70
- section 81
- section 83
- section 107
- section 111

EXPOSURE DRAFT

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)
- chief officer (rural fire service)
- chief officer (SES)
- contravene
- daily newspaper
- director-general (see s 163)
- disallowable instrument (see s 9)
- Executive
- exercise
- external territory
- fire and rescue
- function
- notifiable instrument (see s 10)
- penalty unit (see s 133)
- police officer
- reviewable decision notice
- rural fire service
- SES
- the Territory
- working day.

EXPOSURE DRAFT

accessing biological resources, for part 8.5 (Access to biological resources in reserves)—see section 193.

access provider, for biological resources in a reserve, for part 8.5 (Access to biological resources in reserves)—see section 192.

action plan, for a relevant species, relevant ecological community or key threatening process, for part 4.5 (Action plans)—see section 88.

activities, of an agency, for chapter 12 (Management agreements with utility suppliers, land developers, etc for public or unleased land)—see section 291.

activities declaration, for a reserve—see section 239.

activity information notice, for an activity, for chapter 11 (Nature conservation licences)—see section 253.

ACT parks and conservation service means the ACT parks and conservation service established under section 22.

agency, for chapter 12 (Management agreements with utility suppliers, land developers, etc for public or unleased land)—see section 291.

animal—see section 9.

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.

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

EXPOSURE DRAFT

(b) includes—

- (i) diversity within species and between species; and
- (ii) diversity of ecosystems.

biological resources, for part 8.5 (Access to biological resources in reserves)—see section 190.

built-up urban area, for division 6.1.3 (Offences—native plants)—see section 125.

cause serious or material harm—

- (a) for part 9.4 (Reserves—offences about clearing native vegetation)—see section 220; and
- (b) for part 9.5 (Reserves—offences about damaging land)—see section 228.

clearing native vegetation, for part 9.4 (Reserves—offences about clearing native vegetation)—see section 219.

closed reserve declaration, for a reserve, for part 10.2 (Prohibited and restricted activities)—see section 242.

connected, for part 13.2 (Enforcement by conservation officers)—see section 317.

conservation advice—see section 81.

conservation dependent species means a species included in the conservation dependent category on the threatened native species list.

conservation officer means a conservation officer mentioned in section 23.

conservator—see section 17.

conservator guidelines—see section 20.

EXPOSURE DRAFT

conservator's direction, for part 13.1 (Directions)—see section 311 (2).

controlled native species, for chapter 7 (Controlled native species management plans)—see section 143.

controlled native species management plan—see section 144.

critically endangered ecological community means an ecological community included in the critically endangered category on the threatened ecological communities list.

critically endangered species means a species included in the critically endangered category on 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 native tree, for division 6.1.3 (Offences—native plants)—see section 125; and
- (b) to land, for part 9.5 (Reserves—offences about damaging land)—see section 227.

data deficient species means a species included in the data deficient category on the protected native species list.

draft action plan, for a relevant species, relevant ecological community or key threatening process, for part 4.5 (Action plans)—see section 89.

draft controlled native species management plan, for a controlled native species, for chapter 7 (Controlled native species management plans)—see section 145.

EXPOSURE DRAFT

draft native species conservation plan, for part 5.3 (Native species conservation plans)—see section 103.

draft nature conservation strategy, for the ACT, for chapter 3 (Nature conservation strategy for the ACT)—see section 42.

draft Ramsar wetland management plan, for a Ramsar wetland, for part 8.4 (Ramsar wetlands management plans)—see section 178.

draft reserve management plan, for a reserve, for part 8.3 (Reserve management plans)—see section 162.

ecological community—see section 15.

ecosystem means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.

endangered ecological community means an ecological community included in the endangered category on the threatened ecological communities list.

endangered species means a species included in the endangered category on the threatened native species list.

evidence direction, for part 13.1 (Directions)—see section 299.

exempt animal—see section 140.

export an item, means take the item to another place for any purpose.

Examples—purpose

- 1 sale or trade
- 2 personal use
- 3 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).

EXPOSURE DRAFT

extinct in the wild species means a species included in the extinct in the wild category on the threatened native species list.

extinct species means a species included in the extinct category on the threatened native species list.

financial assurance condition, for chapter 11 (Nature conservation licences)—see section 261.

financial assurance considerations, for part 11.4 (Licences—financial assurance conditions)—see section 262.

genetic resources, for part 8.5 (Access to biological resources in reserves)—see section 190.

ground for regulatory action, against a licensee, for part 11.6 (Licences—regulatory action)—see section 280.

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

- 1 sale or trade
- 2 personal use
- 3 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.

EXPOSURE DRAFT

information direction, for part 13.1 (Directions)—see section 303 (2).

inspection notice, for a licence, for chapter 11 (Nature conservation licences)—see section 255.

interfere with an item, for division 6.1.2 (Offences—native animals)—see section 113.

item, for part 4.4 (Including, transferring and omitting items in list)—see section 69.

IUCN category, for a reserve, for part 8.2 (IUCN categories for reserves)—see section 157.

IUCN reserve management objectives, for an IUCN category, for part 8.2 (IUCN categories for reserves)—see section 159.

keep, an animal, means have charge or possession of the animal, either in captivity or in a domesticated state.

key threatening process—see section 64.

key threatening processes list—see section 65.

key threatening processes list criteria—see section 68.

lease—see the [Planning and Development Act 2007](#), section 235.

leave reserve direction, for part 13.1 (Directions)—see section 305 (2).

licence means a nature conservation licence.

licence number, for a licence, for chapter 11 (Nature conservation licences)—see section 260.

licence register, for part 11.7 (Licence—register, records and royalties), see section 287.

licensed activity, for a licence—see section 245.

EXPOSURE DRAFT

list, for part 4.4 (Including, transferring and omitting items in list)—see section 69.

listing advice—see section 75.

listing assessment—see section 74.

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

management agreement, for public or unleased land, for chapter 12 (Management agreements with utility suppliers, land developers, etc for public or unleased land)—see section 294.

management objectives, for public or unleased land, for chapter 12 (Management agreements with utility suppliers, land developers, etc for public or unleased land)—see section 293.

material harm, to a reserve—

- (a) for clearing native vegetation, for part 9.4 (Reserves—offences about clearing native vegetation)—see section 220; or
- (b) for damage to land, for part 9.5 (Reserves—offences about damaging land)—see section 228.

member—

- (a) of a species of animal—see section 16 (a); or
- (b) of a species of plant—see section 16 (b); or
- (c) of an ecological community—see section 16 (c).

minor amendment, of a list, for part 4.4 (Including, transferring and omitting items in list)—see section 82.

motor vehicle—see the *Road Transport (General) Act 1999*, dictionary.

EXPOSURE DRAFT

name and address direction, for part 13.1 (Directions)—see section 299 (2).

native animal—see section 10.

native plant—see section 12.

native species—see section 14.

native species conservation plan—see section 102.

native timber, for division 6.1.3 (Offences—native plants)—see section 125.

native tree, for division 6.1.3 (Offences—native plants)—see section 125.

native vegetation, for part 9.4 (Reserves—offences about clearing native vegetation)—see section 217.

native vegetation area, for part 9.4 (Reserves—offences about clearing native vegetation)—see section 218.

nature conservation licence—see section 245.

nature conservation strategy, for the ACT—see section 41.

nest, of a native animal, for division 6.1.2 (Offences—native animals)—see section 113.

nomination, for part 4.4 (Including, transferring and omitting items in list)—see section 69.

occupier, of premises, for part 13.2 (Enforcement by conservation officers)—see section 317.

offence, for part 13.2 (Enforcement by conservation officers)—see section 317.

organism includes—

- (a) a virus; and

EXPOSURE DRAFT

(b) the reproductive material of an organism; and

(c) an organism that has died.

personal information notice, for chapter 11 (Nature conservation licences)—see section 250.

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 11.

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 (Offences—native plants)—see section 125.

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

EXPOSURE DRAFT

(b) a vehicle; and

(c) a vessel; and

(d) an aircraft.

prohibited activity, for a reserve, for part 10.2 (Prohibited and restricted activities)—see section 239.

proposed new licensee, for a licence, for part 11.5 (Licences—amendment, transfer, renewal, etc)—see section 272.

protected native species—see section 98.

protected native species list—see section 99 (1).

provisionally listed threatened ecological community means an ecological community included in the provisional category on the threatened ecological communities list.

provisionally listed threatened species means a species included in the provisional category on the threatened native species list.

public consultation notice, for a nomination, for part 4.4 (Including, transferring and omitting items in list)—see section 73 (1).

public consultation period—

(a) for a draft action plan, for part 4.5 (Action plans)—see section 91 (2); and

(b) for a draft controlled native animal management plan, for chapter 7 (Controlled native species management plans)—see section 148 (2); and

(c) for a draft native species conservation plan, for part 5.3 (Native species conservation plans)—see section 106 (2); and

(d) for a draft nature conservation strategy, for chapter 3 (Nature conservation strategy for the ACT)—see section 44 (2); and

EXPOSURE DRAFT

- (e) for a draft Ramsar wetland management plan, for part 8.4 (Ramsar wetlands management plans)—see section 181 (2); and
- (f) for a draft reserve management plan, for part 8.3 (Reserve management plans)—see section 165 (2); and
- (g) for a nomination, for part 4.4 (Including, transferring and omitting items in list)—see section 73 (2).

public or unleased land, for chapter 12 (Management agreements with utility suppliers, land developers, etc for public or unleased land)—see section 292.

public unleased land permit—see the [Public Unleased Land Act 2013](#), section 40.

Ramsar wetland—see section 176.

Ramsar wetland management plan, for a Ramsar wetland, for part 8.4 (Ramsar wetlands management plans)—see section 177.

rare species means a species included in the rare category on the protected native species list.

regular migratory species, for part 4.5 (Action plans)—see section section 87.

regulatory action, against a licensee, for part 11.6 (Licences—regulatory action)—see section 281.

relevant ecological community, for part 4.5 (Action plans)—see section 87.

relevant species, for part 4.5 (Action plans)—see section 87.

repair damage direction, for part 9.3 (Reserves—repairing damage)—see section 214 (2).

reserve—see section 155.

EXPOSURE DRAFT

reserve management plan, for a reserve, for part 8.3 (Reserve management plans)—see section 161.

resource protection area, for chapter 10 (Reserves—prohibited and restricted activities)—see section 236.

resource protection area declaration, for a resource protection area, for part 10.1 (Resource protection areas)—see section 237.

restore excavation direction, for part 9.2 (Reserves—offences in wilderness areas)—see section 211 (2).

restricted activity, for a reserve, for part 10.2 (Prohibited and restricted activities)—see section 239.

restricted trade species means a species included in the restricted trade category on the protected native species list.

reviewable decision, for chapter 14 (Notification and review of decisions)—see section 340.

risk management plan notice, for a licence, for chapter 11 (Nature conservation licences)—see section 254.

scientific committee—see section 26.

sell, for part 6.1 (Offences)—see section 112.

serious harm, to a reserve—

- (a) for clearing native vegetation, for part 9.4 (Reserves—offences about clearing native vegetation)—see section 220; or
- (b) for damage to land, for part 9.5 (Reserves—offences about damaging land)—see section 228.

show cause notice, for a licensee, for part 11.6 (Licences—regulatory action)—see section 282.

special protection status, for a native species—see section 97.

EXPOSURE DRAFT

species—see section 13.

stop vehicle direction, for part 13.1 (Directions)—see section 307 (2).

suitability information—

- (a) about an activity, for chapter 11 (Nature conservation licences)—see section 252; or
- (b) about a person, for chapter 11 (Nature conservation licences)—see section 249.

suitable activity, for a licence, for chapter 11 (Nature conservation licences)—see section 251.

suitable person, to hold a licence, for chapter 11 (Nature conservation licences)—see section 248.

take, for part 6.1 (Offences)—see section 112.

threatened ecological communities list—see section 59.

threatened ecological communities list criteria—see section 62.

threatened ecological community—see section 58.

threatened native species—see section 53.

threatened native species list—see section 54.

threatened native species list criteria—see section 57.

threatening process—see section 63.

transfer, an item within a list, for part 4.4 (Including, transferring and omitting items in list)—see section 69.

treatment direction, for part 13.1 (Directions)—see section 313.

urgent direction, for part 13.1 (Directions)—see section 309.

vehicle includes vessel.

EXPOSURE DRAFT

vessel includes hovercraft.

vulnerable ecological community means an ecological community included in the vulnerable category on the threatened ecological communities list.

vulnerable species means a species included in the vulnerable category on the threatened native species list.

warrant, for part 13.2 (Enforcement by conservation officers)—see section 317.

wilderness area—see section 156.

EXPOSURE DRAFT

Endnotes

- 1 Presentation speech**
Presentation speech made in the Legislative Assembly on 2013.
 - 2 Notification**
Notified under the [Legislation Act](#) on 2013.
 - 3 Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.
-

© Australian Capital Territory 2013

EXPOSURE DRAFT