

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

NATURE CONSERVATION BILL 2014

EXPLANATORY STATEMENT

Circulated by authority of
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NATURE CONSERVATION BILL 2014

Introduction

This explanatory statement relates to the Nature Conservation Bill 2014 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

This statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the Courts.

Overview of the Bill

The legislation that has guided the ACT's approach to nature conservation and biodiversity protection is over thirty years old and has had a range of policy and technical amendments over time, in particular through development of subsidiary regulatory instruments. The result is fragmented nature conservation and biodiversity protection laws that are less transparent than they should be.

This Bill replaces the *Nature Conservation Act 1980*: the proposed Nature Conservation Act 2014 will be the primary ACT legislation for the protection and management of native plants and animals; the identification and protection of threatened species and ecological communities; management of national parks and nature reserves; and the conservation of the ACT's natural resources. The Bill is aimed at maintaining and improving the management of biodiversity in the ACT.

This Bill addresses several key issues outlined below.

Streamlining processes

The primary objective of the Bill is to streamline and update nature conservation processes and procedures to allow more efficient, flexible and effective application of nature conservation policy and to provide for increased transparency and accountability of Government processes. This includes providing objects to guide interpretation of the other provisions and aligning and integrating licensing and permit provisions to make them more consistent across different legislation.

Role of the Conservator

The changes to the role of the Conservator were informed by a consultancy by PriceWaterhouseCoopers (PWC), on the role of the Conservator. In relation to nature conservation and planning issues, the PWC Review recommended that: the Conservator adopts a more strategic approach to planning and development; the ACT Government considers whether the powers of the Conservator under the *Planning and Development Act 2007* should be strengthened¹ and more comprehensive reasons should be provided when planning and developments decisions are made.²

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1. The role of the Conservator in Planning and Development is subject to separate policy processes. This includes additional proposed roles for the Conservator under the Planning and Development Act regarding environmental offsets.
 2. Non-legislative changes are implemented to increase transparency by improving the quality of consultation with the Conservator on planning and development issues under the Planning and Development Act 2007. .

The changes in the Bill provide strengthened roles for the Conservator in nature conservation, particularly in relation to monitoring and review, and in developing guidelines which articulate how the Conservator will undertake their function. This might include for example, guidelines about monitoring and review, standardised techniques for surveying, guidelines for Action Plans etc.

Alignment of processes for listing threatened species and ecological communities

Statutory mechanisms for listing threatened species and ecological communities are aligned with those of the Commonwealth through this Bill, which largely reflects IUCN categories. The Bill provides for a range of processes that provide information about the value of biodiversity and its state. This provides the basis for environmental considerations to be taken into account in decision making, including informing land-use planning which is considered under the *Planning and Development Act 2007*. Alignment of listing processes helps to streamline the approach with that of the Commonwealth.

Management of reserves

The Bill ensures that the primary areas for conservation - wilderness areas, national parks and nature reserves - are managed for that purpose. The Bill ensures that other areas that are managed in association with reserves, albeit with another primary purpose, such as water catchments and special purpose reserves are able to be managed appropriately for their primary purpose, and consistently and sympathetically to adjoining reserves.

Plans and strategies

The Bill includes new facilitative measures for nature conservation such as Native Species Conservation Plans. The Bill enhances the statutory basis for management of issues that are important to conservation of the biological diversity of the ACT and the ecological integrity of lands with nature conservation values. It does this by giving statutory effect to subsidiary strategies and plans under the Bill including the Nature Conservation Strategy, Action Plans, Native Species Conservation Plans and Reserve Management Plans.

Other subsidiary plans with statutory effect, such as Controlled Native Species Management Plans, ensure that management of native species that cause damage is undertaken within a strategic context.

To increase transparency and accountability of Government processes, the Bill provides for appropriate public consultation processes on plans and strategies and also allows for minor amendments and periodic review of these subsidiary strategies and plans.

Once plans and strategies are in place there is an expectation that governments will take reasonable steps to implement them. This does not mean that plans and strategies should not include aspirational elements. Long-term plans and strategies sometimes need to include longer-term visions, which may depend on further information or additional resources that are not currently available. However, plans and strategies must be based on reasonable expectations that the majority of the plan and strategy can, and will, be achieved.

The Bill includes statutory responsibilities for monitoring biodiversity and review of key nature conservation plans and strategies.

Offences in the Bill and enforcement

The environmental offences, penalties and enforcement provisions have been reviewed against a best practice framework relevant to environmental legislation, namely that:

- offences and penalties should be relevant to environmental objectives and complement non-regulatory approaches;
- administrative sanctions should be considered before considering criminal sanctions;
- penalties should be proportionate to the seriousness of the offence;
- offences should be concisely and clearly described;
- penalties should be able to be readily enforced and provide effective deterrence;
- penalties should be comparable to those in other jurisdictions to avoid cross-border effects; and
- natural justice and human rights are considered.

The majority of the offences within the Bill are continued from the *Nature Conservation Act 1980*. The penalties have been reviewed and have been made consistent with comparable offences in other ACT legislation or with similar offences in other jurisdictions. Conservation Officers have been given similar powers to officers managing the *Fisheries Act 2000* and the *Environment Protection Act 1997*.

Some offences under the *Criminal Code 2002* (the Criminal Code) are also applicable. For instance, Part 3.8 of the Criminal Code has offences relating to impersonating a public official or obstructing, hindering, intimidating or resisting a public official in the exercise of his or her functions.

The most serious offences within the Bill relate to either clearing vegetation or damaging land in reserves without approval through a licence. Penalties for these offences are on a sliding scale, depending on whether or not the offending action was intentional, reckless or negligent. The penalties also reflect the seriousness of the damage with a higher level offence for clearing or damage which impacts on significant biodiversity assets. The range of offences for clearing and damaging land have not changed from what was in the *Nature Conservation Act 1980*, however, the penalties are now set at levels commensurate with other Australian jurisdictions. New fault elements of 'knowingly clearing' or 'knowingly damaging' land in reserves has been introduced at a higher penalty commensurate to the level of penalty for similar offences in the *Environment Protection Act 1997*. A further change has been to remove high level strict liability offences of clearing native vegetation and damaging land causing material harm because these were inconsistent with the *Guide for Framing Offences*.

A tiered system of penalties can improve enforcement, provide flexibility and increase the range of regulatory options. There is an option to proceed under a fault liability limb of an offence if there is adequate evidence of the requisite mental element or under a strict liability limb where evidence of such intent is insufficient. Lower penalties for strict liability offences provide a safeguard for the environment affected.

The Bill continues the range of offences that relate to native species protections and offences about non-exempt animals. The provisions about native species and non-exempt animals are long-standing protections that indicate that these actions are an offence unless the person has a nature conservation licence. Other exceptions also apply including, for some offences, for which an approval was provided by a Development Approval. Exceptions also apply to actions taken in accordance with a Controlled Native Species Management Plan. Penalty levels are brought into line with comparable offences in NSW or other jurisdictions through this Bill. A penalty unit is defined in the *Legislation Act 2001*.

Strict liability offences

Some offences relating to actions in reserves that are restricted or prohibited are strict liability offences. In addition, there are strict liability offences relating to: failing to abide by a conservation direction; failing to display a licence for selling animals and protected plants; and for importing and exporting plants without a plant tag. A strict liability offence also applies to interfering with a nest and feeding an animal in a reserve.

A strict liability offence under Section 23 of the Criminal Code means that there are no fault elements for any of the physical elements of the offence. That means that conduct alone is sufficient to make the defendant culpable. However, the mistake of fact defence expressly applies to strict liability as does the other defences in Part 2.3 of the Criminal Code. Section 23 (3) of the Criminal Code provides that other defences may still be available for use in strict liability offences. Defences such as intervening conduct or event (see s 39 of the Criminal Code) are available.

Strict liability offences are an efficient and cost effective deterrent for breaches of regulatory provisions. They are appropriate where the Conservation Officer is in a position to readily assess the truth of a matter and determine that an offence has been committed. They can be dealt with by infringement notice which is a cheaper and less time consuming alternative to a Court prosecution. The provision for strict liability offences is consistent with similar enacted ACT legislation: the *Heritage Act 2004* and *Tree Protection Act 2005* both provide for strict liability offences. Strict liability offences are also used for environmental protection in other jurisdictions, including the Commonwealth.

Strict liability is also justified where a person agrees to conditions attached to a licence and then fails to comply with them. The conditions are written on the licence to ensure that the licensee is fully aware of their obligations. If these conditions are not met then an offence is easy to prove.

A strict liability offence for failing to comply with conservation direction is also easily justified. The landholder is provided with a copy of the conditions as part of the approval process. The directions are written in plain English and are unambiguous. The person involved is aware that the directions need to be complied with within a particular time frame. If the conservation directions are not carried out then an offence is easily made out.

Strict liability is beneficial where offences need to be dealt with expeditiously to ensure confidence in the regulatory scheme. For example, if someone is doing something in a reserve that could damage the environment or harm wildlife, or is disturbing a nest, the public would expect effective and quick action by the Conservation Officer to rectify the situation.

The use of strict liability was carefully considered in developing the offences. The rationale for their inclusion was to protect the environment, or in a few cases, to protect the health and safety of the public.

Human rights issues

Right to privacy and reputation (Human Rights Act 2004 s 12) and Right to liberty and security of person (Human Rights Act 2004 s 18).

Clause 240 and clause 249 allow the Court to order a person convicted of an offence to publicise a contravention of the Act and its environmental consequences and any remedial action taken or ordered in relation to the contravention. The inclusion of this clause may raise human rights issues for individuals in that they limit, in particular, Section 12 of the *Human Rights Act 2004* – the right to privacy and reputation. Section 28 of the *Human Rights Act 2004* allows for reasonable

limitations on protected rights, as long as the limitation is lawful and can be demonstrably justified.

It is considered that this provision is reasonable because it relates to proven serious offences on public land in conservation reserves, where the public interest in both the contravention and the rectification is likely to be very high. It is expected that provision would normally be used for contravention of this Section of the Act by Corporations; however, the decision would be made by the Court, taking into account the circumstances of the contravention.

The provision is intended to have a deterrence effect through the publication of the offence and the consequences as a way of encouraging compliance by others, as well as complementing options such as restoration orders.

The inclusion of orders about rectification of the clearing or damage also aims to have an educative effect by raising awareness about protection mechanisms as well as informing the community about how a serious environmental issue has been rectified. This provision only relates to serious offences: there are no readily identifiable less restrictive alternatives, as the provisions already provide for significant fines, imprisonment and/or restoration orders. The limitation on human rights is considered reasonable in these circumstances.

Similar provisions are found in Section 498, *Environment Protection and Biodiversity Conservation Act 1999*.

Chapter 13, Enforcement provisions, provides for a number of new powers for enforcement officers authorised under the Act. These provisions include measures for people to give names and addresses, to produce a licence, records, or other information. The provisions also include powers to enter premises under certain conditions.

The inclusion of these clauses may raise human rights issues for individuals in that they limit, in particular, Sections 12 and 18 of the *Human Rights Act 2004* – the right to privacy and reputation and the right to liberty and security of person.

Section 28 of the *Human Rights Act 2004* allows for reasonable limitations on protected rights, as long as the limitation is lawful and can be demonstrably justified.

A number of people and businesses keep Australian wildlife under licence, or when the animal is exempted from requiring a licence. The keeping of wildlife (apart from wildlife rehabilitation purposes) is generally subject to the wildlife being sourced from captive bred populations, or from sustainable population management. In many countries without adequate regulation the capture of wild animals or the collection of native plants can lead to significant declines in species populations, including of threatened species. Unrestricted and unenforced trade in wildlife is of international concern. It is important to ensure that native species that are kept have not been taken or bought illegally. In addition, the conditions in which native animals are kept are important to the welfare and survival of the individual animal.

Conservation Officers must be provided with an adequately deterrent scheme to ensure the protection of native species. It is also crucial that Conservation Officers have the authority and ability to act quickly and decisively, particularly in circumstances where delay may result in harm to an individual of the species, or where there may be significant impacts through illegal trade and/or keeping native species.

The objective of the legislation can only be achieved by providing adequate powers to Conservation Officers to enter premises to investigate and seize wildlife, for example, and ask people to give names and addresses, to produce a licence, records, or other information.

There is a strong community interest in affording protection against such activities. The community consultation in relation to the Bill indicated that the community, in general, wants the legislation to provide for enhanced compliance.

It is considered that the limitation of human rights in regard to privacy and reputation and to liberty and security of person serves a legitimate objective, it is rationally connected to achieving that objective and it is the least restrictive means of achieving that objective.

Freedom of movement (Human Rights Act 2004 s 13)

A new provision allows the declaration of a reserve, or part of a reserve as a Resource Protection Area (Part 10.1). This declaration would result in activities in a reserve being restricted or prohibited for a period of time that would allow a degraded environment to recover, or to protecting sensitive breeding habitat from disturbance. The aim of this clause is to protect the environment. This could be argued to trespass on the human right to move freely within the ACT (*Human Rights Act 2004 s 13, Freedom of Movement*).

However, it is considered permissible as a reasonable limitation under Section 28 of the *Human Rights Act 2004*. Section 28 requires that any limitation or restriction of rights must pursue a legitimate objective and there must be a reasonable relationship of proportionality between the means employed and the objective sought to be realised. In assessing whether rights have been trespassed upon within permissible limits it is necessary to consider the objective of the offence and whether the trespass is proportionate to the objective served by the offence provision.

One of the biggest issues facing Australia is the irreversible loss of biodiversity. This is likely to be of greater concern under climate change. The Conservator of Flora and Fauna (the Conservator) and Conservation Officers need the ability to close areas of reserves that contain significant biodiversity to ensure the protection of biodiversity, to allow areas of biodiversity to recover in order to avoid irrecoverable losses through extinction, and or to recover ecosystems before they reach thresholds from which a functioning ecosystem cannot be re-established.

The process of Ministerial declaration of a Resource Protection Area aims to provide the public with the reasons for the limitation on the right to freedom of movement. The declaration may only need to be in place until the restoration objective is achieved, or in the case of sensitive breeding habitat may need to apply seasonally over long periods of time. Because areas may have restricted access over long periods, the declaration is subject to periodic review.

An ability to close reserves for operational or human safety purposes is a current provision of the *Nature Conservation Act 1980* that has been retained to provide for short-term closures of reserves, for example when there are concerns about extreme weather or because of high fire danger, or when operations are occurring that create an unsafe environment for the general public.

Taking Part in Public Life (Human Rights Act 2004, section 17)

The Bill aligns with the right to take part in public life (*Human Rights Act 2004, s 17*), by increasing the ACT community's level of consultation on a range of plans and strategies. The Bill expressly provides for alternative approaches to communication for people with particular communication needs.

The Bill also provides citizens with greater opportunities to access information relating to biodiversity by requiring the Conservator to publish a number of reports and reviews.

Presumption of innocence (Human Rights Act 2004 s 22)

The strict liability offences could be argued to trespass unduly on personal rights and liberties and be a limitation on the right to be presumed innocent under Section 22 of the *Human Rights Act 2004*. However, it is considered permissible as a reasonable limitation under Section 28 of the *Human Rights Act 2004* which provides that human rights may be subject only to reasonable limits set by Territory laws that can be demonstrably justified in a free and democratic society. In effect, Section 28 requires that any limitation or restriction of rights must pursue a legitimate objective and there must be a reasonable relationship of proportionality between the means employed and the objective sought to be realised.

Of necessity, the application of the *Human Rights Act 2004* in circumstances such as these does require some value judgments to be made. A judgment must be made about the value to society of the presumption of innocence as opposed to the protection of the environment, and the protection of human health and safety.

The objective of the legislation can only be achieved by removing the need for intent by way of strict liability offences because the purpose of the provisions is not to punish wrongdoing but to protect the environment. It is considered that the limitation in the strict liability offences serves a legitimate objective, it is rationally connected to achieving that objective and it is the least restrictive means of achieving that objective. It is also crucial that Conservation Officers have the ability to act quickly and decisively, particularly in circumstances where delay may result in irreparable damage or loss. There is a strong community interest in affording protection for the environment.

To facilitate consistency with the *Human Rights Act 2004*, strict liability offences only impose an evidential burden on the defendant. Strict liability offences do not lead to a reversal in the onus of proof. Such offences require the prosecution to prove the elements of the offence beyond reasonable doubt. It is then open to a defendant to raise defences and to bear an evidential burden only as to their existence. An evidential burden means that a defendant need only point to evidence that suggests a reasonable possibility that the matter in question exists. It is lower than a legal burden and is less of a limitation on the presumption of innocence. The prosecution must then disprove the existence of any defence beyond reasonable doubt.

In addition, if strict liability applies, the defence of mistake of fact and other defences under the Criminal Code such as intervening conduct or event (s 39) may be available. Another indication that the strict liability offences are a reasonable limitation under section 28 of the *Human Rights Act 2004* is the low maximum penalty of 50 penalty units and no imprisonment. There are three strict liability offences that do not meet this criterion at Clauses 236, 245 and 326. The Explanatory Statement for those clauses identifies the reason why a higher penalty is justified.

Costs and benefits

The costs and benefits of environmental regulation are difficult to assess because protection of species and ecosystems does not have a monetary value. Although there are techniques that can provide ways of valuing biodiversity, these assessments are largely situational. For example, providing a value for the existence of a particular species or an assessment of the value of ecosystem services depends upon the values the community holds and the particular services provided by a resource.

Nevertheless, there have been some estimates of the global value of ecosystem services, which are one value of biodiversity. The maintenance of our natural environment is critical to the provision of ecosystem services including the quality of air, water and soil.³ The value of ecosystem services that nature provides is significant. The United Nations Environment Program report, *Dead planet, living planet: Biodiversity and ecosystem restoration for sustainable development* (2010), notes that, globally, between US\$21 trillion and US\$72 trillion a year of essential services are provided by ecosystems.⁴

A Regulation Impact Statement has been prepared on the costs and impacts of the Bill and is available at www.environment.act.gov.au.

This Bill has no significant revenue impacts or additional costs of administration. The provisions of the Bill are largely procedural. Many of the provisions are aimed at providing additional transparency and accountability of government decision making. Associated costs of an administrative nature will be met from existing resources and budgetary allocations. Many actions, such as monitoring and review already occur with the amendments providing a statutory framework.

Climate change impacts

There are minimal climate change impacts from this Bill itself. The measures in the Bill are largely procedural, or facilitative. Some processes in the Bill address remediation of damage caused by clearing native vegetation etc, but as damage needs to occur, remediation after the event would result in neutral climate change impacts over time.

Subsidiary instruments such as the Nature Conservation Strategy and Action Plans have a strong climate change adaptation focus, but the facilitative provisions themselves have no climate change impact, either positive or negative.

³ Australian Government Response to the Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999.

⁴ Australian Government Response to the Report of the Independent Review of the Environment Protection and Biodiversity Conservation ACT 1999.

Bill provisions in detail

Chapter 1 Preliminary

Overview

This part provides the context in which the Act is proposed to operate.

A new objects provision is proposed. Providing objects for legislation represents best practice in jurisprudence. Objects guide the intent and interpretation of provisions, including when sanctions are imposed by a Court. The objects help to guide decision making under the Act, and guide the development of strategies and plans.

This part also describes the relationship of this Bill to other ACT laws.

This part also provides some important concepts about what a plant and animal are, what a species is and what an ecological community is. It also includes a definition of biodiversity, nature and nature conservation.

Part 1.1 Preliminary

Clause 1. Name of Act

This clause indicates the name of the Act. This Bill, if passed, will become the Nature Conservation Act 2014.

Clause 2. Commencement

This clause indicates the time of commencement of the Act. This Bill provides for a delayed commencement. This aims to provide sufficient time for subsidiary regulation and instruments to be prepared; for websites and signage to be updated and for information about the Act to be sent to relevant people such as existing licence and permit holders.

Clause 3. Dictionary

This clause indicates that the dictionary is part of the Act.

Clause 4. Notes

This clause indicates that notes are explanatory and not part of the Act.

Clause 5. Offences against Act—application of Criminal Code etc

This clause notes that other legislation applies in relation to offences against this Act. This particularly refers to the application of the *Criminal Code 2002* and *Legislation Act 2001*.

Clause 6. Objects of Act

This clause provides for the objects of the Act. Objects guide the intent and interpretation of provisions, including when sanctions are imposed by a Court. The objects describe the elements of nature covered by the Act, such as species, communities, diversity within those species and communities, ecological processes and ecological connectivity. The objects also describe the mechanisms for conserving them, including subsidiary strategies and plans that outline restoration, land management, community and indigenous partnerships, education and research

activities that help to achieve the objects of the Act. The objects recognise public participation in nature conservation.

The objects of the Act are achieved through implementation of the range of statutory strategies and plans made under the Act, as well as through the arrangements for licencing of actions and offences and penalties when actions are taken outside of the licencing and permitting arrangements.

In exercising a function under the Act, the Minister must have regard to the objects of the Act.

Part 1.2 Relationship to other laws

Clause 7. Application of Act to Emergencies Act 2004

This clause notes that the *Emergencies Act 2004* has precedence over this Act where a person is exercising a function of the *Emergencies Act 2004* for the purpose of protecting life or property and controlling, extinguishing or preventing the spread of a fire.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s.5).

Clause 8. Relationship to environment laws

This Clause provides an understanding of the relationship of this Act to other ACT environment laws. This provision reflects similar provisions within the *Nature Conservation Act 1980* (s.6).

Part 1.3 Important concepts

Clause 9. What is nature?

This clause provides a definition of nature. The term nature is a broad term that includes biodiversity. The term biodiversity only includes biotic elements of nature; it does not include broader elements of the ecosystem, such as soil and water.

Clause 10. What is conservation?

This clause provides a definition of conservation. Conservation means the protection and maintenance of nature while allowing for its sustainable use.

Clause 11. What is an animal?

This clause provides guidance on the definition of an 'animal' and includes important concepts about the Act referring to animals that are dead, as well as alive, and includes reference to parts of animals such as skin, feathers, horns, shell and egg yolk.

The Bill is not meant to apply to humans and excludes them as animals.

The Bill excludes non-protected fish and invertebrates as animals. While all fish and invertebrates are animals, they are not protected under this Act, except when they are given special protection or protected status. In part, this is because other Acts such as the *Fisheries Act 2000* also apply to the management of fish species. Fishing and collection of invertebrates may also be activities that are regulated in reserves, for example, limiting fishing in particular areas of a reserve.

Clause 12. What is a native animal?

This clause provides a definition of 'native animal' for the purpose of the Act. The clause aims to reduce confusion about what should be considered a native animal. Some animals are considered

to be native because they are indigenous to Australia or were introduced by Aboriginal people before European settlement. The definition also needs to provide for migratory species which are only located in Australia at certain times, but are also considered native animals. The definition excludes pest animals: these are covered under the *Pest Plants and Animals Act 2005*.

Clause 13. What is a plant?

This clause provides guidance on the definition of a ‘plant’ and includes important concepts about the Act referring to all members of the plant kingdom or fungus kingdom and the definition includes a part of a plant and seeds and other plant reproductive material.

Clause 14. What is a native plant?

This clause provides a definition of ‘native plant’ for the purpose of the Act. The clause aims to reduce confusion about what should be considered a native plant. Some plants are considered to be native because they are indigenous to Australia or were introduced by Aboriginal people before European settlement. The definition excludes pest plants: these are covered under the *Pest Plants and Animals Act 2005*.

Clause 15. What is a species?

This clause provides a definition of a ‘species’. The definition provides a regulation making power to declare a group of organisms a species for the purposes of the Act. This provides for situation where the organisms require some protection or management but the taxonomy is not fully settled to definitively say that the species is a separate species.

This is similar to a provision within the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Clause 16. What is a native species?

This clause provides a definition of a ‘native species’. Native species means a group of native animals (including protected fish and protected invertebrates) or native plants that can interbreed to produce fertile offspring. The definition also references species that show common genetic characteristics.

The definition provides a regulation making power to declare a group of organisms a species for the purpose of the Act. This provides for situations where the taxonomy of whether it is a separate species is not fully settled.

This Bill proposes that a regulation can also provide that a species is not a native species for the purpose of the Act. This aims to provide additional regulatory certainty in situations where the taxonomy is not clear, or is contested. For example, a species of bird has arrived in Australia and it is unclear whether it has arrived by its own means (thus considered a native migratory species) or as an introduced species as a stowaway (potentially a pest animal). The Act could determine whether it is to be treated as a native species or as a pest species. This is an important provision given that significant penalties exist for harming or killing a native animal.

These concepts are similar to those within the Commonwealth’s EPBC Act.

Clause 17. What is an ecological community?

This clause provides a definition of an ‘ecological community’.

Clause 18. What is a member of a species or ecological community?

This clause clarifies that a ‘member of a species or ecological community’ includes living members, dead animals and reproductive material such as eggs or seeds. Dead elements are parts of a functioning ecosystem and they are included because of that.

Clause 19. Meaning of Biodiversity

This clause provides a definition of biodiversity for the purpose of the Act. Biodiversity includes diversity within species (genetic diversity) and between species, and includes the diversity of ecosystems. The term biodiversity encapsulates the living components of ecosystems. This reflects the definition within *the Environment Protection and Biodiversity Conservation Act 1999*.

The term ‘nature’ has a broader meaning as it also includes non-living parts of ecosystems such as soil and rock which are also protected in reserves.

Chapter 2 Administration

Overview

The proposed Bill will distribute responsibilities for administration of the Act to reflect similar levels of decision making currently in place. The Minister is responsible for strategic decision making under the Act, and the relevant Director-General, the Conservator and Parks and Conservation Service are responsible for the Act's implementation.

- The Minister is responsible for appointing the Scientific Committee, directing the Scientific Committee, declaring threatened species and ecological communities, approving the Nature Conservation Strategy, declaring species as controlled native species and declaring areas as Resource Protection Areas.
- The Director-General is responsible for appointing the Conservator and Conservation Officers, and the Secretary to the Scientific Committee, and for issuing identity cards.
- The Conservator is primarily responsible for implementing decisions made by the relevant Minister. This involves preparing and implementing the Nature Conservation Strategy, Action Plans, Native Species Conservation Plans and Controlled Native Species Management Plans; monitoring biodiversity, deciding whether licences should be issued and issuing conservation directions. The Conservator is supported by the Parks and Conservation Service and other officers as needed.
- The Scientific Committee provides scientific advice to the Minister and to the Conservator and is responsible for making recommendations about protected matter listings, including threatened species and ecological communities.
- The Parks and Conservation Service support the Conservator in the exercise of their responsibilities and for enforcement of the Act. As land Custodian, the Parks and Conservation Service is responsible for preparing and implementing Reserve Management Plans for conservation reserves. The custodian is also responsible, as is the Conservator, for implementing Controlled Native Species Management Plans.
- The Custodian is the custodian of unleased land or public land established under Section 333 of the *Planning and Development Act 2007*. In many cases, particularly for conservation reserves, the custodian is within the same administrative unit as the Parks and Conservation Service.

Part 2.1 Conservator of Flora and Fauna

Clause 20. Conservator—appointment

This clause provides for the appointment of a public servant as the Conservator of Flora and Fauna. The Conservator has a range of statutory functions under the Act.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 7).

A new sub clause provides that in appointing the Conservator, the Director-General can only appoint a conservator if satisfied that the person has suitable qualifications or experience to exercise the functions during the term of the appointment.

Clause 21. Conservator—functions

This Clause provides for additional Conservator functions to increase the accountability of the function.

This clause establishes that the main functions of the Conservator are to develop and oversee policies, programs and plans for the effective conservation and management of nature in the ACT.

The Bill requires the Conservator to monitor the state of nature conservation in the ACT and to contribute Information to the ACT State of the Environment Report. . How the Conservator will monitor elements of nature conservation would be articulated in a biennial Biodiversity Research and Monitoring Program.

The Conservator is required to not act in-consistently with the objects of the Act, the Nature Conservation Strategy and any conservator guidelines when exercising functions under the Act.

This clause indicates that the Conservator may also take account of the findings of the biodiversity research and monitoring program, actions plans, reserve management plans and any response to the state of the Environment Report and investigations by the Commissioner for Sustainability and the Environment.

The Conservator has other functions including issuing of licences and conservation directions.

The Conservator also has other functions established under other pieces of legislation.

Clause 22. Conservator—delegation

This clause provides for the Conservator to delegate any of the Conservator’s function to a Conservation Officer.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 11).

Clause 23. Conservator—guidelines

These provisions enable the Conservator to develop and publish guidelines that articulate the processes and priorities that will inform Conservator decision making under the Act. The types of guidelines that the Conservator might make include:

- on appropriate survey methodologies for threatened species assessment;
- for writing Action Plans, Native Species Conservation Plans and Controlled Native Species Management Plans;
- on the scope, use and monitoring of Action Plans;
- for ecological restoration; and
- for management of threatened species breeding programs, etc.

This provision aims to provide additional transparency and certainty about the Conservator functions and how they will be undertaken.

The Conservator is required to consult with the Scientific Committee on draft Conservator Guidelines.

Clause 24. Meaning of biodiversity research and monitoring program – pt 2.1

This clause provides a definition of the biodiversity research and monitoring program which gives effect to the Conservator’s responsibilities to monitor biodiversity.

Clause 25. Biodiversity research and monitoring program—conservator to prepare

This clause provides a responsibility to the Conservator to prepare and implement a biennial research and monitoring program that sets out how the Conservator will monitor the state of nature conservation in the ACT and the effective management of nature conservation.

It is not possible to monitor all nature conservation in detail. The intent is for the Conservator to monitor nature conservation generally, rather than comprehensively. This provision aims to increase accountability by ensuring that monitoring of nature conservation and programs continues to occur as a statutory responsibility.

In developing the Program the Conservator must:

- consult with the Scientific Committee on priorities for the program and appropriate methods and approaches to monitoring;
- consider the role of community organisation in monitoring activities; and
- Consider arrangements for sharing and transferring data with other entities.

Monitoring and review are fundamental elements of robust management. While data has been collected about aspects of the natural environment from time to time, there are few examples of systematic ongoing monitoring that could be used to evaluate the effectiveness and efficiency of management. The need for monitoring both the state of nature conservation and the effectiveness of Action Plans was a common theme in consultation on the Review of the Nature Conservation Act 1980 Discussion Paper. The need has also been identified in the past by the ACT Commissioner for Sustainability and the Environment. The Conservator would be required to use information from the Research and Monitoring Program, as well as any other relevant information, when providing advice or making decisions under the Act.

Clause 26. Biodiversity research and monitoring program—conservator to implement

This clause provides that the Conservator must take reasonable steps to carry out a nature conservation monitoring program and may commission another entity to implement all or part of the program. The Conservator is required to report on the program and make the report publically accessible.

In reporting on the program, the Conservator does not need to make specific details about locations of species available if this could contribute to additional threats to the species.

Part 2.2 ACT Parks and Conservation Service

Clause 27. ACT Parks and Conservation Service - establishment

This clause establishes the Parks and Conservation Service and identifies that it is the role of the Parks and Conservation Service to assist the Conservator in the exercise of the functions of the Conservator under this Act. The Clause also establishes that it is the role of the Parks and Conservation Service to assist the Custodian in the Custodian's functions for reserves managed under this Bill.

While the ACT Parks and Conservation Service is made up of Conservation Officers, not all Conservation Officers are part of the ACT Parks and Conservation Service. Some Conservation Officers support the Conservator by undertaking research and monitoring or other activities which are not directly engaged in the administrative unit identified as the Parks and Conservation Service, currently residing in the Territory and Municipal Services Directorate.

Part 2.3 Conservation Officers

Clause 28. Conservation Officers - appointment

This clause makes provision for the Director-General to appoint a person as a Conservation Officer. The Conservator is also a Conservation Officer. The function of Conservation Officers is to assist the Conservator in the functions of the Conservator. This means that the primary function of Conservation Officers is to provide effective conservation and management of nature in the ACT.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 8).

Clause 29. Conservation Officers - Identity cards

This clause makes provision for the Director-General to provide a Conservation Officer with a Conservation Officer identity card stating the person's name and other details. The clause provides a regulation making power to require anything else that might be required for an identity card. This aims to provide some flexibility if, for example, best practice indicates that something else needs to be included on the identity card. The clause provides that identify cards must be returned when the person ceases to be a Conservation Officer.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 9).

Clause 30. Conservation Officers - Power not to be exercised before identity card shown

This clause provides that a Conservation Officer cannot exercise a power unless the Conservation Officer shows their identity card. This aims to ensure that responsibilities are exercised appropriately.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 131). It also reflects provisions within the *Public Unleased Land Act 2013* (s 91).

Part 2.4 Scientific Committee

Clause 31. Scientific Committee—establishment

This clause establishes the Scientific Committee.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 13).

Clause 32. Scientific Committee—functions

This clause establishes that it is the role of the Scientific Committee to advise the Minister and the Conservator about scientific aspects of nature conservation. This clause provides a new responsibility for the Scientific Committee to provide advice to the Conservator as well as to the Minister. The Scientific Committee is required to have significant expertise in the conservation of threatened species and ecological communities and makes it clear that this expertise can be used by the Conservator in exercising their functions.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 14).

Clause 33. Scientific Committee—Minister's directions

This clause provides that the Minister may provide direction to the Committee to provide advice on a nature conservation issue or to assess the status of a particular species.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 15).

Clause 34. Scientific Committee—membership

This clause establishes that the Scientific Committee is made up of seven members who are appointed by the Minister.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 17).

Clause 35. Scientific Committee—appointment of members

This clause provides that the Scientific Committee is made up of seven members. At least four members cannot be public servants. This aims to avoid conflicts of interest by ensuring that a majority of members of the Committee are not employed within Government, whilst also recognising that ecological expertise is often found from within Government research organisations.

The clause provides that appointments to the Committee must have appropriate scientific expertise in biology, ecology conservation science or conservation management. This ensures that the advice provided to the Minister and the Conservator is based on science.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 17).

Clause 36. Scientific Committee—chair and deputy chair

This clause provides for the Minister to appoint a chair and deputy chair of the Scientific Committee, noting that the chair and deputy chair must not be public servants. This aims to provide an independent head of the Committee.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 18).

Clause 37. Scientific Committee—secretary

This clause provides that the Director-General must nominate a public servant to be secretary of the Scientific Committee. The role of the Secretary is to manage the business of the Committee. The Secretary is not a member of the Committee.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 19).

Clause 38. Scientific Committee—ending appointments

This clause provides that the Minister may end the appointment of a member of the Scientific Committee in a range of circumstances. Previously the Minister was obliged to end appointments in the circumstances prescribed in the Act. The provision now provides some discretion to end appointments to allow the particular circumstances to be taken into account.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 22).

Clause 39. Scientific Committee—disclosure of interests

This clause requires members to disclose interests in any issues being considered, or about to be considered. The clause provides processes for dealing with interests if they occur. The Act identifies the range of interests that must be disclosed including direct and indirect interests.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 21).

Clause 40. Scientific Committee—meetings

This clause sets out the processes for meetings of the Scientific Committee. The clause proposes flexibility for the Committee to decide when and where meetings are to be held so long as the Committee meets as often as is needed for the Committee to efficiently carry out its functions and if asked by the Minister.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 23).

Clause 41. Scientific Committee—presiding member at meetings

This clause sets out the processes for chairing of meetings of the Scientific Committee. The clause indicates that the chair presides at all meetings at which the chair is present with the deputy chair presiding if the chair is absent. In other circumstances the Committee can decide who will preside. This aims to provide for the Committee to meet in circumstances where neither the chair nor deputy chair is available, and there are matters that need to be considered by the Committee in a timely manner.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 24).

Clause 42. Scientific Committee—quorum at meetings

This clause provides that meetings of the Scientific Committee can only go ahead where at least half of the members appointed are present. This aims to ensure that matters considered by the Committee and recommendations are considered by a majority of the Committee.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 25).

Clause 43. Scientific Committee—voting at meetings

This clause provides the procedures for voting at meetings of the Scientific Committee. Each matter to be decided by the Committee is decided by a majority of the votes of the members present with each member having a vote on the issues. Where the votes are equal, the member presiding has a deciding vote.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 24).

Clause 44. Scientific Committee—conduct of meetings

This clause sets out that the Scientific Committee may conduct its proceedings including its meetings as it considers appropriate, but must keep minutes. The clause proposes flexibility for the Scientific Committee to decide its own processes for the matters to consider.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 24).

Part 2.5 Advisory committees

Clause 45. Advisory committees

This clause provides that the Minister may set up advisory committees that the Minister considers necessary. The Clause provides that the committee is subject to the direction of the Minister in the exercise of their functions.

This clause mirrors provisions within the *Human Rights Commission Act 2004* (s 19c) and the *Cultural Facilities Corporation Act 1998* (s 8).

Chapter 3 Nature Conservation Strategy for the ACT

Overview

Provisions relating to the Nature Conservation Strategy are similar to those that were within the *Nature Conservation Act 1980*. The primary changes to the provisions about the Nature Conservation Strategy from those within the 1980 Act relate to matters that must be considered in developing a Nature Conservation Strategy.

Additional minor changes provide for part of an adopted and current strategy to be amended prior to its replacement with a completely revised strategy at the end of its expected life. Currently, once a Nature Conservation Strategy has commenced there is no provision to allow it to be amended.

A Nature Conservation Strategy has recently been finalised. Transitional arrangements are made to reflect that this strategy will become a strategy under the new Act.

Clause 46. What is the Nature Conservation Strategy for the ACT?

This clause provides a definition of the Nature Conservation Strategy for the purpose of the Act. The draft Strategy becomes the Strategy when the Minister approves and when an approved Strategy has minor amendments that are approved.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 26).

Clause 47. What is a draft Nature Conservation Strategy?

This clause provides a definition of a 'draft Nature Conservation Strategy' for the purposes of the Act. A draft nature conservation strategy includes proposals about native species and ecosystems. The strategy must also include strategies to address the potential and actual impacts of climate change. Requiring the Conservator to expressly consider climate change in the Nature Conservation Strategy helps to deliver against Action 17 of Weathering the Change Action Plan 2 which indicates that "The ACT Government will continue to assess the potential impacts of climate change on ecological systems in the ACT and the surrounding region and integrate this knowledge into environmental management and development planning decisions to ensure our natural environment is conserved and enhanced".

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 26).

Clause 48. Draft Nature Conservation Strategy—Conservator to prepare

This clause sets out the responsibility for the Conservator to prepare a draft Nature Conservation Strategy for the ACT.

In preparing the Nature Conservation Strategy, the Conservator must consider:

- landscape scale approaches across tenures;
- restoration of habitat;
- landscape connectivity;
- threats to biodiversity;
- impacts of climate change; and
- findings of the biodiversity research and monitoring program reports.

Clause 49. Draft Nature Conservation Strategy – consultation with Scientific Committee and the Commissioner for Sustainability and the Environment

This clause provides that the Conservator is required to consult with the Scientific Committee in the development of the Nature Conservation Strategy.

The Conservator is also required to consult with the Commissioner for Sustainability and the Environment on the development of the Nature Conservation Strategy. This is to ensure that, as far as practicable and as appropriate, the Nature Conservation Strategy takes into account Government responses to recommendations arising from the State of the Environment Report and from special investigations.

Clause 50. Draft Nature Conservation Strategy—public consultation

This clause sets out the responsibility for the Conservator to undertake public consultation on a draft Nature Conservation Strategy for the ACT. The Conservator is required to prepare a public consultation notice about the draft Nature Conservation Strategy. A minimum 6 week public consultation period applies.

The clause provides that the Conservator can make arrangements for a person with particular communication needs to have adequate opportunity to comment on the draft strategy. This aims to ensure that a range of people are able to comment including the opportunity for people to make submissions other than in writing.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 27).

Clause 51. Draft strategy—revision and submission to Minister

This clause provides that the Conservator must consider any submissions received during the public consultation period and submit a revised draft Nature Conservation Strategy to the Minister for approval. The submitted draft strategy must be accompanied by a report setting out the issues raised in submissions given to the Conservator during each public consultation period for the draft strategy.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (ss 28-29).

Clause 52. Draft strategy—Minister to approve, return or reject

This clause provides that the Minister can either approve or reject the draft strategy, or return the draft strategy to the Conservator to undertake further consultation or consider a relevant report or revise the draft strategy. This aims to provide the Minister flexibility to seek changes to a draft strategy if the Minister considers this necessary.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 30).

Clause 53. Draft strategy—Minister’s approval and notification

This clause provides that a draft Nature Conservation Strategy approved by the Minister is disallowable.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 30).

Clause 54. Draft strategy—Minister’s direction to revise etc

This clause provides a responsibility for the Conservator to respond to the Minister’s directions to revise a draft Nature Conservation Strategy by giving effect to the direction and resubmitting the draft strategy to the Minister for approval.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 29).

Clause 55. Draft strategy—Minister’s rejection

This clause provides that if the Minister rejects a draft Nature Conservation Strategy the Minister must prepare a rejection notice and notify this on the legislation register.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 31).

Clause 56. Nature Conservation Strategy—minor amendments

This clause provides for the Nature Conservation Strategy to be varied in a minor way to make it more effective. This would allow for changes to the strategy without needing to undertake a major review. The use of minor amendment powers would occur when the Conservator considers that minor amendments to the existing strategy are appropriate. Minor amendments are those that will improve the effectiveness or technical efficiency of the strategy without changing the substance of the strategy.

Where the Conservator makes minor amendments to the strategy, the Conservator must submit the revised strategy to the Minister for approval. The Minister can either approve or reject the amended strategy.

Public consultation is not required for minor amendments. Public consultation for minor amendments is not necessary as the amendments do not change the overall policy direction.

A strategy that incorporates minor amendments is disallowable by the Assembly.

Clause 57. Nature Conservation Strategy—Conservator to implement

This clause provides that if a Nature Conservation Strategy is in force for the ACT, the Conservator must take reasonable steps to implement the strategy.

This does not mean that the strategy should not include aspirational elements. Long-term strategies sometimes need to include longer-term visions, which may depend on further information or additional resources that are not currently available.

This provision aims to increase accountability for the implementation of the Nature Conservation Strategy.

Clause 58. Nature Conservation Strategy—monitoring and review

This clause provides a responsibility for the Conservator to monitor the effectiveness of the Nature Conservation Strategy for the ACT.

The Conservator is required to report to the Minister on progress of the strategy every five years. This is intended to ensure that the Strategy is being implemented.

The clause also provides a responsibility for the Conservator to review the Nature Conservation Strategy 10 years after the plan commences unless the Minister extends the time for conducting the review.

In reviewing a Nature Conservation Strategy, the Conservator must consider the outcomes of the biodiversity research and monitoring program and may consult the Scientific Committee and make recommendations to the Minister about the strategy.

Following a review the strategy could undergo minor amendments if the review found that the strategy was effective or, alternatively, a new draft strategy would be prepared.

This provision aims to increase accountability for the monitoring of the Nature Conservation Strategy.

Chapter 4 Threatened native species and ecological communities

Overview

Listing of species and ecosystems provides for increased information about the significant conservation values of the ACT and will be used to inform decisions under both the Nature Conservation Act 2014 and the *Planning and Development Act 2007*. This chapter provides for new categories of threatened species to align with the EPBC Act.

While ACT listing processes and categories are currently similar to those under the EPBC Act, there are some gaps. This Bill proposes to add the following categories to the Act to reflect those in the EPBC Act: ‘critically endangered species’, ‘extinct species’, ‘extinct in the wild species’, ‘conservation dependent species’, ‘vulnerable ecological communities’ and ‘critically endangered ecological communities’ will also be included. The Conservator and Scientific Committee may recommend to the Minister that a review of the criteria for listing be undertaken.

The listing process itself does not directly impact the decisions made about whether a development or action is appropriate or not. The decision about whether a development is appropriate, taking into account the full range of Government policies is made through the *Planning and Development Act 2007* and, where the species or ecosystem is of national environmental significance, under the EPBC Act. The listing of species informs that process by requiring an environmental impact assessment and, as appropriate, the avoidance of impacts on significant biodiversity.

Requirements for Action Plans apply to threatened species and ecological communities, with some exceptions. This Bill provides for formal reporting on, and review of, Action Plans.

Part 4.1 Threatened native species

Clause 59. What is a threatened native species?

This clause provides a definition for ‘threatened native species’.

Clause 60. What is a threatened native species list?

This clause provides a definition for ‘threatened native species list’.

Clause 61. Threatened native species list categories

This clause provides a responsibility for the Minister to make a threatened native species list with a range of categories. This proposal adds new categories to those provided for in the *Nature Conservation Act 1980*. The new categories include ‘critically endangered’, ‘extinct’, ‘extinct in the wild’ and ‘conservation dependent’ species. The clause also provides for a provisional listing which allows for an assessment of the appropriate category to be made, while still giving adequate protection to species showing a strong decline.

This proposal provides alignment with the categories used by the Commonwealth under the EPBC Act (s 178) and therefore improves clarity of laws between jurisdictions.

Clause 62. Threatened native species list—eligibility for categories

This clause provides some basic requirements for a species to be included on the list of threatened species under a particular category. These requirements are aligned with the requirements used by the Commonwealth and therefore improve clarity of laws between jurisdictions.

The extinct category is used when there is no remaining member of the species anywhere in its range. Extinct in the wild is used where individuals of the species exist, for example in zoos, but are no longer found in their former range in nature.

The critically endangered and endangered categories identify when a species is facing an extremely high risk of extinction in the wild in the immediate or near future. The vulnerable category recognises species that are facing a high risk of extinction in the wild in the medium-term future.

Conservation dependent species are those which are subject to a conservation management plan, the ending of which might result in the species becoming vulnerable, endangered or critically endangered, including on a regional basis. This measure aims to protect species that may be non-threatened in other areas, but are subject to management in the ACT, such as the reintroduction programs for the New Holland Mouse and Bettongs.

The provisional category provides an emergency listing process to allow a species to be listed where there is a strong decline in the number of members of the species in the ACT and surrounding region, or the species is listed by another jurisdiction and occurs or is likely to occur in the ACT. The provisional listing aims to provide that these species have adequate protection during the time it might take to fully assess the status of the species and assemble the evidence supporting a listing. Provisional listing would end after 18 months, or if the species is transferred to another category of the list.

These proposals provide alignment with the categories used by the Commonwealth (EPBC Act s 179) and therefore improve clarity of laws between jurisdictions.

Clause 63. Threatened native species list – eligibility criteria

This clause provides that 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 Minister is required to consult with the Conservator and the Scientific Committee in developing the criteria. The requirement for the Minister to develop more detailed criteria on what can be listed provides for a transparent and robust process for consideration of which category species should be listed under. The criteria are disallowable.

This process is similar to that undertaken by the Commonwealth.

Clause 64. Threatened species list – criteria to review

This clause provides that either the Conservator or Scientific Committee must recommend to the Minister that a review of the criteria for listing be undertaken in certain circumstances. The clause provides that if the Minister refuses to review the criteria that this decision is notifiable. The criteria (once reviewed) are disallowable.

Part 4.2 Threatened ecological communities

Clause 65. What is a threatened ecological community?

This clause provides a definition for ‘threatened ecological communities’.

Clause 66. What is a threatened ecological communities list?

This clause provides a definition for ‘threatened ecological communities list’.

Clause 67. Threatened ecological communities list - categories

This clause provides a responsibility for the Minister to make a threatened ecological communities list with the following categories: critically endangered; endangered; vulnerable and provisional.

This proposal adds ‘critically endangered’ and ‘vulnerable’ categories to the current endangered category provided for in the *Nature Conservation Act 1980*. A provisional listing also applies.

These are the primary threat categories used nationally in Australia and internationally. This proposal provides alignment with the categories used by the Commonwealth (EPBC Act s 181) and therefore improves clarity of laws between jurisdictions.

Clause 68. Threatened ecological communities list—eligibility for categories

This clause provides some basic requirements for ecological communities to be included on the list of threatened ecological communities under a particular category.

The provisional category provides an emergency listing process to allow an ecological community to be put on the list where there is a strong decline in the ecological community in the ACT and surrounding region or the ecological community is listed by another jurisdiction and occurs or is likely to occur in the ACT. The provisional listing aims to provide adequate protection during the time it might take to fully assess the status of the ecological community and assemble evidence supporting a listing. Provisional listing would end after 18 months, or if the ecological community is transferred to another category of the list.

This proposal provides alignment with the categories used by the Commonwealth (EPBC Act s 182) and therefore improves clarity of laws between jurisdictions.

Clause 69. Threatened ecological communities list- eligibility criteria

This clause provides that the Minister must develop criteria to be used in deciding whether an ecological community is eligible to be included in a category on the threatened native species list. The Minister is required to consult with the Conservator and the Scientific Committee in developing the criteria.

The requirement for the Minister to develop more detailed criteria on what can be listed provides for a transparent and robust process for consideration of which category ecological communities should be listed under. The criteria are disallowable.

This process is similar to that undertaken by the Commonwealth.

Clause 70. Threatened ecological communities list – criteria to review

This clause provides that either the Conservator or Scientific Committee must recommend to the Minister that a review of the criteria for listing be undertaken. The clause provides that if the Minister refuses to review the criteria that this decision is notifiable. The criteria (once reviewed) are disallowable.

Part 4.3 Key threatening processes

Clause 71. What is a threatening process?

This clause provides a definition of what a ‘threatening process’ is. A threatening process means a process that threatens, or may threaten, the survival, abundance or evolutionary development of a native species or ecological community.

This aligns provisions with those in the Commonwealth's EPBC Act (s 188 (3)).

Clause 72. What is a key threatening process?

This clause provides a definition of what a 'key threatening process' is. A key threatening process is one that is listed on the key threatening processes list.

Clause 73. What is a key threatening processes list?

This clause provides a definition of what a 'key threatening process list' is.

Clause 74. Key threatening processes list

This clause provides a responsibility for the Minister to make a key threatening processes list.

This provides alignment with the processes used by the Commonwealth and therefore improves clarity of laws between jurisdictions (Commonwealth's EPBC Act s 183).

Clause 75. Key threatening processes list—eligibility

This clause provides that a threatening process is eligible to be included on the key threatening processes list if it could cause a native species or an ecological community to become eligible for listing.

The reason to list a key threatening process is to intervene prior to a species becoming threatened where it is considered that the key threatening process would result in species becoming threatened without intervention. The listing of threatening processes is most usefully focussed on specific threatening processes rather than generic threats. Generic threats such as climate change are likely to require more strategic approaches that cover broad areas and multiple species. Many threats to biodiversity such as weeds and pest animals are subject to separate legislation such as the *Pest Animals and Plants Act 2007*. This does not preclude their listing as a key threatening process.

This process is similar to that undertaken by the Commonwealth.

Clause 76. Key threatening processes list—eligibility criteria

This clause provides that the Minister must develop criteria to be used in deciding whether a threatening process is eligible to be included on the key threatening processes list. The clause provides that the key threatening processes list criteria should only include consideration of scientific matters regarding the conservation of species and ecological communities. The Minister must consult with the Conservator and the Scientific Committee in developing the criteria. The criteria are disallowable.

This provides alignment with the categories used by the Commonwealth and therefore improves clarity of laws between jurisdictions (Commonwealth's EPBC Act s 188 (4)).

Clause 77. Key threatening processes list criteria—review

This clause provides that either the Conservator or Scientific Committee may recommend to the Minister that a review of the criteria for listing be undertaken. The clause provides that if the Minister refuses to review the criteria that this decision is notifiable. The criteria (once reviewed) are disallowable.

Part 4.4 Including, transferring and omitting items in list

Clause 78. Definitions—Part 4.4

This clause provides definitions of terms used in this part. The terms defined are items, list and transfer. The term nomination is also defined. Transferring an item on the threatened species list or threatened ecological communities list, means transferring the item from one category on the list to another category on the list.

Clause 79. Nominations—public may nominate item at any time

This clause provides that at any time, any person may nominate an item for inclusion, transfer or omission on the threatened species list, threatened ecological communities list or key threatening processes list. A nomination must be given to the Scientific Committee, and must comply with any requirements prescribed by regulation for the nomination.

The clause also provides that a person who gives a nomination to the Scientific Committee may, in writing, withdraw the nomination at any time.

Other jurisdictions put in place processes for seeking nominations through a public call, which are then prioritised by the relevant Minister. These provisions are required to manage high workloads for assessing nominations. This is not required at present in the ACT, however, a regulation making power has been provided so that prioritisation of nominations could occur if needed at a later stage.

Details on how to make a nomination including forms for making a nomination will be provided on the relevant website.

This clause reflects current arrangements within the *Nature Conservation Act 1980*. This also reflects provisions within the Commonwealth's EPBC Act s 194 (e).

Clause 80. Nominations—Scientific Committee may reject nomination

This clause provides that the Scientific Committee may reject a nomination if the Scientific Committee considers that the nomination is vexatious, frivolous or not made in good faith; or a requirement prescribed by regulation for the nomination has not been complied with. This clause is aimed at ensuring the nominations are made seriously and in response to real concerns about the species, ecological community or threatening process involved. This also applies to rejecting nominations about transferring or omitting items.

The clause also provides that the Scientific Committee must take reasonable steps to tell the person who made the nomination about the rejection of a nomination and the reason for it.

This clause reflects current arrangements within the *Nature Conservation Act 1980*. This reflects provisions within the Commonwealth's EPBC Act s 194 (F).

Clause 81. Nominations—Scientific Committee may nominate items itself

This clause provides that the Scientific Committee may also nominate items for inclusion, transfer or omission on the threatened species, threatened ecological communities or key threatening processes lists. The Scientific Committee is made up of recognised experts in threatened species taxonomy, ecology and management. This clause makes sure that the Committee is able to nominate species, ecological communities and threatening processes in recognition of their

expertise and that being on the Committee should not preclude their participation in the nomination process.

This reflects provisions within the EPBC Act s 194 (G).

Clause 82. Nominations—public consultation

This clause provides that the Scientific Committee is able, but not required, to undertake public consultation on nominations. If the Scientific Committee decides to consult, the Scientific Committee must prepare a public consultation notice about the nomination. The public consultation notice must state that anyone may give a written submission to the Scientific Committee about the nomination and submissions may be given to the Scientific Committee only during the public consultation period.

The clause provides that the Scientific Committee may make arrangements for a person with particular communication needs to ensure they have adequate opportunity to comment on the nomination.

This is a similar provision to Commonwealth's EPBC Act s 194 (G).

Clause 83. Nominations—Scientific Committee to carry out listing assessment

This clause provides processes for the Scientific Committee to undertake an assessment of the nomination and to give the assessment to the Minister. An assessment of a nominated item must assess whether the item is eligible for inclusion on the threatened species list; or the threatened ecological communities list, or the key threatening processes list; and which category of the list the item is eligible to be included in, if eligible. The assessment would use similar processes for consideration of transferring or omitting items.

Listing is a science-based decision on environmental considerations to be made before social and economic factors are considered—for example, in deciding whether a species meets the criteria for listing as endangered. These principles are also well-established internationally.

The Scientific Committee are appointed as experts in their fields and make recommendations for listing based on scientific studies and monitoring from a range of sources, including the government's monitoring programs and commissioned research.

This is a similar provision to Commonwealth's EPBC Act s 194 (N).

Clause 84. Scientific Committee to prepare Listing Advice

This clause provides that the advice from the Scientific Committee must also contain a statement that sets out the grounds on which the species or community is eligible to be included in the category and the main factors that make it eligible. This advice is called a Listing Advice and is required to be notified at the time of the listing. This clause aims to make the listing process more transparent. A further clause (Section 343) provides that the Listing Advice need not include information that could lead to harm of the species or ecological community.

The Scientific Committee has a maximum of one year to assess a nomination.

The Listing Advice is notified once the Minister has made a decision on the listing.

Clause 85. Minister to decide whether to include, transfer or omit item

This clause provides that the Minister must make a decision on a Listing Advice from the Scientific Committee within three months after receiving the Scientific Committee's assessment. The Minister must decide whether to include the item on the list; or refuse to include the item on the list; or to transfer the item to another category on the list or to refuse to transfer the item to another category on the list.

The clause provides that the Minister is required to advise someone who made a nomination about a decision to include or transfer an item on the list.

These provisions mirror those within the Commonwealth's EPBC Act s 194 (Q).

Clause 86. Minister's decision- include item

This clause provides that the Minister may include an item in a list, or category on a list, only if satisfied that the item is eligible to be included in the list or category. The Listing Advice provides information about the species, ecological community or process. The Minister also needs to consider the eligibility of the item for inclusion against the criteria and, if the listing relates to a species or ecological community, the effect that including the item may have on the survival of the item.

These provisions aim to improve transparency about the circumstances in which an item can be included on the list.

These provisions are similar to those within the Commonwealth's EPBC Act ss 186, 187 and 188.

Clause 87. Minister's decision -transfer item

This clause provides that the Minister may transfer an item in a list, or category on a list, only if satisfied that the item is eligible to be included in the list or category. The Listing Advice provides information about the species, ecological community or process. The Minister also needs to consider the eligibility of the item for inclusion against the criteria and, if the listing relates to a species or ecological community, the effect that transferring the item may have on the survival of the item.

These provisions aim to improve transparency about the circumstances in which an item can be transferred on the list.

These provisions are similar to those within the Commonwealth's EPBC Act ss 186 & 187.

Clause 88. Minister's decision -omit item

This clause provides that the Minister may omit an item in a list, or category on a list, only if satisfied that the item is eligible to be omitted from the list or category.

The Minister also needs to consider the eligibility of the item for omission of the item against the criteria and, if the listing relates to a species or ecological community, the effect that omitting the item may have on the survival of the item.

These provisions aim to improve transparency about the circumstances in which an item can be omitted on the list.

These provisions are similar to those within the Commonwealth's EPBC Act ss 186 & 187.

Clause 89. Final version of list and notification

This clause provides that final versions of the lists are notifiable instruments.

Clause 90. Scientific Committee to prepare Conservation Advice

The Scientific Committee must prepare, within 3 months of listing, a Conservation Advice about the species or community that sets out what may be done to stop the decline of, or support the recovery of, the species or community.

A Conservation Advice can also be a statement to the effect that there is nothing that could appropriately be done to stop the decline of, or support the recovery of, the species or community. It is proposed that the Scientific Committee can remake the Conservation Advice whenever it needs to be updated.

The Conservation Advice can substitute for an Action Plan for vulnerable species if the Conservator believes that the Conservation Advice for the species or community provides adequate guidance about the appropriate management of the species or community. This may also substitute for an Action Plan if the species is presumed extinct or likely to be extinct but does not meet the criteria for listing it as such.

These provisions are similar to those within the Commonwealth's EPBC Act.

Clause 91. What is a minor amendment? Pt 4.4

This clause provides a definition of a minor amendment for this part of the Act.

Clause 92. Minister may make minor amendments

This clause provides that the Minister may make a new list without requiring a nomination or the Scientific Committee preparing Conservation Advice. The minor amendment process allows similar species to be included on or omitted from the list. The minor amendment process also allows the transfer of an extinct species to the provisional category if it happens to be rediscovered. Minor amendments can also be used to update names of species and ecological communities and to correct inaccuracies.

These provisions are similar to those within the Commonwealth's EPBC Act s 184.

Clause 93. Minor amendment—including similar species

The Minister may, on the advice of the Scientific Committee, include an otherwise ineligible species in the critically endangered, endangered and vulnerable categories of the list if the native species is indistinguishable from a species that is eligible to be included. The circumstances in which this is appropriate are that the non-listing of the non-eligible species would further threaten the survival of the eligible species. This proposal aims to provide protection for those species where the taxonomy of a species is uncertain, or contested. For example a species may include two genetically separate species which look similar. The two species are indistinguishable except through genetic testing. In those instances it would be prudent to provide protection for both species, as a precautionary measure.

These provisions are similar to those within the Commonwealth's EPBC Act ss 186 & 189.

Clause 94. Minor amendment—omitting similar species

The Minister may, on the advice of the Scientific Committee, omit an ineligible species from the threatened native species list if its inclusion is not having a significant beneficial effect on the survival of the eligible species.

This clause provides for the matters that must be considered by the Scientific Committee.

These provisions are similar to those within the Commonwealth's EPBC Act s 186.

Clause 95. Minor amendment- rediscovery of extinct species

This clause allows the Minister to transfer a native species listed as extinct to another category if it has been rediscovered in the wild. In this case the Minister may transfer the species from the extinct category to the provisional category without considering advice from the Scientific Committee. This allows the Scientific Committee to consider the best category for the species' listing. In most instances a recently rediscovered extinct species is likely to be re-listed as critically endangered, but this may not be so for all species, particularly plants.

These provisions are similar to those within the Commonwealth's EPBC Act s 192.

Part 4.5 Action Plans

Clause 96. Definitions –Act

This clause provides a definition of a 'relevant species' and a 'relevant ecological community' for this part of the Act. Relevant species means a critically endangered species; an endangered species; a vulnerable species; or a regular migratory species. A relevant ecological community means a critically endangered ecological community; an endangered ecological community; or a vulnerable ecological community. This definition is used to indicate what ecological communities require an Action Plan. Providing a definition of the species and ecological communities defines what species must or may be covered in an Action Plan.

Migratory species are those that are protected under Commonwealth law and international arrangements. These have been provided with special protection status under ACT law for a number of years. A consequence of the special protection status is that they have been required to be assessed for environmental impact assessments. Also there are higher penalties for taking these species from the wild, or killing them. However, there has been no requirement for an Action Plan or strategy to provide for their management and there is little information available about them, or their habitat needs.

The new provisions require the development of an Action Plan for migratory species which will cover those listed species likely to occur in the ACT, as regular or opportunistic migrants. This Action Plan will help inform environmental impact assessment processes, but also identify strategies to improve management of the habitat of migratory species.

Clause 97. What is an Action Plan? -pt 4.5

This clause provides a definition of an 'Action Plan' as a final version of a draft Action Plan for the species, community or threatening process.

Transitional arrangements apply to Action Plans. Current Action Plans finalised under the *Nature Conservation Act 1980* will be taken to be an Action Plan under the new Act.

Clause 98. What is a draft Action Plan? pt 4.5

This clause provides a definition of a 'draft Action Plan' for a threatened species, threatened ecological community or key threatening process.

A draft Action Plan for a threatened species provides details of proposed mechanisms to protect and manage the threatened species. A draft Action Plan must include consideration of:

- impacts of climate change on the relevant species or ecological communities (if known);
- threats to the species or ecological community;
- connectivity requirements for the species or ecological community;
- critical habitat of for the species or ecological community.

An Action Plan for migratory species maps their known critical and potential habitats and proposes management strategies to ensure their persistence. An Action Plan for a threatened ecological community provides guidance on the management of the ecological community, and may include Action Plans for threatened species that are associated with the ecological community. An Action Plan for a key threatening process aims to minimise any effect of that process. Action Plans may include proposals for monitoring and research of the threatened species, migratory species, threatened ecological communities and key threatening process. The Conservator is required to include considerations about known critical habitat in an Action Plan (critical habitat for some species is not known, and is not easily identified). If the Conservator is of the view that the inclusion of information about critical habitat of a species could threaten the species, it does not need to be included in the Action Plan, except through general references.

The clause provides that the Conservator can apply, adopt or incorporate an instrument as in force from time to time. This provides the opportunity, for example, for the Conservator to adopt a recovery plan under the EPBC Act, or under the *Threatened Species Conservation Act 1995* (NSW) if it meets the needs of the ACT. This is aimed at reducing duplication of effort and improving inter-jurisdictional collaboration.

The Review of the *Nature Conservation Act 1980* identified shortcomings with Action Plans, largely relating to a lack of specificity in how they are to be used and monitored. The Conservator is able to prepare guidelines on the scope, use and monitoring of Action Plans.

These guidelines could include directions such as:

- that Actions identified need to be measurable
- timeframes for Actions within Action Plans need to be identified; and
- that critical habitat is identified, where appropriate, and managed.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 40).

Clause 99. Draft Action Plan—Conservator to prepare

This clause provides that the Conservator must prepare a draft Action Plan for each relevant species, ecological community and key threatening process, if they occur in the ACT.

This clause also provides that an Action Plan does not need to be done for a species or ecological community if the Conservator considers there is insufficient evidence that the species or ecological community exists in the ACT. For example, a species is historically known to occur in the

ACT, and has been listed as threatened for some time. However, it has not been recorded in the wild for a long time. The species may be extinct but the survey work has not been undertaken to justify a transfer to the extinct category. In these situations there is little to be gained by developing an Action Plan, unless the species or ecological community is found again. A Conservation Advice would still apply to these species.

This clause provides that the Conservator does not need to develop an Action Plan for vulnerable species if the Conservator believes that the Conservation Advice for the species or ecological community provides adequate guidance about the appropriate management of the species or ecological community, or if the species is the subject of a Native Species Conservation Plan. Action Plans can be made where this is considered more appropriate. General advice on vulnerable species and ecological communities would be provided through Conservation Advices (prepared at the time of listing) and/or Native Species Conservation Plans. This is a similar approach to that used in other jurisdictions including the Commonwealth and NSW.

There are mandatory considerations in the development of Action Plans.

This provision, requiring Actions Plans be made, reflects similar provisions to the *Nature Conservation Act 1980* (s 40). The provisions to make Action Plans discretionary in some circumstances for certain species is aimed at focusing effort on critically endangered and endangered species and ecological communities because resources are limited.

Clause 100. Draft Action Plan- consultation with Scientific Committee

This clause provides that the Conservator is required to consult with the Scientific Committee in the development of Action Plans.

Clause 101. Draft Action Plan—public consultation

This clause provides that public consultation be undertaken on draft Action Plans. The public consultation process commences when a public consultation notice about the draft Action Plan is notified on the ACT legislation register. The minimum period of consultation on a draft Action Plan is 6 weeks.

If consultation is on an instrument that is to be adopted the notification of the consultation process will need to note that instruments proposed to be adopted cannot be amended, only adopted or not adopted because the ACT is not able to amend another jurisdictions instrument.

This clause provides that the Conservator can make arrangements for a person with particular communication needs to have adequate opportunity to comment on the draft plan. This aims to ensure that a range of people are able to comment including the opportunity for people to make submissions other than in writing.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 41).

Clause 102. Draft Action Plan—revision

This clause provides that the Conservator must consider any submissions received during the public consultation period and prepare a final version of the draft Action Plan.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 42).

Clause 103. Draft Action Plan—final version and notification

This clause provides that the final version of an Action Plan prepared by the Conservator is a disallowable instrument.

Transitional arrangements apply to existing Action Plans.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 42).

Clause 104. Action Plan—minor amendments

This clause provides for minor amendments to be made to an Action Plan for a relevant species, relevant ecological community or key threatening process. The Conservator may prepare a new draft Action Plan for the species, community or process, incorporating the minor amendments into the existing plan and prepare a final version of the draft Action Plan, as amended. Minor amendments mean an amendment that will improve the effectiveness or technical efficiency of the plan without changing the substance of the plan. This might include updating references to altered scientific names, or updating titles of other relevant plans or similar. Consultation on minor amendments is not required.

Clause 105. Action Plan—Conservator to implement

This clause requires that the Conservator must take reasonable steps to implement the plan if an Action Plan is in force for a relevant species, relevant ecological community or key threatening process.

This provision aims to increase accountability for the implementation of Action Plans.

Clause 106. Action Plan—monitoring and review

Under the current *Nature Conservation Act 1980* provisions there is no formal period for review of Action Plans. This clause requires that the Conservator must take reasonable steps to monitor the effectiveness of an Action Plan. The provisions require a progress report on each Action Plan after five years and mandatory review by the Scientific Committee to occur at 10 years. Reviews can occur earlier than this if needed. Amendments are also proposed that allow for minor amendments to Action Plans in the absence of a full review. The review of an Action Plan may include recommendations to the Conservator about the plan. Following the review period the Conservator can – decide to amend the plan (minor amendments) or rewrite the plan through developing a new Action Plan.

The Conservator is required to make monitoring reports on Action Plans publicly available. The Conservator does not need to include some details about monitoring if the species or ecological community could be threatened by this disclosure.

This provision aims to increase accountability for the monitoring of Action Plans.

Chapter 5 Protection of native species—conservation plans etc

Overview

This Chapter provides for the management of species and the development of conservation plans.

The Chapter outlines processes for providing special protection status and protected status to important and significant plants and animals of the ACT.

The Chapter also outlines processes for the development and implementation of species conservation plans which apply to Conservation Dependent species, but that can also be used to outline management of a range of other native species, such as reintroduction and captive breeding programs, specific habitat restoration programs, or rare plant propagations programs, by way of example. A conservation plan may apply to threatened or protected species, but can be used for any species that requires management.

Part 5.1 Special protection status

Clause 107. What is special protection status?

Special protection status is provided to species that are a threatened native species listed under the Act and to listed threatened and migratory species listed under the EPBC Act.

Differential penalties apply to actions that are taken without a licence, or other approval such as a Development Approval for species with special protection. This is because the consequences to the species may be more substantial because the species is threatened, or is migratory.

Lists and descriptions of species with special protection status likely to occur in the ACT will be made readily available through a range of different media. This aims to improve knowledge and understanding of the species with special protection status in the ACT.

Differential requirements for licencing may also apply to species with special protection status. For example, licences may only be provided for research or management, or in limited circumstances, for commercial actions aimed at improving species persistence, such as programs selling propagated threatened plants for ex situ conservation.

This clause notes that the Conservator may make a Native Species Conservation Plan for a species that has special protection status. These plans are aimed at underpinning licencing requirements for species with special protection status. The Conservator must make a Migratory Species Action Plan for migratory species with special protection status, that is, listed migratory species.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 33).

Part 5.2 Protected native species

Clause 108. What is a protected native species?

This clause provides a definition for 'protected native species'. Protected native species are native species on a protected native species list.

Clause 109. Minister to make protected native species list

This clause requires the Minister to make a list of native species that are protected native species (the protected native species list). The clause provides that the protected native species list must

be divided into three categories: restricted trade; rare and data deficient. The clause also provides that additional categories can be added if a regulation prescribes an additional category.

Differential penalties for actions taken without a licence, or as otherwise excepted, also apply to protected species. This is because the consequences to the species may be more substantial because the species is subject to exploitation from the wildlife trade, because it is rare, or there is insufficient information about the species to be able to determine either its current or past extent.

Clause 110. Protected native species list - eligibility

This clause provides that a native species is eligible to be included in the restricted trade category on the protected native species list if it is a species that is subject to trade which can, if unregulated, cause a decline in otherwise common species. Many of the current listings on the protected species list fall into this category.

This clause provides that a native species is eligible to be included in the rare category on the protected native species list if it is rare and if it does not have special protection status. Rare species are species which have a naturally limited distribution. There may not be any particular current threat to their extent but because they are naturally rare a precautionary approach needs to be taken for their management including consideration of licencing requirements and impacts from land use. Many rare species currently have protected status under the *Nature Conservation Act 1980*.

This clause provides that a native species is eligible to be included in the data deficient category on 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 threatened native species or a rare species. For example, some cryptic species are not easily detected through surveys: this may indicate that either the survey technique is not appropriate, or that the species is naturally rare; or that the species is declining such that the survey cannot adequately capture data on the species. A precautionary approach provides protection to these species in the absence of information.

The listing of data deficient species reflects provisions in the EPBC Act and can assist targeting of research and inventory effort.

Clause 111. Minister to develop criteria and processes for protected native species list

This clause provides that the Minister must develop criteria to be used in deciding whether a species is eligible to be included in a category on the protected native species list. The clause indicates that the Minister must have regard to the conservation of the species and the ecological significance of the species.

Protected species provisions were part of the provisions of the *Nature Conservation Act 1980* (s 34). However, the *Nature Conservation Act 1980* provided little guidance on what should be protected. The provisions in the new Act have provided this guidance based partly on the reasons for protection given in the explanatory statement for the *Declaration of protected and exempt flora and fauna*, and to reflect categories used in other jurisdictions (Queensland, South Australia, Tasmania, Victoria and Western Australia list rare species; the Commonwealth and most other jurisdictions have a data deficient category).

The Minister is required to consult with the Scientific Committee in developing the protected native species list criteria. The Minister must also develop processes to be followed in deciding whether a species is to be included in a category on the protected native species list.

Clause 112. Protected native species list criteria—review

This clause provides that either the Conservator or Scientific Committee must recommend to the Minister that a review of the criteria for listing be undertaken. The clause provides that if the Minister refuses to review the criteria that this decision is notifiable. The criteria (once reviewed) are disallowable.

Part 5.3 Native Species Conservation Plans

Clause 113. What is a Native Species Conservation Plan?

This clause provides a definition of a 'Native Species Conservation Plan'.

Clause 114. What is a draft Native Species Conservation Plan? pt 5.3

This clause provides a definition of a 'draft Native Species Conservation Plan'. A draft Native Species Conservation Plan provides details of how the native species may be appropriately managed. Native Species Conservation Plans for a species may apply across the ACT or may apply to discrete areas.

The plan may apply, adopt or incorporate an instrument as in force from time to time. This provides the opportunity, for example, for the Conservator to adopt a fisheries management plan under the *Fisheries Act 2000*.

A Native Species Conservation Plan may incorporate requirements agreed to in a conservation agreement under the EPBC Act. This provision is aimed at reducing duplication of effort and improving inter-jurisdictional collaboration.

Clause 115. Draft Native Species Conservation Plan—Conservator to prepare

This clause provides that the Conservator may prepare a draft Native Species Conservation Plan for species that have special protection status or any other native species the Conservator considers appropriate for a Native Species Conservation Plan, such as for protected species. Species that are conservation dependent would always require a Native Species Conservation Plan because they are not considered conservation dependent unless they are the subject of a conservation program.

A Native Species Conservation Plan aims to ensure that species management actions are placed within a strategic context. A Native Species Conservation Plan may include proposals for sustainable use where this is considered appropriate for conservation of the species, such as allowing fishing of protected fish species in areas that have been stocked for that purpose. Native Species Conservation Plans would only be developed to enable actions that are undertaken for the overall conservation of the species.

A Native Species Conservation Plan must be made for listed as conservation dependent. Conservation dependent species are those species that need management intervention and will generally be managed within conservation reserves.

Native Species Conservation Plans could also be used to manage species that are the subject of captive breeding programs and reintroduction programs (e.g. Bettongs and Brush-tailed Rock-wallaby). A Native Species Conservation Plan could also be used to underpin programs that propagate and sell threatened native plants.

Clause 116. Draft native species conservation plan – consultation with Scientific Committee

This clause provides that the Conservator is required to consult with the Scientific Committee in the development of Native Species Conservation Plans.

Clause 117. Draft Native Species Conservation Plan—consultation with lessee and Custodian

This clause provides that the Conservator must consult with the lessee and/or Custodian of each area of land to which the plan applies. This is aimed at gaining the collaboration of Custodians and lessees if the plan is proposed to apply to land under their management.

Plans for species do not have to cover the entire ACT. They may only apply to specific areas or a specific tenure and it is not generally proposed that a Native Species Conservation Plan apply to private leaseholds beyond requirements in land management agreements and leasehold conditions, except through agreement. There may be situations where the plan would assist leaseholders to conserve species on their land. If the plan was in place the plan would identify best practice ways to conserve native species.

Clause 118. Draft Native Species Conservation Plan—public consultation

This clause provides that public consultation be undertaken on a draft Native Species Conservation Plan. The public consultation process commences when a public consultation notice about the draft Native Species Conservation Plan is notified on the ACT legislation register. The minimum period of consultation on a draft Native Species Conservation Plan is 6 weeks.

If consultation is on an instrument that is to be adopted the notification of the consultation process will need to note that instruments proposed to be adopted cannot be amended, only adopted or not adopted because the ACT is not able to amend another jurisdiction's instrument.

The clause provides that the Conservator can make arrangements for a person with particular communication needs to have adequate opportunity to comment on the draft plan. This aims to ensure that a range of people are able to comment including the opportunity for people to make submissions other than in writing.

Clause 119. Draft Native Species Conservation Plan—revision

This clause provides that the Conservator must consider any submissions received during the public consultation period and prepare a final version of the Native Species Conservation Plan, at the end of the public consultation period.

Clause 120. Draft Native Species Conservation Plan—final version and notification

This clause provides that the final version of a Native Species Conservation Plan prepared by the Conservator is a notifiable instrument.

Clause 121. Native Species Conservation Plan—minor amendments

This clause provides for minor amendments to be made to Native Species Conservation Plans. The Conservator may prepare a new Native Species Conservation Plan for the species incorporating minor amendments into the existing plan and prepare a final version of the draft Native Species Conservation Plan, as amended.

Minor amendments mean an amendment that will improve the effectiveness or technical efficiency of the plan without changing the substance of the plan. This might include updating

references to altered scientific names, or updating titles of other relevant plans or similar. Consultation on minor amendments is not required.

Clause 122. Native Species Conservation Plan—Conservator etc to implement

This clause requires that the Conservator and the Custodian must take reasonable steps to implement a Native Species Conservation Plan.

Not all plans would apply to all tenures. It is only intended that a plan that covered private leasehold land would generally only apply to private leaseholds where it is in their interests to conserve species on their land as outlined in lease and land management agreements, or through additional voluntary measures. If the plan was in place the plan would identify best practice ways to conserve native species. If landholders are involved in conservation of a particular native species on their land, they would be required to do it in accordance with the plan. Most plans, however, would only apply to public land.

This provision aims to increase accountability for the implementation of Native Species Conservation Plans.

Clause 123. Native Species Conservation Plan—monitoring and review

This clause requires that the Conservator must take reasonable steps to monitor the effectiveness of a Native Species Conservation Plan. The clause also provides that the Conservator may ask the Scientific Committee to review a Native Species Conservation Plan.

Following the review period the Conservator can decide to amend the plan (minor amendments) or rewrite the plan through developing a new Native Species Conservation Plan. The Conservator is required to make monitoring reports on Native Species Conservation Plans publicly available.

This provision aims to increase accountability for the monitoring of Native Species Conservation Plans.

There is no formal period of review set out in the Act for review of Native Species Conservation Plans. This is because they are likely to vary significantly from species to species. Some plans would need to be reviewed annually, while others may need to only be reviewed at 10 years. A Conservator guideline on preparing Native Species Conservation Plans would state that each plan would need to indicate when a review should occur.

Chapter 6 Protection of native species—offences etc

Overview

The following clauses substitute current provisions relating to protection of native animals and native plants to increase the penalties to those consistent with the penalties used in NSW or Victoria for the same or similar offences. There are differential higher penalties for species with special protection status because these species are threatened, and therefore the environmental consequences of actions against these species are higher.

The majority of species with special protection status are threatened with extinction and are thus not easily found in the natural environment. Threatened species are generally targeted for killing, taking or sale because they have a market value in illegal trade (such as rare parrots or orchids). As such, perpetrators are likely to have good knowledge of the species that they are taking. Incidental or inadvertent taking is likely to be extremely rare. Lists and descriptions of species with special protection status likely to occur in the ACT will be made readily available through a range of different media. This aims to improve knowledge and understanding of the species with special protection status in the ACT so as to ensure there is no inadvertent non-compliance.

The proposals clarify current uncertainty regarding the requirement for a licence to take or kill native plants and animals. To streamline processes, it is proposed to remove the requirement for a licence for activities consistent with a development approval under the *Planning and Development Act 2007*, for provisions relating to taking and removing plants or timber because these would have been assessed when land was made urban capable or because the land is leased land and the plant provisions do not apply. Because animal species are mobile, it is more difficult to provide an exception to killing and taking animals through a development approval. It is preferable for development to be delayed, as in the case of nests, or where appropriate, for species to be relocated. Relocation of species should be undertaken by specialists.

Part 6.1 Offences

Division 6.1.1 Definitions – part 6.1

Clause 124. Definitions - part 6.1

This clause provides a definition of ‘sell and take’ for this part of the Act.

Division 6.1.2 Offences—native animals

Clause 125. Definitions – Division 6.1.2

This clause provides definitions for this part.

Clause 126. Offence—interfere with nest of native animal

This clause provides that it is an offence if the person interferes with a nest of a native animal or something in the immediate environment of the nest of a native animal.

Most animals that a person comes in contact with in the natural environment are likely to be native species. Animal species that are not native species are generally readily identifiable, and include cats, dogs, horses and domestic stock etc.

The clause provides a higher level of penalty for interference with a nest or something in the immediate environment of the nest of a native animal that has special protection status. Specially protected species are threatened species or migratory species. Lists and descriptions of species

with special protection status likely to occur in the ACT will be made readily available through a range of different media. This aims to improve knowledge and understanding of the species with special protection status in the ACT so as to ensure there is no inadvertent non-compliance.

Exceptions for this offence relate to having a licence to interfere with the nest or something in the immediate environment of the nest. The requirement for licencing allows the Conservator to provide advice on how and when nests can be disturbed without compromising the species persistence.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 43).

Clause 127. Offence—interfere with nest of native animal—endanger progeny or breeding

This clause provides a higher level offence if the person interferes with a nest of a native animal or something close to the nest of a native animal when the disturbance endangers the animal or its progeny; or disrupts breeding.

The offences in this clause are higher than in Clause 126 because there is an element of harm to the offence. Disturbance of breeding habitat during breeding can lead to serious population declines and as such there are higher penalties for this offence when there is actual harm.

Exceptions for this offence relate to having a licence to interfere with the nest or something in the immediate environment of the nest. The requirement for licencing allows the Conservator to provide advice on how and when nests can be disturbed without compromising species persistence.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 43).

Clause 128. Offence—kill native animal

This clause provides that it is an offence if the person engages in conduct that causes the death of a native animal. Most animals that a person comes in contact with in the natural environment are likely to be native species. Animal species that are not native species are generally readily identifiable, and include cats, dogs, horses and domestic stock etc.

The clause provides a higher level offence if the person engages in conduct that causes the death of a native animal and the native animal has special protection status. Specially protected species are threatened species or migratory species. Lists and descriptions of species with special protection status likely to occur in the ACT will be made readily available through a range of different media. This aims to improve knowledge and understanding of the species with special protection status in the ACT so as to ensure there is no inadvertent non-compliance.

There are a range of exceptions to this offence including if the death of the native animal was caused in circumstances in which the animal was a danger to the person or by an accidental collision with a motor vehicle.

An exception applies to actions that are authorised under a Controlled Native Species Management Plan which provides a strategic context for the management of the species.

An exception applies to fishing for protected and specially protected fish species where the fishing is consistent with a Native Species Conservation Plan. Many protected and specially protected fish species are bred and stocked in Canberra's lakes. The exception aims to provide that in these locations, or others identified in the Native Species Conservation Plan, it is not an offence to fish the species.

Other exceptions relate to having a licence. Where there is no strategic plan for the management of the species, the requirement for licencing allows the Conservator to consider, for example, the future management of the native species and the impacts on the population of the species.

This offence reflects similar provisions within the *Nature Conservation Act 1980* (s 44).

Clause 129. Offence—injure or endanger native animal

This clause provides that it is an offence if the person engages in conduct that causes injury to a native animal. The offence of engaging in conduct that causes injury to a native animal is a strict liability offence of 50 penalty units.

Most animals that a person comes in contact with in the natural environment are likely to be native species. Animal species that are not native species are generally readily identifiable, and include cats, dogs, horses and domestic stock etc.

The clause provides that a person also commits an offence if the person engages in conduct that places a native animal in danger of injury or death. For this offence to occur the injury to the animal does not need to occur. As such it is not a strict liability offence. The penalty is 50 penalty units.

There is a range of exceptions to this offence including if the death of the native animal was caused, in circumstances in which the animal was a danger to the person or by an accidental collision with a motor vehicle.

An exception applies to actions that are authorised under a Controlled Native Species Management Plan which provides a strategic context for the management of the species.

An exception applies to fishing for protected and specially protected fish species where the fishing is consistent with a Native Species Conservation Plan. Many protected and specially protected fish species are bred and stocked in Canberra's lakes. The exception aims to provide that in these locations, or others identified in the Native Species Conservation Plan, it is not an offence to fish the species.

Other exceptions relate to having a licence. Where there is no strategic plan for the management of the species, the requirement for licencing allows the Conservator to consider, for example, the future management of the native species and the impacts on the population of the species.

Clause 130. Offence—take native animal

This clause provides that a person commits an offence if the person takes a native animal, whether dead or alive. Most animals that a person comes in contact with in the natural environment are likely to be native species. Animal species that are not native species are generally readily identifiable, and include cats, dogs, horses and domestic stock etc.

The clause provides a higher level offence if the person takes a native animal, whether dead or alive and the native animal has special protection status. Specially protected species are threatened species or migratory species. The requirement for licencing allows the Conservator to consider, for example, the future management of the native species and the impacts on the population of the species. Lists and descriptions of species with special protection status likely to occur in the ACT will be made readily available through a range of different media. This aims to improve knowledge and understanding of the species with special protection status in the ACT so as to ensure there is no inadvertent non-compliance.

An exception applies to actions that are authorised under a Controlled Native Species Management Plan which provides a strategic context for the management of the species.

An exception applies to fishing for protected and specially protected fish species where the fishing is consistent with a Native Species Conservation Plan. Many protected and specially protected fish species are bred and stocked in Canberra's lakes. The exception aims to provide that in these locations, or others identified in the Native Species Conservation Plan, it is not an offence to fish the species.

Other exceptions relate to having a licence. Where there is no strategic plan for the management of the species, the requirement for licencing allows the Conservator to consider, for example, the future management of the native species and the impacts on the population of the species.

As well as exceptions from having a licence an exception applies if the animal is taken by the person for treatment or to be given to a Conservation Officer or someone else licensed to care for native animals.

This offence reflects similar provisions within the *Nature Conservation Act 1980* (s 45).

Clause 131. Offence—keep non-exempt animal

This clause provides that it is an offence if a person keeps an animal and the animal is not an exempt animal. Exempt animals are identified in the Exempt Animals declaration. Awareness materials are provided to relevant groups to ensure there is no inadvertent non-compliance.

A higher level offence applies to a person keeping an animal that is a species with special protection status. Specially protected species are threatened species or migratory species. Lists and descriptions of species with special protection status likely to occur in the ACT will be made readily available through a range of different media. This aims to improve knowledge and understanding of the species with special protection status in the ACT so as to ensure there is no inadvertent non-compliance.

Exceptions to this offence are if the animal is suffering from a disease, illness or injury and the person is keeping the animal for not more than 48 hours and the animal is being kept for treatment or to be given to a veterinary surgeon, Conservation Officer or someone else licensed to care for the animal.

The requirement for licencing allows the Conservator to consider, for example, the future management of the species of both native and non-native species, including risks of disease to native populations, impacts on other species if the animal escapes from captivity and whether the species is suitable for captivity.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 46).

Clause 132. Offence—sell non-exempt animal

This clause provides an offence if the person sells an animal without a licence. This offence applies to both native animals and non-native animals (that are not exempted). Exempted animals are those that are commonly bought and sold for pets, where these species come from captive bred populations rather than wild capture, unless the wild capture is allowed through a licence. Exempt animals are identified in the Exempt Animals declaration. Awareness materials are provided to relevant groups to ensure there is no inadvertent non-compliance.

A higher level offence occurs if the animal has special protection status. Specially protected species are threatened species or migratory species. Species with special protection status can also be exempt animals where these species come from captive bred populations rather than wild capture, unless the wild capture is allowed through a licence. The listing of an exempt species is able to indicate that a species is not an exempt species unless the provenance can be proved. This concept is similar to that within the Commonwealth's EPBC Act. Lists and descriptions of species with special protection status likely to occur in the ACT will be made readily available through a range of different media. This aims to improve knowledge and understanding of the species with special protection status in the ACT so as to ensure there is no inadvertent non-compliance.

The requirement for licencing allows the Conservator to consider, for example, the future management of the species of both native and non-native species, including risks of disease to native populations, impacts on other species if the animal escapes from captivity and whether the species is suitable for captivity.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 47).

Clause 133. Offence—offer to sell animal without disclosing licence

This clause provides that individuals offering to sell native animals must disclose their licence and licence number. This aims to ensure that buyers know that the person is licenced to sell native animals, and that the animal has come from an appropriate source. The requirement does not apply to exempt animals.

Clause 134. Offence—import non-exempt animal

This clause provides an offence if the person imports an animal and the animal is not an exempt animal without a licence. Exempt animals are identified in the Exempt Animals declaration. Awareness materials are provided to relevant groups to ensure there is no inadvertent non-compliance.

A higher level offence occurs if the animal has special protection status. Specially protected species are threatened species or migratory species. Lists and descriptions of species with special protection status likely to occur in the ACT will be made readily available through a range of different media. This aims to improve knowledge and understanding of the species with special protection status in the ACT so as to ensure there is no inadvertent non-compliance.

The requirement for licencing allows the Conservator to consider, for example, the future management of the species of both native and non-native species, including risks of disease to native populations, impacts on other species if the animal escapes from captivity and whether the species is suitable for captivity.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 48).

Clause 135. Offence—export non-exempt animal

This clause provides an offence if the person exports an animal and the animal is not an exempt animal, without a licence. Exempt animals are identified in the Exempt Animals declaration. Awareness materials are provided to relevant groups to ensure there is no inadvertent non-compliance.

A higher level offence occurs if the animal has special protection status. Specially protected species are threatened species or migratory species. Lists and descriptions of species with special protection status likely to occur in the ACT will be made readily available through a range of

different media. This aims to improve knowledge and understanding of the species with special protection status in the ACT so as to ensure there is no inadvertent non-compliance.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 48).

Clause 136. Offence—release animal from captivity

A person commits an offence if the person releases an animal from captivity without a licence. The offence relates to release of any animal within a reserve. It also applies to the release of animals outside of reserves except for animals and circumstances that are covered under the *Domestic Animals Act 2004* relating to dogs and cats. This offence is intended to cover the release of animals within reserves, such as dumping cats or other animals in reserves. It would also apply to the release of dogs or other animals in reserves for the purpose of hunting.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 49).

Division 6.1.3 Offences—native plants

Clause 137. Definitions—Division 6.1.3

This clause provides a definition of the built-up urban area: linking to the definition in the *Tree Protection Act 2005*. The clause also provides definitions of native timber, native trees and tree seedlings and plant tags.

Clause 138. Offence—take native plant—unleased land

This clause provides that a person commits an offence if the person takes a native plant from unleased land. This offence does not apply if the person is licenced to take native species, or where the taking is incidental to an approved development or maintenance of public areas.

These offences are not intended to apply to incidental actions that arise through the maintenance of public areas, e.g. through mowing of public land, pruning of trees on public land as part of urban tree management programs, or where inspectors need to clear vegetation to access electrical installations.

Government officials and contractors would still be expected to take reasonable care to avoid harm to plants and animals wherever possible, even though the exceptions apply to the offence provisions.

The offence does not apply if the person takes seeds from the plant for domestic use.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 51).

Clause 139. Offence—take and sell native plant—unleased land

This clause provides that a person commits an offence if the person takes a native plant from unleased land for the purpose of sale, without a licence. The offence does not apply to native timber which is subject to Sections 142-145.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 51).

Clause 140. Offence—take native plant—protected native species

This clause provides that a person commits an offence if the person takes a native plant and the plant is a protected native species. This offence does not apply if the person is licenced to take a

protected native species, or where the taking is incidental to an approved development or maintenance of public areas.

These offences are not intended to apply to incidental actions that arise through the maintenance of public areas, e.g. through mowing of public land, pruning of trees on public land as part of urban tree management programs, or where inspectors need to clear vegetation to access electrical installations.

Government officials and contractors would still be expected to take reasonable care to avoid harm to plants and animals wherever possible, even though the exceptions apply to the offence provisions.

The offence does not apply to plants growing on leased land in the built-up urban area; if the occupier of leased rural land takes the plant for cultivation or the plant is taken as part of farming operations.

Lists and descriptions of protected species that occur in the ACT will be made readily available through a range of different media. This aims to improve knowledge and understanding of protected species in the ACT so as to ensure there is no inadvertent non-compliance.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 51).

Clause 141. Offence—take native plant—special protection status

It is an offence to take a native plant with special protection status without a licence. Special protection status applies to threatened species. This offence does not apply where the taking is incidental to an approved development or maintenance of public areas.

These offences are not intended to apply to incidental actions that arise through the maintenance of public areas, e.g. through mowing of public land, pruning of trees on public land as part of urban tree management programs, or where inspectors need to clear vegetation to access electrical installations.

Government officials and contractors would still be expected to take reasonable care to avoid harm to plants and animals wherever possible, even though the exceptions apply to the offence provisions.

Lists and descriptions of species with special protection status likely to occur in the ACT will be made readily available through a range of different media. This aims to improve knowledge and understanding of the species with special protection status in the ACT so as to ensure there is no inadvertent non-compliance.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 51).

Clause 142. Offence—damage native tree—unleased land

This clause provides that it is an offence to damage a native tree on unleased land without a licence. This offence does not apply where the taking is incidental to an approved development or maintenance of public areas.

These offences are not intended to apply to incidental actions that arise through the maintenance of public areas, e.g. through mowing of public land, pruning of trees on public land as part of urban tree management programs, or where inspectors need to clear vegetation to access electrical installations.

Government officials and contractors would still be expected to take reasonable care to avoid harm to plants and animals wherever possible, even though the exceptions apply to the offence provisions.

The provision continues an offence provision within the within the *Nature Conservation Act 1980* (s 52).

This provision reflects similar provisions to the *Tree Protection Act 2005*. The penalty is the same as a similar offence under the *Tree Protection Act 2005* for reckless damage to trees on leased land inside the built-up urban area. The penalty level is high to reflect that trees on public land are a community asset that provides amenity and also habitat for wildlife. Old trees with significant hollows can provide habitat for multiple species. They are not easily replaced. Single old trees can provide significant connectivity. If they are lost, then this can disrupt migratory patterns and isolate populations, leading to overall decline. Because of the important role of trees in the landscape the penalty is high.

Clause 143. Offence—damage native tree—leased land

This clause provides that it is an offence to damage or fell a native tree on leased land outside the built up area without a licence. This offence does not apply where the taking is incidental to an approved development or maintenance of public areas.

The offence does not apply if the tree was planted by an occupier of the land or the tree was damaged or felled by an occupier of the land for use on the land, but not for sale or trade.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 52).

Clause 144. Offence—damage or take fallen native timber

This clause provides that it is an offence to take fallen timber from unleased land or leased land outside a built-up urban area without a licence. This offence does not apply where the taking is incidental to an approved development or maintenance of public areas.

These offences are not intended to apply to incidental actions that arise through the maintenance of public areas, e.g. through mowing of public land, pruning of trees on public land as part of urban tree management programs, or where inspectors need to clear vegetation to access electrical installations.

Government officials and contractors would still be expected to take reasonable care to avoid harm to plants and animals wherever possible, even though the exceptions apply to the offence provisions.

For leased land take means to take the timber from the land subject to the lease, i.e. to remove the timber from the leased property. For unleased land, take means to remove the timber from the immediate vicinity.

Damaging and taking fallen native timber are common offences as people take this for firewood, mostly for their own use or small scale commercial purposes. Fallen native timber is an important component of an ecosystem. Fallen native timber provides habitat for invertebrate species which then provide a food source for many birds, reptiles and small mammals. These species in turn contribute to plant health through pollination, nutrient turnover and limiting impacts of invertebrate pests. Protecting fallen native timber in reserves is as important to biodiversity as living trees and plants.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 52).

Clause 145. Offence—offer to sell native plant without disclosing licence

This clause provides that those individuals offering to sell native plants that require a licence to be sold must disclose that the person is licensed to sell the native plant and must disclose the licence number. This aims to ensure that buyers know that the person is licenced to sell native plants where a licence is required.

Clause 146. Offence—sell native plant - protected or special protection status

This clause provides that it is an offence to sell a protected native plant without a licence. This clause also provides that it is an offence if a person sells a native plant with special protection status without a licence. Special protection status applies to threatened species. Lists and descriptions of protected species and species with special protection status likely to occur in the ACT will be made readily available through a range of different media. This aims to improve knowledge and understanding of the species with special protection status in the ACT so as to ensure there is no inadvertent non-compliance.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 53).

Clause 147. Offence—sell native plant without plant tag - protected or special protection status

This clause provides that it is an offence to sell a protected native plant if a plant tag is not visibly attached to the plant at the time of sale. This offence does not apply if the plant is dead or a seed.

This clause also provides that it is an offence if a person sells a native plant with special protection status if a plant tag is not visibly attached to the plant at the time of sale. Special protection status applies to threatened species. This offence does not apply if the plant is dead or a seed.

Lists and descriptions of protected species and species with special protection status likely to occur in the ACT will be made readily available through a range of different media. This aims to improve knowledge and understanding of the species with special protection status in the ACT so as to ensure there is no inadvertent non-compliance.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 54).

Clause 148. Offence—import native plant - protected or special protection status

This clause provides an offence if the person imports a protected native plant. A higher level offence occurs if the plant has special protection status. Special protection status applies to threatened species.

Lists and descriptions of protected species and species with special protection status likely to occur in the ACT will be made readily available through a range of different media. This aims to improve knowledge and understanding of the species with special protection status in the ACT so as to ensure there is no inadvertent non-compliance.

Exceptions for this offence are that the person is licenced to import the plant. The offences do not apply to the importation into the ACT of native timber.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 53).

Clause 149. Offence—export native plant - protected or special protection status

This clause provides an offence if the person exports a protected native plant without a licence. A higher level offence occurs if the plant has special protection status. Special protection status applies to threatened species.

Lists and descriptions of protected species and species with special protection status likely to occur in the ACT will be made readily available through a range of different media. This aims to improve knowledge and understanding of the species with special protection status in the ACT so as to ensure there is no inadvertent non-compliance.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 53).

Clause 150. Offence—export native plant without plant tag - protected or special protection status

This clause provides that it is an offence to sell a protected or specially protected native plant if a plant tag is not visibly attached to the plant at the time of sale. This offence does not apply if the plant is dead or a seed.

Lists and descriptions of protected species and species with special protection status likely to occur in the ACT will be made readily available through a range of different media. This aims to improve knowledge and understanding of the species with special protection status in the ACT so as to ensure there is no inadvertent non-compliance.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 54).

Division 6.1.4 Exceptions to offences

Clause 151. Chapter 6 exceptions

This clause provides a range of exceptions to the offences in this Chapter.

The 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 (refer s 7).

The offences do not apply if the actions are undertaken in accordance with a management agreement (s 304)

The offences do not apply to a Conservation Officer exercising a function under this Act.

An exception applies to authorised actions to implement a Controlled Native Species Management Plan. This underpins a requirement for the Conservator and Custodian to implement a plan and ability for the Conservator and Custodian to authorise people undertake actions to implement the Plan.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 55).

Part 6.2 Other matters

Clause 152. What is an exempt animal?

This clause provides a definition of an 'exempt animal'. An exempt animal means an animal for which an exempt animal declaration is in force.

Clause 153. Declarations—exempt animals

This clause provides that the Conservator may declare a stated animal to be an exempt animal. In making a declaration the Conservator is required to consider the need to protect native species in the ACT and the need to conserve the significant ecosystems of the ACT, NSW and Australia. The listing of an exempt species is able to indicate that a species is not an exempt species unless the provenance can be proved. This concept is similar to that within the Commonwealth's EPBC Act.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 34).

Clause 154. Interest in native animal ends with escape

This clause provides that if a person holds an interest in a native animal and the animal escapes, the person's interest in the animal ends. Also, if the person held a licence to keep the escaped native animal, the licence no longer applies in relation to the animal. This clause is needed to ensure people are not prosecuted for accidental escapes of animals.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 50).

Chapter 7 Controlled Native Species Management Plan

Overview

The clauses provided in this Chapter allow for the management of native species that cause unacceptable economic, social and environmental damage within a strategic context of ensuring the persistence of the species overall.

Native plants and animals can cause unacceptable environmental, social or economic damage that requires management. For example:

- the Eastern Grey Kangaroo population may need to be controlled to ensure the persistence of endangered ecological communities;
- Grey-headed Flying-foxes can carry serious diseases which can be passed on to humans and certain camps may need to be managed if, for example they establish a camp in a school ground;
- Ibis populations may need to be managed around landfills;
- some individual Magpies need to be managed because of overly aggressive behaviour in the nesting season; and
- Cootamundra Wattle may be invading native vegetation patches and require management.

There are currently two regulatory options for managing native plants and animals that cause unacceptable damage:

- the Conservator can provide a licence under the Nature Conservation Act to take or kill a native animal or plant; or
- the species can be declared a pest plant or animal under the *Pest Plants and Animals Act 2005*. This excludes the species from the protection of the Act and enables it to be managed under a pest plant or animal management plan which is a notifiable instrument under the *Pest Plants and Animals Act 2005*.

These are not considered to be efficient or appropriate mechanisms for managing native species that need to be controlled. The licencing mechanism does not put the licence into a strategic context. For example, licencing only applies to taking or killing. It cannot specify and enforce a broader range of management actions such as manipulating habitat; using other control methods or managing competition.

Listing native species as pests under the *Pest Plants and Animals Act 2005* is problematic because it requires species to be declared pests before they can be managed. The use of the term 'pest' for popular native species such as Eastern Grey Kangaroos is inappropriate. Also, the *Pest Plants and Animals Act 2005* has no formal requirement for public consultation on a pest animal management plan, and no formal requirement that broader environmental issues be considered, such as the species conservation status in the ACT or the ecological role of the species in the ecosystem. Introducing such provisions into the *Pest Plants and Animals Act 2005* would complicate the much more straightforward process of managing exotic pests. The ACT Pest Animal Management Strategy 2012 raised the option of amending the *Nature Conservation Act 1980* to allow native animals to be managed to reduce impacts on social, environmental or economic assets to an acceptable level.

This chapter provides processes for managing the impacts of native species within a statutory framework that considers the impact of the species, animal welfare, and the species own conservation.

Clause 155. What is a controlled native species?- Chapter 7

This clause provides a definition of a ‘controlled native species’. A controlled native species means a native species declared to be a controlled native species. Controlled native species may be a plant or an animal, or another organism.

The clause provides that 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.

Clause 156. What is a Controlled Native Species Management Plan?

This clause provides a definition of a ‘Controlled Native Species Management Plan’.

Clause 157. What is a draft Controlled Native Species Management Plan? - Chapter 7

This clause provides a definition of a draft ‘Controlled Native Species Management Plan’. A draft Controlled Native Species Management Plan means a plan detailing how the controlled native species may be appropriately managed and how the plan may apply, adopt or incorporate an instrument as in force from time to time. A Controlled Native Species Management Plan may incorporate requirements agreed to in a conservation agreement under the EPBC Act, for example.

The clause provides that a Controlled Native Species Management Plan for a native animal must be consistent with each approved code of practice and mandatory code of practice under the *Animal Welfare Act 1992* that applies to the animal.

Clause 158. 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. Plans for species do not have to cover the entire ACT. They may only apply to specific areas or a specific tenure.

Clause 159. Draft Controlled Native Species Management Plan —consultation with lessee and Custodian

Some species may need to be controlled on both public and privately managed land. This clause provides that the Conservator must consult with the lessee and/or the Custodian of the land in preparing a draft Controlled Native Species Management Plan for a controlled native species on stated land.

Not all plans would apply to all tenures. It is only intended that a plan that covered private leasehold land would generally only apply to private leaseholds where they are required to manage species as required in lease conditions and land management agreements, or if they seek to manage wildlife because of environmental, social or economic damage. If the plan was in place the plan would identify best practice ways to manage native species.

Clause 160. Draft Controlled Native Species Management Plan —public consultation

This clause provides that public consultation be undertaken on a draft Controlled Native Species Management Plan. The public consultation process commences when a public consultation notice

about the draft Controlled Native Species Management Plan is notified on the ACT legislation register. The minimum period of consultation on a draft Controlled Native Species Management Plan is 6 weeks.

If consultation is on an instrument that is to be adopted the notification of the consultation process will need to note that instruments proposed to be adopted cannot be amended, only adopted or not adopted because the ACT is not able to amend another jurisdiction's instrument.

The clause provides that the Conservator can make arrangements for a person with particular communication needs to have adequate opportunity to comment on the draft plan. This aims to ensure that a range of people are able to comment including the opportunity for people to make submissions other than in writing.

Clause 161. Draft Controlled Native Species Management Plan —revision

This clause provides that at the end of the public consultation period, the Conservator must consider any submissions received during the public consultation period and prepare a final version of the draft Controlled Native Species Management Plan.

Clause 162. Draft Controlled Native Species Management Plan —emergencies

This clause provides for finalisation of a draft Controlled Native Species Management Plan in an emergency situation without public consultation. This aims to provide for control of native species in situations where there is an urgent requirement to manage a species, for example in situations to manage an outbreak of a disease or where there are significant risks to human health.

Clause 163. Draft Controlled Native Species Management Plan —final version and notification

This clause provides that the final version of a draft Controlled Native Species Management Plan is a disallowable instrument.

Clause 164. Controlled Native Species Management Plan —minor amendments

This clause provides for minor amendments to be made to a Controlled Native Species Management Plan. Minor amendments mean an amendment that will improve the effectiveness or technical efficiency of the plan without changing the substance of the plan. This might include updating references to altered scientific names, or updating titles of other relevant plans or similar. Consultation on minor amendments is not required.

Clause 165. Controlled Native Species Management Plan —Conservator etc to implement

This clause requires that the Conservator and the Custodian must take reasonable steps to implement a Controlled Native Species Management Plan.

There is a general expectation that once plans have been finalised and agreed, they will be implemented. The Custodian and Conservator are able to implement the Plan in any manner that is consistent with the Plan. The Bill makes an express provision for authorising actions consistent with the Plan.

Not all plans would apply to all tenures. It is intended that a plan would generally only apply to private leaseholds where they need to manage species on their land as outlined in lease and land management agreements.

The existence of a plan is not intended to preclude management of native species outside of the actions and activities identified in the plan. Actions not identified in the Plan could still be undertaken but would be subject to normal licensing provisions.

This provision aims to increase accountability for the implementation of the Controlled Native Species Management Plans.

Clause 166. Controlled Native Species Management Plan —monitoring and review

This clause requires that the Conservator must take reasonable steps to monitor the effectiveness of a Controlled Native Species Management Plan. The clause also provides that the Conservator must review a Controlled Native Species Management Plan at least once every 5 years.

Following the review period the Conservator can decide to amend the plan (minor amendments) or rewrite the plan through developing a new Controlled Native Species Management Plan.

This provision aims to increase accountability for the implementation of the Controlled Native Species Management Plan.

Chapter 8 Reserves—management planning

Overview

Conservation reserves are the primary means of providing for the conservation and management of species and ecosystems. Governments have a responsibility for stewardship of conservation reserves and the species and ecosystems they contain for current and future generations. It is appropriate that legislation prescribes the process that the ACT government and statutory officers will undertake to protect the species and ecosystems of the ACT to meet these requirements for stewardship.

The ACT has established a comprehensive reserve network protecting areas of high conservation value. Today more than 61 per cent⁵ of the ACT is a part of the reserve network, with 55 per cent managed expressly for its conservation values. This is a much higher proportion of reserved land than in other states and the Northern Territory. All ACT ecosystems and habitats of all threatened species are represented in the reserve network.

Currently, requirements for management planning for conservation reserves are in the *Planning and Development Act 2007*, while management authority (provided through the creation of the Parks and Conservation Service and Conservation Officers) is under nature conservation legislation. The Conservation Officers have a range of powers to regulate activities in reserves, which are used to implement plans. The Conservator also has powers to regulate activities. The ACT is the only jurisdiction in Australia that provides for plans of management and operational management of reserved areas under two separate statutes. All other jurisdictions, including the Commonwealth, provide for both aspects under one piece of legislation. The result is an unnecessary degree of administrative complexity and some uncertainty about responsibility and authorisation.

This Bill aims to align management planning and day to day operations for conservation reserves through provisions to consolidate plans of management for wilderness areas, national parks and nature reserves under the Act. The Bill also brings management of catchment areas and some special purpose reserves (those managed as part of a broader conservation area such as the Murrumbidgee River Corridor and Molonglo River Park) into the Act. This is because day to day management is undertaken by the Parks and Conservation Service, and there are insufficient regulatory provisions under other statutes to provide for adequate day to day management, such as restricting access, managing recreational use etc.

The Bill also provides for the development of plans of management for Ramsar sites and for benefit sharing arrangements to implement the Nagoya Protocol, a subsidiary international agreement under the Convention on Biological Diversity.

Part 8.1 Meaning of Reserve and Wilderness Area

Clause 167. What is a reserve?

This clause provides a definition of what reserves are covered under the Act for the purposes of planning and management and compliance and enforcement. Reserves covered under the Act are wilderness areas, national parks, nature reserves, and catchment areas. The clause provides for a regulation that would determine what other areas of land reserved under the Territory Plan are to be managed under the Act. There are some reserves, for example the Murrumbidgee River

⁵ This includes Wilderness Areas (12%), National Parks (35%), Nature Reserves (8%), catchment areas (3%), special purpose reserves (3%).

Corridor, and the proposed Molonglo River Park which are managed as an individual unit but are made up of a combination of nature reserves and special purpose reserves. The aim of the proposed Regulation is to ensure seamless management and offences across areas managed as a single nature reserve. This provides clarity to managers and users of these public spaces without changing the purpose for which the reserve was created under the Territory Plan and the *Planning and Development Act 2007*. The Regulation can also specify that parts of special purpose reserves are not reserves for the purpose of the Act. For example, the regulation may indicate that a pine plantation embedded in the reserve is not part of the reserve: in that case the management plan does not need to include the areas and the offences relating to reserves within the Act do not apply.

The creation of reserves occurs through the *Planning and Development Act 2007*. The intention to bring reserves whose primary purpose is not 'nature conservation' such as special purpose reserves and water catchments, into the Act is to provide for consistent management of these areas to protect the values for which they were reserved, which may be for water catchment or aesthetics. For example, Conservation Officers have no effective powers in the lower Cotter Catchment. This is leading to degradation and increased costs for restoration.

Although much of the Act focuses on the protection and management of species and ecosystems, the Act uses the term 'nature conservation' to indicate that the intent of the Act is much broader than merely plants and animals and species and ecological communities. The objects within the Bill include an objective to 'protect conserve, enhance, restore and improve ... ecosystem services and functions ... and landscapes of natural significance'. The provision outlined at this clause gives effect to that objective (as well as a range of other provisions relating to damage within reserves).

Clause 168. What is a wilderness area?

This clause provides a definition of a 'wilderness area' which is an area of public land reserved in the Territory Plan for a wilderness area. Management objectives for wilderness areas are in the *Planning and Development Act 2007*, sch 3.

Part 8.2 IUCN (International Union for Conservation of Nature) categories for reserves

The following provisions give effect to the Government Response to recommendations made by the Commissioner for Sustainability and the Environment in the report on the *Investigation into Canberra Nature Park (nature reserves); the Molonglo River (nature reserves) and Googong Foreshores*.

Clause 169. What is an IUCN category for a reserve?- part 8.2

This clause provides a definition of an 'IUCN category' for a reserve. An IUCN category means an International Union for Conservation of Nature category set out in the *Environment Protection and Biodiversity Conservation Regulations 2000* as in force from time to time. The IUCN categories are an international standard which have been given recognition at the national level and are used for international reporting on protected areas, in particular to report on reserve establishment and management.

IUCN categories are the accepted global standard for the planning, establishment and management of protected areas and embody international best practice. They are applied by all Australian jurisdictions to reserved areas through their collaboration in the National Reserve System program, and would provide a robust, internationally recognised framework for guiding management.

Clause 170. Assignment of reserves to IUCN categories

It is also proposed that the Conservator be required to allocate to all reserved areas one of the six Protected Area Management Categories developed by the IUCN. The IUCN categories would reflect the purpose of the reserve as set out for the management objectives in section 317 and Schedule 3 of the *Planning and Development Act 2007*. For the purposes of management planning, the Conservator may divide a reserve into parts (*zones*) and assign each zone to an IUCN category.

This clause provides that the Conservator need not assign a special purpose reserve or catchment area to a category because the primary objective of these reserves is not conservation.

IUCN categories for reserves are provided to the Commonwealth for inclusion in the Collaborative Australian Protected Area Database (CAPAD). This then provides the basis of reporting on protected areas to the Convention on Biological Diversity.

Clause 171. IUCN reserve management objectives

This clause provides that a regulation may prescribe objectives (the *IUCN reserve management objectives*) for each IUCN category.

The objectives of the reserve as identified under the *Planning and Development Act 2007* would apply and would be a higher order objective for the reserve. The IUCN management objectives aim to provide consistency across Australia in identifying the main principles for management.

Some jurisdictions manage reserves primarily according to IUCN objectives. This provides an opportunity to move to that model if desired for some types of reserves but does not obligate the Territory to do so.

Clause 172. Management of reserve assigned to IUCN category if no Reserve Management Plan

This clause provides an obligation to manage a reserve consistent to an IUCN category, if one has been assigned, in the absence of a management plan. This also obligates the Custodian to manage the reserve in accordance with the IUCN reserve management objectives for the IUCN category to which the reserve is assigned (if these objectives have been developed and apply to the particular reserve).

These arrangements are not intended to override the objectives for the reserve assigned under the *Planning and Development Act 2007*. These objectives serve to identify the overall purpose of the reserve whereas the IUCN categories and objectives aim to inform management within overarching objectives for establishing the reserve in the first place.

Part 8.3 Reserve Management Plan

Management plans for nature conservation reserves have traditionally been done under the *Planning and Development Act 2007*. All other jurisdictions provide for management planning for reserves within the Act that provides for their management. The clauses below transfer management planning for reserves managed by the Parks and Conservation Service from the *Planning and Development Act 2007*. Management planning for open space and recreational reserves remains with the *Planning and Development Act 2007*. The provisions are largely similar to those currently in place: some timelines have been tightened to ensure the management planning processes are not unnecessarily protracted and a few unused provisions (to defer or withdraw a plan) have not been included.

Clause 173. What is a Reserve Management Plan?

This clause provides a definition of a 'Reserve Management Plan'. A Reserve Management Plan is a final plan approved by the Minister.

The clause provides that a Reserve Management Plan may incorporate a Ramsar Wetlands Management Plan for the wetland if the wetland occurs within a reserve. There is only one Ramsar wetland in the ACT, Ginnini Wetlands which is wholly within Namadgi National Park.

Clause 174. What is a draft Reserve Management Plan? – pt 8.3

This clause provides a definition of a 'draft Reserve Management Plan'. A draft Reserve Management Plan should be consistent with the IUCN category to which the reserve or a zone of the reserve is assigned (if any) and any IUCN objectives.

The plan should describe how the IUCN reserve management objectives for the reserve are to be implemented or promoted in the reserve.

Clause 175. Draft Reserve Management Plan —Custodian to prepare

This clause provides that the Custodian of a reserve must prepare a draft Reserve Management Plan for the reserve. The clause also provides that in preparing a draft Reserve Management Plan, the Custodian must consult with the Conservator and the planning and land authority.

This provision mirrors requirements under the *Planning and Development Act 2007* (s 322) which allocates responsibility for developing management plans to the Custodian of the reserve.

Clause 176. Draft Reserve Management Plan — planning reports and strategic environmental assessments

This clause provides that the Minister may direct the Planning and Land Authority to prepare either a planning report or a strategic environmental assessment to inform the development of the Reserve Management Plan. The Custodian must consider any planning report in developing the Reserve Management Plan.

This mirrors an existing provision of the *Planning and Development Act 2007*.

Clause 177. Draft Reserve Management Plan —public consultation

This clause provides that public consultation must be undertaken on a draft Reserve Management Plan. Consultation is commenced through a public consultation notice.

The clause provides that the Conservator can make arrangements for a person with particular communication needs to have adequate opportunity to comment on the draft plan. This aims to ensure that a range of people are able to comment including the opportunity for people to make submissions other than in writing.

This mirrors an existing provision of the *Planning and Development Act 2007*.

Clause 178. Draft Reserve Management Plan —revision and submission to Minister

This clause provides processes relevant to the Custodian finalising the Reserve Management Plan. The Custodian of the reserve is required to revise the plan as appropriate and submit the revised plan to the Minister.

This clause provides processes to be followed for submission of the finalised Reserve Management Plan to the Minister for approval. The submission to the Minister seeking approval of the plan needs to be accompanied by a report outlining the issues raised through the consultation process. The report must include advice about any submissions the planning and land authority or the Conservator made including the reasons the Custodian did not revise the draft plan to incorporate the change.

This mirrors an existing provision of the *Planning and Development Act 2007*.

Clause 179. Draft Reserve Management Plan —referral to Legislative Assembly Committee

This clause provides for processes to refer a draft Reserve Management Plan for a reserve to a Committee of the Legislative Assembly. The Minister must refer the plan to a Committee within 5 working days of receiving it. The plan must be accompanied by the report setting out the issues raised during the consultation process.

The Committee can make recommendations about the draft plan, including that the Minister should approve it. The Committee is required to tell the Minister about the recommendations and refer the matter back to the Minister.

This mirrors an existing provision of the *Planning and Development Act 2007*.

Clause 180. Draft Reserve Management Plan —Committee to report

This clause provides that if the Minister has provided a draft plan to a Committee, the Minister cannot approve, return or reject the plan until the Committee has referred the plan back to the Minister, except in the circumstances outlined.

This clause provides a statutory timeframe for the Committee to report back to the Minister. If the Committee has not reported back to the Minister within 6 months of the plan being given to them the Minister can, but is not required to, approve, reject or return the plan. The aim of this is to provide for timely consideration of plans of management while ensuring adequate time for scrutiny and public processes.

The clause also provides that the Minister must take action to approve, return the plan to the Custodian for revision or reject the plan once the Committee has referred the plan back to the Minister.

Clause 181. Draft Reserve Management Plan —Minister to approve, return or reject

This clause provides that the Minister can approve, return or reject a Reserve Management Plan where the Legislative Assembly Committee has reported back to the Minister, or where the Minister decides to take this action because 6 months has passed and the Legislative Assembly Committee has not reported back.

The clause provides that the Minister must consider the Legislative Assembly Committee's recommendations, and the Minister can direct the Custodian to consider the Committee's recommendations in finalising the plan.

The Minister must make a decision on a management plan within 45 days.

Previous processes under the *Planning and Development Act 2007* include processes for withdrawing and delaying implementation of a plan of management. These processes were never utilised and have been omitted.

Clause 182. Draft Reserve Management Plan —Minister’s approval and notification

This clause provides that a draft Reserve Management Plan approved by the Minister is a disallowable instrument.

The clause notes that 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.

Clause 183. Draft Reserve Management Plan —Minister’s direction to revise etc

This clause provides for processes that must be undertaken if the Minister gives the Custodian of a reserve a direction to consider the Assembly Committee’s recommendations, to carry out further consultation or to revise the draft plan in a stated way.

The clause requires the Custodian to give effect to the direction and resubmit the draft plan to the Minister for approval. The clause also provides that the Minister must decide to approve, return or reject a resubmitted draft plan.

Clause 184. Draft Reserve Management Plan —Minister’s rejection

This clause provides that the Minister can, by issuing a rejection notice, reject a draft Reserve Management Plan to the Minister. A rejection notice is a notifiable instrument.

Clause 185. Reserve Management Plan —minor amendments

This clause provides for minor amendments of an existing plan of management if the Custodian considers that minor amendments to the existing plan are appropriate.

The minor amendments process requires the Custodian to prepare a new draft Reserve Management Plan for the reserve, incorporating the minor amendments into the existing plan and submit the new draft Reserve Management Plan to the Minister for approval. Provisions about public consultation and referral to a Legislative Assembly Committee do not apply to a Reserve Management Plan that has had minor amendments. The Minister is able to approve an amended plan, with or without revisions, or reject the plan.

Minor amendments of a Reserve Management Plan for a reserve are those amendments that will improve the effectiveness or technical efficiency of the plan without changing the substance of the plan. This is intended to include minor corrections to improve effectiveness, omitting parts that are redundant and technical adjustment to improve efficiency.

Clause 186. Reserve Management Plan —Custodian to implement

This clause provides that if a Reserve Management Plan is in force for a reserve the Custodian of the reserve must take reasonable steps to implement the plan.

This provision aims to increase accountability for the implementation of management plans. This does not mean that management plans should not include aspirational elements. Long-term plans sometimes need to include longer-term visions, which may depend on further information or additional resources that are not currently available.

Clause 187. Reserve Management Plan —review

This clause provides that if a Reserve Management Plan is in force for a reserve the Custodian of the reserve report to the Minister about the plan at least once every 5 years. The clause also

provides that the Custodian of the reserve must review the plan 10 years after the plan commences. This is aimed at ensuring that regular reviews of management are undertaken. It is intended that if the review finds that the plan is largely effective, the minor amendments process can be used to update the plan without the requirement to write a new plan.

The clause also provides that the Custodian must consult the Conservator when undertaking a review. This aims to ensure that the review explicitly considers the effectiveness of the plan in protecting biodiversity.

This provision aims to increase accountability for the monitoring of the effectiveness of management plans.

Part 8.4 Ramsar wetlands management plans

This part provides for the development of a specific management plan for a Ramsar wetland. Ramsar wetlands are protected under the EPBC Act and are also subject to state and territory jurisdictional arrangements. There is one Ramsar site in the ACT which is within the Namadgi National Park and which has general protection under the Namadgi National Park Plan of Management.

This part proposes a supplementary management plan for Ramsar Wetlands to ensure their ongoing appropriate management. The management plan is intended to provide significantly more detailed management requirements than those that would normally be covered in a Reserve Management Plan.

Clause 188. What is a Ramsar wetland?

This clause provides a definition of a 'Ramsar wetland'. A Ramsar wetland is a declared Ramsar wetland under the EPBC Act.

The Convention on Wetlands of International Importance, called the Ramsar Convention, is an intergovernmental treaty that provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. Ramsar wetlands are declared under the EPBC Act.

The declaration process for a Ramsar wetland can take many years, and wetlands are only declared with the agreement of the relevant jurisdiction, and private landowners if the wetland occurs on private land.

Clause 189. What is a Ramsar Wetland Management Plan?

This clause provides a definition of a 'Ramsar Wetland Management Plan'.

Clause 190. What is a draft Ramsar Wetland Management Plan? –pt 8.4

This clause provides a definition of a draft Ramsar Wetland Management Plan.

The clause provides that the plan may apply, adopt or incorporate an instrument as in force from time to time. For example, for the Ginini Flats Wetlands Ramsar Site might incorporate the Corroboree Frog recovery plan made under the EPBC Act, s 269A.

This section also provides a definition of ecological character by referring to the requirements of the EPBC Act.

Clause 191. Draft Ramsar Wetland Management Plan—Conservator to prepare

This clause outlines that it is the responsibility of the Conservator to prepare a draft Ramsar Wetland Management Plan for a Ramsar wetland. The preparation of a Ramsar Wetland Management Plan is not a mandatory requirement but would be prepared if it is considered that management of the Ramsar site could be improved through preparation of a management plan.

Clause 192. Draft Ramsar Wetland Management Plan—consultation with Commonwealth and Custodian

This clause provides that the Conservator must consult with the Commonwealth Minister responsible for administering the EPBC Act; and the Custodian of each area of public land where the wetland is located.

The Commonwealth is responsible for the protection of Ramsar sites and for reporting about their management internationally. It is therefore appropriate that the Commonwealth be consulted during the preparation of the management plan. It is also appropriate that the Custodian of the land that the Ramsar site is on be consulted during the drafting of the management plan.

Clause 193. Draft Ramsar Wetland Management Plan—public consultation

This clause provides that the Conservator must undertake a minimum 6 week public consultation process on a draft Ramsar Wetland Management Plan.

The clause provides that the Conservator can make arrangements for a person with particular communication needs to have adequate opportunity to comment on the draft plan. This aims to ensure that a range of people are able to comment including the opportunity for people to make submissions other than in writing.

Clause 194. Draft Ramsar Wetland Management Plan—revision and submission to Minister

This clause provides that following the consultation period, the Conservator must consider any submissions received and prepare a version for submission to the Minister. This clause provides processes for finalising a draft Ramsar Wetland Management Plan. The Conservator must submit the draft plan to the Minister for approval. The submission must be accompanied by a report setting out the issues raised in submissions given to the Conservator during the public consultation period for the draft plan.

Clause 195. Draft Ramsar Wetland Management Plan —Minister to approve, return or reject

This clause provides processes for approving a draft Ramsar Wetland Management Plan. On receiving a finalised draft Ramsar Wetland Management Plan, the Minister must approve the draft plan, return the draft plan to the Conservator for further revision or reject the draft plan.

If the Minister returns the draft plan to the Conservator for revision, the Minister may direct the Conservator to carry out stated further consultation, to consider a relevant report (such as an investigation report from the Commissioner for Sustainability and the Environment) or to revise the draft plan in a stated way.

Clause 196. Draft Ramsar Wetland Management Plan—Minister's approval and notification

This clause provides that a draft Ramsar Wetland Management Plan approved by the Minister is a disallowable instrument. The clause notes that minor amendments may be made to the Ramsar Wetland Management Plan.

Clause 197. Draft Ramsar Wetland Management Plan—Minister’s direction to revise etc

If the Minister returns the draft plan to the Conservator, the Minister can direct the Conservator to carry out further consultation, to revise the draft plan in a stated way or to consider a report. The Conservator must give effect to the direction and resubmit the draft plan to the Minister for approval.

Clause 198. Draft Ramsar Wetland Management Plan—Minister’s rejection

This Clause provides that if the Minister rejects a draft Ramsar Wetland Management Plan the Minister must prepare a rejection notice.

Clause 199. Ramsar Wetland Management Plan—minor amendments

This clause provides for minor amendments of an existing Ramsar Wetland Management Plan if the Conservator considers that minor amendments to the existing plan are appropriate.

The minor amendments process requires the Conservator to prepare a new draft Ramsar Wetland Management Plan, incorporating the minor amendments into the existing plan and submit the new draft plan to the Minister for approval. Public consultation is not required. The clause provides that the Minister must approve the plan, with or without revisions, or reject the plan.

Minor amendments of a Ramsar Wetland Management Plan for a reserve are those amendments that will improve the effectiveness or technical efficiency of the plan without changing the substance of the plan. This is intended to include minor corrections to improve effectiveness, omitting parts that are redundant and technical adjustment to improve efficiency.

Clause 200. Ramsar Wetland Management Plan—Conservator etc to implement

This clause provides that if a Ramsar Wetland Management Plan is in force the Conservator and the Custodian of the reserve must take reasonable steps to implement the plan.

This provision aims to increase accountability for the implementation of the Ramsar Wetland Management Plan.

Clause 201. Ramsar Wetland Management Plan—monitoring and review

This clause provides that if a Ramsar Wetland Management Plan is in force for a reserve the Conservator must monitor the effectiveness of the plan and report to the Minister about the plan at least once every 5 years.

This provision aims to increase accountability for the monitoring of the effectiveness of the Ramsar Wetland Management Plan.

Part 8.5 Access to biological resources in reserves

The changes outlined below are proposed to give effect to the Nagoya Protocol on biological resources. Australia signed the Nagoya Protocol on Access and Benefit Sharing in 2012. The Nagoya Protocol is a supplementary agreement to the Convention on Biological Diversity. Australian jurisdictions will be obliged to legislate to implement the Protocol when it comes into force, which will occur 90 days after the 50th country signs.

The provision aims to provide additional licensing provisions to ensure that commercial benefits obtained through research or collection of flora and fauna in ACT reserves are shared appropriately with the ACT Government and Aboriginal groups who have contributed traditional

ecological knowledge. The Bill provides a transparent legal framework for the fair and equitable sharing of benefits arising out of the utilisation of genetic resources.

Under the proposed amendments, licence applicants would be required to develop and participate in a benefit sharing agreement with the ACT Government or Aboriginal groups, and obtain prior informed consent and mutually agreed, fair and equitable terms for relevant government and commercial interests and Aboriginal groups. This is a facilitative provision that aims to reduce uncertainty about access to genetic resources.

The provisions largely mirror those of the EPBC Act.

Clause 202. What are biological resources? –pt 8.5

This clause provides a definition of ‘biological resources’. Biological resources include genetic resources; organisms or parts of organisms; and populations and any other biotic component of an ecosystem with actual or potential use or value for humanity.

These provisions largely mirror those of the EPBC Act.

Clause 203. What are genetic resources? –pt 8.5

This clause provides a definition of ‘genetic resources’. Genetic resources mean any material of plant, animal, microbial or other origin that contains functional units of heredity and has actual or potential value for humanity.

These provisions largely mirror those of the EPBC Act.

Clause 204. Who is an access provider? -Pt8.5

This clause provides a definition of an ‘access provider’. An access provider for biological resources in a reserve means the Territory and the native title holders for the reserve (if native title exists in relation to the reserve).

These provisions largely mirror those of the EPBC Act.

Clause 205. What is accessing biological resources? -pt 8.5

This clause provides a definition of ‘accessing biological resources’. Accessing biological resources means the taking of biological resources of native species for research and development of any genetic resources, or biochemical compounds, comprising or contained in the biological resources.

The term ‘accessing biological resources’ does not include the ‘taking of public resources’ for other purposes than identified in this Section. The clause provides that the taking of public resources includes fishing for commerce or recreation, collecting brood stock for aquaculture, harvesting wildflowers, taking wild animals or plants for food, collecting peat or firewood taking essential oils from wild plants or collecting plant reproductive material for propagation, or commercial forestry. The definition does not imply that these activities are allowed in reserves, or that, if they are allowed, they would not be subject to licencing. The definition of taking of public resources is only provided to indicate that these activities, if allowed, are not subject to the benefit sharing requirements of the Act.

The term accessing biological resources does not include some traditional activities of indigenous people for a purpose other than a commercial purpose (and as otherwise appropriately licenced or permitted) or in the exercise of their native title rights and interests or for access to human remains.

This is a facilitative provision. It may or may not be used, depending on whether commercial uses arise from the ACT's biological resources. The provisions largely mirror those of the EPBC Act.

Clause 206. Application—certain biological resources

This clause provides an ability to make a declaration that this part does not apply to stated biological resources or a stated collection of biological resources (including future additions to the collection) if the resources are held as specimens away from their natural environment by the Territory or a territory authority.

This is a facilitative provision. It may or may not be used, depending on whether commercial uses arise from the ACT's biological resources. The provisions largely mirror those of the EPBC Act.

Clause 207. Offence—access biological resources

This clause provides that it is an offence if the person accesses biological resources in a reserve without a nature conservation licence authorising the accessing of the resources.

The offence does not apply to a person in relation to biological resources that are in a reserve for which the person is an access provider.

Clause 208. Benefit-sharing agreement— licensee required to enter

This clause provides that an applicant for a licence to access biological resources for commercial purposes or potential 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.

The clause provides that the Conservator may, on behalf of the Territory as an access provider, enter into the benefit-sharing agreement.

This clause provides that a benefit-sharing agreement takes effect only if a licence for the proposed access is issued under Chapter 11 (Licences). This aims to ensure that not only the benefits of any benefit sharing arrangements are fair and equitable, but that they are also appropriate to the sustainability of the resource. For example, it may not be appropriate for a species or organism to be subject to a benefit sharing arrangement because the population could not withstand any use without harming the population.

This is a facilitative provision. It may or may not be used, depending on whether commercial uses arise from the ACT's biological resources. The provisions largely mirror those of the EPBC Act.

Clause 209. Benefit-sharing agreement - provisions

This clause provides that a benefit-sharing agreement must provide for reasonable benefit-sharing arrangements including protection for, recognition of and valuing of any indigenous people's knowledge to be used.

The clause provides that the Conservator may make a model benefit-sharing agreement as a guide to assist in the development of benefit sharing agreements. A model benefit-sharing agreement is a notifiable instrument.

This clause aims to ensure that any traditional ecological knowledge used as part of the benefit sharing arrangement is appropriately valued and recognised.

This is a facilitative provision. It may or may not be used, depending on whether commercial uses arise from the ACT's biological resources. The provisions largely mirror those of the EPBC Act.

Clause 210. Benefit-sharing agreement -Informed consent

This clause provides that the Conservator must not enter into a benefit-sharing agreement on behalf of the Territory concerning access to biological resources if 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.

The clause provides that the Conservator must consider whether the access provider had adequate knowledge of this part and was able to engage in reasonable negotiations with the applicant for the licence about the benefit-sharing agreement and whether the access provider was given adequate time to consider the application for the licence and to negotiate the benefit-sharing agreement. The Conservator must also consider 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 and whether the access provider has received independent legal advice about the application and the requirements of this part.

This clause aims to ensure that if native title exists over the area, indigenous access providers are appropriately engaged in the benefit sharing arrangement.

This is a facilitative provision. It may or may not be used, depending on whether commercial uses arise from the ACT's biological resources. The provisions largely mirror those of the EPBC Act.

Chapter 9 Reserves—offences

Overview

The following clauses largely reflect current provisions relating to offences in reserves. Some provisions have been redrafted to improve clarity.

This chapter includes the most serious offences within the Bill relating to either clearing vegetation or damaging land in reserves without approval through a licence, or a development approval. Penalties for these offences are on a sliding scale, depending on whether or not the offending action was intentional, reckless or negligent. The penalties also reflect the seriousness of the damage with a higher level offence for clearing or damage which impacts on significant biodiversity assets. The range of offences for clearing and damaging land have not changed from what was in the *Nature Conservation Act 1980* and are set at levels commensurate with other Australian jurisdictions. New fault elements of ‘knowingly clearing’ or ‘knowingly damaging’ land in reserves have been introduced at a higher penalty of 2,500 penalty units, which is commensurate to the level of penalty for a similar level offence under the *Environment Protection Act 1997*.

The proposals clarify current uncertainty regarding whether a development approval under the *Planning and Development Act 2007* authorises action for clearing and damaging land. The exceptions at the end of the chapter clarify that.

The *Nature Conservation Act 1980* did not enable the Conservator to apply to the Court for an order to remedy environmental harm where a conviction has occurred. This Bill provides the Conservator the opportunity to make such an application.

The chapter also provides an exception for actions that are consistent with an Activities Declaration under Chapter 10. This is required because different reserves are managed for different purposes and some activities that would constitute an offence in one reserve are allowed in another. For example, it is an offence to take a dog into Namadgi National Park but it is not an offence to take a dog into Canberra Nature Park, if it is on a trail and on a lead. The processes in Chapter 10 will clarify what is allowed, or not allowed, in each reserve.

Part 9.1 Reserves—offences generally

Clause 211. Offence—enter reserve without paying entry fee

This clause provides that a person commits an offence if an entry fee for a reserve has been determined by the Minister and the fee is not paid. The maximum penalty for these strict liability offences is 20 penalty units.

Clause 212. Offence—take animal into reserve

This clause provides that a person commits an offence if a person takes an animal into a reserve or allows an animal to enter a reserve and the animal is not a native animal.

This offence does not apply if the animal is an assistance animal. Activities Declarations will identify reserves where it is appropriate to take dogs on leads, and identify any dogs off lead areas within reserves managed under this Act.

This offence does not apply if taking an animal into a reserve is allowed under a Reserve Activities Declaration (Chapter 10) if the conditions stated in the declaration are adhered to.

Clause 213. Offence – feed animal in reserve

This clause makes in an offence to feed an animal within a reserve. The feeding of native animals can cause aggressive behavior in animals and can also cause disease in animals if they are fed inappropriate food, and also cause changes in animal abundance with flow on impacts to the ecological function. Feeding of feral animals can lead to impacts on native species.

Clause 214. Offence—interfere with trap or bait in reserve

This clause is intended to make it an offence to interfere with programs that are either managing the impacts of feral animals, or programs that are researching the ecology of species (native or non-native), or ecological impacts of species (native or non-native).

The term bait is intended to include food or some substitute used as a lure in fishing, trapping etc. The term trap is intended to mean a contrivance used for taking game or other animals.

The Chapter 9 Exceptions apply.

Clause 215. Offence—weapons and traps in reserve

This clause makes it an offence if the person has items in a reserve that are aimed at killing or capturing animals. This includes use of substances that are capable of being used to take or capture an animal.

The Chapter 9 Exceptions apply.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 67).

Clause 216. Offence—damage native plant in reserve

This clause provides that it is an offence to damage a plant in a reserve. This clause aims to limit behaviour within a reserve that damages plants. This might include driving over plants, breaking stems of plants that have been planted as part of landcare activities, or pulling new seedlings out.

The Chapter 9 Exceptions apply.

Clause 217. Offence—take plant or plant reproductive material into reserve

This clause provides that it is an offence to takes a pest plant into a reserve. Under this clause it is proposed that a person commits an offence if the person takes plant reproductive material into a reserve and leaves the plant reproductive material in the reserve. The offence includes depositing garden waste, soil or landscaping material that contains plant material capable of propagating. This section is aimed at people who dump garden waste, soil or landscaping material that contains plant material capable of propagating in reserves because this may have significant impacts on the species within the reserve.

Clause 218. Offence—planting a plant in a reserve

The clause provides that a person commits an offence if the person plants a plant into a reserve. This offence is not aimed at landcare or parkcare activities, or restoration of reserves through Government programs. The clause is aimed at persons who establish plants in reserves as an extension of their own backyards, or for example, they consider that the reserve could be improved by the addition of particular trees or plants, that may not be native.

ParkCare and Landcare activities will be excluded from the offence via licence and/or Activities Declarations.

The Chapter 9 Exceptions apply.

Clause 219. Offence—remove soil or stone from reserve

A person commits an offence if the person removes soil or stone from a reserve. This offence is aimed at small scale removals of stone or soil from a reserve for example for landscaping of backyards. The quantities taken may be small but even small amounts of removal can have significant impacts because of the cumulative effects.

Clause 220. Offence—damage, destroy or remove things in reserve

This clause makes it an offence to damage or destroy a natural or constructed structure or feature in a reserve. The clause also makes it an offence to damage a site, or object, of historical, archaeological, paleontological or geological interest in a reserve. This clause also makes it an offence to damage or destroy infrastructure in a reserve.

Reserve structures and infrastructure are intended to include signs, fences, gates, as well as buildings and barriers etc. It is also intended to cover actions such as removing or damaging plant rehabilitation measures such as exclusion barriers, tree guards etc. Features used for monitoring such as survey markers, photo-points or detection cameras are also intended to be covered in this definition. The provisions are aimed at limiting behaviour that causes damage to reserve infrastructure, but also behaviour that interferes with research, rehabilitation or monitoring programs.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 67).

Part 9.2 Reserves—offences in wilderness areas

Clause 221. Offence—make road in wilderness area

This clause makes it an offence to make a track or road in a wilderness area. Wilderness areas are intended to be areas where there is limited access for humans. Motorised access for wilderness areas is contrary to the purpose of wilderness. People can make tracks by repeated driving through an area or by using things like whipper snippers.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 70).

Clause 222. Offence—use motor vehicle off road in wilderness area

This clause makes it an offence to use a motor vehicle if the person uses a motor vehicle in a wilderness area on a track that was not in existence when the wilderness area was created under the Territory Plan, and the track is not designed to be used by vehicles with 4 or more wheels. Motorised access for wilderness areas is contrary to the purpose of wilderness. However, the use of some roads is allowed to recognise existing uses that were in place when the wilderness was created.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 70).

Clause 223. Offence—excavate in wilderness area without licence

This provision makes it an offence to excavate in a wilderness area without a nature conservation licence.

Excavation is not normally an activity that would occur in a wilderness area, but could occur for example through the excavation of archaeological sites. If this occurs then there is an expectation that the area would be restored to its former condition, as far as possible to its former state.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 70).

Clause 224. Direction to restore excavation site

This clause provides that a direction may be made to restore an excavation site in a wilderness area if a person fails to restore the excavation site and its surroundings as far as possible to their former state. It is intended that this direction may apply whether or not the person was licenced to undertake the excavation.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 72).

Clause 225. Offence—fail to comply with restore excavation direction

This clause makes it an offence to fail to comply with the direction to restore an excavation site. If the person was not licenced to carry out the excavation then other offences also arise.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 72).

Clause 226. Restoration of excavation site by Territory

This clause allows the Conservator to restore the site and surroundings and recover from the person the reasonable costs of restoring the site and surroundings in the circumstance where a person fails to comply with a restore excavation site direction. This aims to ensure that the environmental damage is restored as soon as possible, in the event that a person either will not, or cannot restore the site.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 72).

Part 9.3 Repairing damage to reserves

Clause 227. Directions to repair damage to reserve

This clause provides that in the circumstances where a person causes damage to a reserve or Territory property on a reserve, the Conservator may direct the person to repair the damage. This provision is intended to cover situations where damage to reserve infrastructure occurs. This might include repair from acts of vandalism, graffiti or other types of damage identified in this chapter. This aims to ensure that the environmental damage is restored as soon as possible.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 71).

Clause 228. Offence—fail to comply with repair damage direction

This clause makes it an offence to fail to comply with a direction to repair damage to a reserve.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 71).

Clause 229. Repair of damage by Territory

This clause allows the Conservator to repair the damage and recover from the person the reasonable costs of repairing the damage in the circumstance where a person fails to comply with a repair damage direction. This aims to ensure that the environmental damage is restored as soon as possible, in the event that a person either will not, or cannot restore the site.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 71).

Part 9.4 Reserves—offences about clearing native vegetation

Clause 230. What is native vegetation? Part 9.4

This clause provides a definition of what is meant by native vegetation. Native vegetation for an area means vegetation indigenous to the area including trees, understorey plants (such as shrubs), groundcover consisting of any kind of grass or herbaceous vegetation and plants occurring in a wetland or stream in the area.

Clause 231. What is a native vegetation area? Part 9.4

The definition of a 'Native Vegetation Area' is needed to define when a native vegetation area is cleared. The Bill proposes to remove ambiguity that was in the *Nature Conservation Act 1980* which stated that 'Native vegetation is cleared in an area if vegetation cleared in the area is substantially native vegetation.' This is ambiguous as determining the meaning of 'substantially' is difficult. The loose definition of substantial is more than 50%. This definition does not work in situations where ground cover may be absent because of drought, or in situations where there is a spring flush of annual weeds, that for a short period dominate the vegetation but do not displace the native plants.

The new definition of a native vegetation areas aims to remove this ambiguity, and provide additional guidance on this complex issue of what is native vegetation that is then used to define when it is cleared.

This definition is reflected in the definition of native vegetation used as a trigger for environmental impact statements.

Clause 232. What is clearing native vegetation? Part 9.4

This clause provides a definition of 'clearing native vegetation'. Clearing native vegetation includes cutting down, felling, thinning, logging or removing native vegetation; burning native vegetation; or doing anything else that kills, or is likely to kill, native vegetation.

Note an exception applies to clearing native vegetation as agreed through the Strategic Bushfire Management Plan, a development approval under the *Planning and Development Act 2007*, a nature conservation licence and a permit under the *Public Unleased Land Act 2013* (noting that permits under the *Public Unleased Land Act 2013* for conservation reserves are subject to consultation with the Conservator).

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 74).

Clause 233. When does clearing cause serious harm or material harm to a reserve? Pt 9.4

This clause provides a description of the circumstances in which clearing native vegetation in a reserve is considered to have caused serious harm or material harm.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 75 & 76).

Clause 234. Offence—clear vegetation causing serious harm

This clause provides that it is an offence if the person **knowingly** clears native vegetation in a reserve in a native vegetation area and the clearing causes serious harm to the reserve.

This clause also provides that it is an offence if the person **recklessly** clears native vegetation in a reserve in a native vegetation area and the clearing causes serious harm to the reserve.

This clause provides that it is an offence if the person **negligently** clears native vegetation in a reserve in a native vegetation area and the clearing causes serious harm to the reserve.

This clause continues the tiered approach to the offence of clearing native vegetation causing serious harm. A new fault element of ‘knowingly clearing’ land in reserves has been introduced at a higher penalty of 2,500 penalty units or 7 years imprisonment, which is commensurate to the level of penalty for a similar offence in the *Environment Protection Act 1997*.

A further change has been to remove the strict liability offence that was in the *Nature Conservation Act 1980* of clearing native vegetation causing material harm with a penalty of 1000 penalty units because it did not meet JACS guidelines for framing offences.

A tiered system of penalties can improve enforcement, provide flexibility and increase the range of regulatory options. There is an option to proceed under a fault liability limb of an offence if there is adequate evidence of the requisite mental element or under a strict liability limb (Clause 236) where evidence of such intent is insufficient. Lower penalties for strict liability offences provide a safeguard for the environment affected.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 75). It has been redrafted to provide clarity and to make it compliant with JACS guidelines for framing offences.

Clause 235. Offence—clear vegetation causing material harm

This clause provides that it is an offence if the person **knowingly** clears native vegetation in a reserve in a native vegetation area and the clearing causes material harm to the reserve.

This clause also provides that it is an offence if the person **recklessly** clears native vegetation in a reserve in a native vegetation area and the clearing causes material harm to the reserve.

This clause provides that it is an offence if the person **negligently** clears native vegetation in a reserve in a native vegetation area and the clearing causes material harm to the reserve.

This clause continues the tiered approach to the offence of clearing native vegetation causing material harm. A new fault element of ‘knowingly clearing’ land in reserves has been introduced at a higher penalty of 1,500 penalty units or 5 years imprisonment, which is commensurate to the level of penalty for a similar offence in the *Environment Protection Act 1997*. A further change has been to remove the strict liability offence that was in the *Nature Conservation Act 1980* of clearing native vegetation causing material harm with a penalty of 500 penalty units because it did not meet JACS guidelines for framing offences.

A tiered system of penalties can improve enforcement, provide flexibility and increase the range of regulatory options. There is an option to proceed under a fault liability limb of an offence if there is adequate evidence of the requisite mental element or under a strict liability limb (Clause 236) where evidence of such intent is insufficient. Lower penalties for strict liability offences provide a safeguard for the environment affected.

Note an exception applies to clearing native vegetation as agreed through the Strategic Bushfire Management Plan, a development approval under the *Planning and Development Act 2007*, a nature conservation licence and a permit under the *Public Unleased Land Act 2013* (noting that

permits under the *Public Unleased Land Act 2013* for conservation reserves are subject to consultation with the Conservator).

Clause 236. Offence—clear vegetation

This clause provides that it is an offence if the person clears native vegetation in a reserve in a native vegetation area. This is a strict liability offence. The offence is at 100 penalty units. The offence has been set at 100 penalty units to reflect the more serious nature of clearing vegetation. By definition, clearing vegetation applies to more than 1 plant. The penalty for taking a plant from unleased land (Clause 138) is 50 penalty units. The penalty unit for clearing vegetation needs to be higher than that of taking a plant.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 79).

Clause 237. Defence of appropriate diligence for offences – Part 9.4

This clause provides a defence of appropriate diligence.

Clause 238. Alternative verdicts for offences—Part 9.4

This clause provides for alternative verdicts for the range of offences in this part. The clause applies where a Court is not satisfied that the defendant is guilty of the relevant offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an alternative offence. The alternative offences may only be applied if the defendant has been given procedural fairness in relation to the finding of guilt in a prosecution.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 81).

Clause 239. Order to restore cleared vegetation etc

This clause applies following a conviction for an offence about clearing native vegetation in a reserve.

These provisions apply in addition to or instead of any other penalty it may impose for the offence.

This clause reflects a similar provision within the *Nature Conservation Act 1980*. However the existing provision did not enable the Conservator to apply to the Court for an order to remedy environmental harm where a conviction has occurred. This leaves the cost of repairing any environmental harm to the Government or the community. The Bill proposes that the Conservator be given the opportunity to make such an application.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 82).

Clause 240. Order to publicise conviction or finding of guilt

This clause provides that the Court may require action for the offender; the contravention and its environmental consequences; and any remedial action taken or ordered in relation to the contravention to be publicised.

The inclusion of this clause raises human rights issues for individuals in that they limit, in particular, s12 of the *Human Rights Act 2004*— the right to privacy and reputation. Section 28 of the *Human Rights Act 2004* allows for reasonable limitations on protected rights, as long as the limitation is lawful and can be demonstrably justified.

It is considered that this provision is reasonable because it only relates to serious offences on public land in conservation reserves, where the public interest in both the contravention and the rectification is likely to be very high, and only once there has been a conviction. It is expected that provision would normally be used for contravention of this Section of the Act by Corporations; however, the decision would be made by the Court, taking into account the circumstances of the contravention.

The provision is intended to have a deterrence effect through the publication of the offence and the consequences as a way of encouraging compliance by others, as well as complementing other orders such as restoration orders.

The inclusion of orders about rectification of the clearing aims to have an educative effect by raising awareness about protection mechanisms as well as informing the community about how a serious environmental issue has been rectified. This provision only relates to serious offences: there are no readily identifiable less restrictive alternatives, as the provisions already provide for significant fines, imprisonment and/or restoration orders. The limitation on human rights is considered reasonable in these circumstances.

Similar provisions are found in s 498, *Environment Protection and Biodiversity Conservation Act 1999*.

Part 9.5 Reserves—offences about damaging land

Clause 241. What is damage to land? Part 9.5

This clause provides a definition of what is meant by ‘damage’. Damage to land includes the destruction to land or the removal of clay, gravel, rock, sand, soil or stone from the land.

Clause 242. When does damage cause serious harm or material harm to a reserve? - Part 9.5

This clause provides a description of the circumstances in which damage in a reserve is considered to have caused ‘serious harm’ or material harm.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 75 & 76).

Clause 243. Offence—damage land causing serious harm

This clause provides that it is an offence if the person **knowingly** damages land in a reserve and the damage causes serious harm to the reserve.

This clause also provides that it is an offence if the person **recklessly** damages land in a reserve and the damage causes serious harm to the reserve.

This clause provides that it is an offence if the person **negligently** damages land in a reserve and the damage causes serious harm to the reserve.

This clause continues the tiered approach to the offence of damaging land causing serious harm. A new fault element of ‘knowingly clearing’ land in reserves has been introduced at a higher penalty of 2,500 penalty units or 7 years imprisonment, which is commensurate to the level of penalty for a similar offence in the *Environment Protection Act 1997*. A further change has been to remove strict liability from the offence of damaging land causing serious harm with a penalty of 1000 penalty units.

A tiered system of penalties can improve enforcement, provide flexibility and increase the range of regulatory options. There is an option to proceed under a fault liability limb of an offence if there

is adequate evidence of the requisite mental element or under a strict liability limb (Clause 245) where evidence of such intent is insufficient. Lower penalties for strict liability offences provide a safeguard for the environment affected.

Note an exception applies to damaging land causing serious harm as agreed through the Strategic Bushfire Management Plan, a development approval under the *Planning and Development Act 2007*, a nature conservation licence and a permit under the *Public Unleased Land Act 2013* (noting that permits under the *Public Unleased Land Act 2013* for conservation reserves are subject to consultation with the Conservator).

Clause 244. Offence—damage land causing material harm

This clause provides that it is an offence if the person **knowingly** damages land in a reserve and the damage causes material harm to the reserve.

This clause also provides that it is an offence if the person **recklessly** damages land in a reserve and the damage causes material harm to the reserve.

This clause provides that it is an offence if the person **negligently** damages land in a reserve and the damage causes material harm to the reserve.

This clause continues the tiered approach to the offence of damaging land causing material harm. A new fault element of 'knowingly' damaging land in reserves has been introduced at a higher penalty of 1,500 penalty units or 5 years imprisonment, which is commensurate to the level of penalty for a similar offence in the *Environment Protection Act 1997*. A further change has been to remove the strict liability offence that was in the *Nature Conservation Act 1980* of damaging land causing material harm with a penalty of 1000 penalty units because it did not meet JACS guidelines for framing offences.

A tiered system of penalties can improve enforcement, provide flexibility and increase the range of regulatory options. There is an option to proceed under a fault liability limb of an offence if there is adequate evidence of the requisite mental element or under a strict liability limb (Clause 245) where evidence of such intent is insufficient. Lower penalties for strict liability offences provide a safeguard for the environment affected.

Note an exception applies to damaging land causing material harm as agreed through the Strategic Bushfire Management Plan, a development approval under the *Planning and Development Act 2007*, a nature conservation licence and a permit under the *Public Unleased Land Act 2013* (noting that permits under the *Public Unleased Land Act 2013* for conservation reserves are subject to consultation with the Conservator).

Clause 245. Offence—damage land causing harm

This clause provides that it is an offence if the person damages land in a reserve causing harm. The maximum penalty for this offence is 100 penalty units. The offence is set at 100 penalty units. The offence has been set at 100 penalty units to reflect the more serious nature of damaging land in this section because of the environmental harm caused. A lower level offence occurs at s 206 which relates to removing soil and stone from a reserve. Damaging land causing harm needs to be a higher penalty because harm occurs. The harm may be that irreversible changes to the soil profile occur, or that soil is contaminated.

It is a defence to a prosecution for an offence of damage if the defendant proves that the defendant took all reasonable steps to avoid committing the offence. What constitutes reasonable steps largely depends on the circumstances of the particular case.

Clause 246. Defence of appropriate diligence for offences – Part 9.5

This clause provides a defence of appropriate diligence.

Clause 247. Alternative verdicts for offences—Part 9.5

This clause provides for alternative verdicts for the range of offences in this part. The clause applies where a Court is not satisfied that the defendant is guilty of the relevant offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an alternative offence. The alternative offence may only be applied if the defendant has been given procedural fairness in relation to the finding of guilt in a prosecution.

Clause 248. Order to rehabilitate land etc.

This clause applies following a conviction for an offence about damaging land in a reserve.

These provisions apply in addition to or instead of any other penalty it may impose for the offence. This clause reflects a similar provision within the *Nature Conservation Act 1980*. However the existing provision did not enable the Conservator to apply to the Court for an order to remedy environmental harm where a conviction has occurred. This leaves the cost of repairing any environmental harm to the Government or the community. The Bill proposes that the Conservator be given the opportunity to make such an application.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 82).

Clause 249. Order publicise conviction or finding of guilt.

This clause provides that the Court may require action for the offender; the contravention and its environmental consequences; and any remedial action taken or ordered in relation to the contravention to be publicised.

The inclusion of this clause raises human rights issues for individuals in that they limit, in particular, s 12 of the *Human Rights Act 2004*— the right to privacy and reputation. Section 28 of the *Human Rights Act 2004* allows for reasonable limitations on protected rights, as long as the limitation is lawful and can be demonstrably justified.

It is considered that this provision is reasonable because it only relates to serious offences on public land in conservation reserves, where the public interest in both the contravention and the rectification is likely to be very high, and only once there has been a conviction. It is expected that provision would normally be used for contravention of this Section of the Act by corporations; however, the decision would be made by the Court, taking into account the circumstances of the contravention.

The provision is intended to have a deterrence effect through the publication of the offence and the consequences as a way of encouraging compliance by others, as well as complementing other orders such as restoration orders.

The inclusion of orders about rectification of the damage aims to have an educative effect by raising awareness about protection mechanisms as well as informing the community about how a serious environmental issue has been rectified. This provision only relates to serious offences:

there are no readily identifiable less restrictive alternatives, as the provisions already provide for significant fines, imprisonment and/or restoration orders. The limitation on human rights is considered reasonable in these circumstances.

Similar provisions are found in s 498, *Environment Protection and Biodiversity Conservation Act 1999*.

Part 9.6 Exceptions to offences

Clause 250. Chapter 9 exceptions

This clause provides general exceptions to the offences in this chapter. The offences do not apply where the activity is consistent with the directions and requirements stated in the declaration. The actions are also not an offence if they are authorised under a Strategic Bushfire Management Plan under the *Emergencies Act 2004*, a nature conservation licence; a public unleased land permit or a development approval under the *Planning and Development Act 2007*. The offences do not apply for actions consistent with a management agreement with a utility provider.

The offences do not apply to a Conservation Officer exercising a function under this Act. An exception also applies to authorised actions under a Controlled Native Species Management Plan. This underpins a requirement for the Conservator and Custodians to implement a plan and an ability for the Conservator and Custodian to authorise people to undertake actions to implement the Plan.

This provision reflects similar provisions within the Nature Conservation Act 1980 (s 80 & 89).

Chapter 10 Reserves—prohibited and restricted activities

Overview

This chapter provides for the declaration of Resource Protection Areas. The intent is to allow closure of reserves for a significant period of time (for example, greater than 6 months) to allow for rehabilitation, restoration or resource protection. The current Act allows reserve closure for operational reasons but is not clear about closures over the longer term. This may include closures that prohibit or restrict particular actions for some time or permanently. Resource Protection Areas would be managed by the Parks and Conservation Service.

Recreation and education activities are an important use of reserves. Management of these activities to ensure that they do not impact on the values for which the reserve was created is an important focus of management of reserves. This clause aims to clarify the range of provisions about recreational and other activities that are appropriate across the range of reserves in the ACT. Activities that are restricted or prohibited in reserves result from management planning or from the need to manage habitats for wildlife and resource protection.

This part provides that the Conservator may make an activities declaration stating that certain activities must not be carried out in reserves or may be carried out only if directions or requirements are complied with. A notice about the declaration must be displayed at the reserve. It is an offence to contravene a declaration.

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 camping in the reserve is authorised through a declaration under this part of the Act. The declaration will indicate what activities require a permit under the *Public Unleased Land Act 2013*.

Part 10.1 Resource Protection Areas

Clause 251. What is a Resource Protection Area? –ch 10

This clause provides a definition of a ‘Resource Protection Area’. A Resource Protection Area means an area declared by the Minister to be a Resource Protection Area.

A Resource Protection Area is only placed over an existing reserve. It is not intended to be used to create new reserves. That is the role of the *Planning and Development Act 2007* and the Territory Plan.

Clause 252. Resource Protection Area—declaration

This clause provides that the Minister may declare an area in a reserve to be a Resource Protection Area.

From time to time some reserves, or parts of reserves, may need to be essentially shut down from use to allow a resource to recover, or to protect for example, sensitive breeding habitat. The purpose of this declaration is to ensure that any significant restriction of access and activities to reserves over the longer term is transparent and accountable to the public.

A Resource Protection Area declaration must state the purpose of the declaration, including a description of the environmental harm that the declaration is intended to reduce; and identify the area to be declared a Resource Protection Area.

Access arrangements may be put in place to allow access to areas not subject to the resource protection area but would be made inaccessible by the Resource Protection Declaration. This would be through the Activities Declaration for the Resource Protection Area.

A Resource Protection Area declaration continues until it is revoked. As such a declaration may be in perpetuity depending upon the environmental harm being avoided. However, it is only intended that a Resource Protection Area declaration be in place for as long as it is needed to avoid environmental harm. For example, a Resource Protection Area declaration may need to be in place for 10 years to allow an area to recover from a serious wildfire, but may only need to be in place for 2 years to rehabilitate an area that needs to recover from overgrazing.

The declaration of a Resource Protection Area is separate to the Conservator's ability to close reserves for operational reasons, for example on high fire danger days.

Clause 253. Resource Protection Area—review

This clause provides that if a Resource Protection Area is declared, the Conservator must review a Resource Protection Area declaration at least once every 3 years after the declaration commences. This aims to ensure that the declaration continues to meet the objectives for which it was declared. The Conservator is required to explicitly consider the effectiveness of the declaration in achieving its stated purpose.

Part 10.2 Prohibited and restricted activities

Clause 254. Conservator may make Activities Declarations

This clause provides for the Conservator to restrict activities in a reserve if they may have a negative impact on the reserve. This is similar in intent to a section of the *Nature Conservation Act 1980* which restricted activities in reserves without the authorisation of the Conservator. In many cases authorisation was taken from the Reserve Management Plan, and or signage. Because the Conservator only provides comment on Reserve Management Plans, and does not approve them, it is uncertain whether this approach is sufficient as an authorisation. This process aims to overcome that uncertainty.

The Clause provides that the Conservator restricts activities in a reserve by making an Activities Declaration that a stated activity may be carried out in a stated reserve only if stated directions or requirements are complied with (a restricted activity) or is prohibited in a stated reserve (a prohibited activity). In developing the Activities Declaration the Conservator must consider the Reserve Management Plan for the reserve to inform the Activities Declaration. The Activities Declaration is intended to have precedence over the reserve management plan in what activities are restricted or prohibited because the Activities Declaration is able to be updated to respond to new or emerging threats to reserve condition that may not have been identified in a reserve management plan (which are subject to review every 10 years), and because the offences and penalties rely on the detailed information included in an Activities Declaration.

Examples of activities that may be restricted in particular reserves include entering or remaining in the reserve, driving a motor vehicle, taking an animal into a reserve, camping or swimming.

The declaration will need to describe where in the reserve a restriction or prohibition applies, including through the use of maps. The Activities Declaration will largely mirror the uses allowed under the management plan but will be able to be updated if there is a need to restrict an activity because harm to the reserve is occurring.

Clause 255. Offence—carry on restricted activity in reserve

This clause provides that a person commits an offence if a person undertakes a restricted activity in a reserve where an Activities Declaration is in force for a reserve, and the Activities Declaration states that an activity is a restricted activity for the reserve.

This clause also provides that a person commits an offence if a person undertakes a restricted activity in a Resource Protection Area where an Activities Declaration is in force for a reserve and the Activities Declaration states that an activity is a restricted activity for the Resource Protection Area.

Clause 256. Offence—carry on prohibited activity in reserve

This clause provides that a person commits an offence if a person undertakes a prohibited activity in a reserve where an Activities Declaration is in force for a reserve and the Activities Declaration states that an activity is a prohibited activity for the reserve.

This clause also provides that a person commits an offence if a person undertakes a prohibited activity in a Resource Protection Area where an Activities Declaration is in force for a reserve and the Activities Declaration states that an activity is a prohibited activity for the Resource Protection Area.

Clause 257. Conservator may close reserve

This clause allows the Conservator to restrict or prohibit access to reserves in certain circumstances. From time to time the Conservator may need to close reserves for operational reasons or because there is a danger to people, for example on high fire danger days.

Clause 258. Offence—enter closed reserve

This clause makes it an offence for a person to enter a closed reserve in contravention of the declaration.

Clause 259. Part 10.2 exceptions

This clause outlines the range of exceptions that apply to this section.

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. What constitutes reasonable steps largely depends on the circumstances of the particular case.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (ss 80 & 89).

The clause notes that the 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

Overview

This chapter provides the process for the granting of nature conservation licences. A range of similar provisions were established under the *Nature Conservation Act 1980* through a regulation and a disallowable instrument. It is important that the primary requirements for licencing are in the Act rather than subsidiary documents. These provisions have thus been included in the Bill making the requirements clearer. The provisions have been revised to reflect permit requirements under the *Public Unleased Land Act 2013*. Having similar processes for different authorisations reduces red-tape because it makes the provisions easier to understand and, therefore, comply with.

Private individuals, corporations and scientific institutions may apply for licences for the sustainable use of biodiversity in the ACT. This licensing may also include provision of access to reserves to undertake activities.

The majority of licences issued under the *Nature Conservation Act 1980* have been for the keeping of native birds, reptiles and amphibians, the management of wildlife, wildlife research and the damaging of nests during urban tree removal or trimming. Licences may be subject to specified conditions.

Part 11.1 Licences—preliminary

Clause 260. What is a nature conservation licence?

This clause provides a definition of a 'nature conservation licence'. A nature conservation licence means a licence that authorises the licensee to carry on 1 or more activities that would otherwise be an offence under this Act. Note there are some activities that are unsuitable for a licence. A regulation making power provides for the activities that cannot be licensed.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (DI 2001-47 s 4). It has been included as a provision within the Bill to provide clarity.

Clause 261. Offence—fail to comply with condition of licence

It is proposed to introduce an offence of failing to comply with a licence or licence conditions to ensure that licences are used appropriately.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 44).

Part 11.2 Licences—application and suitability

Clause 262. Licence—application

This clause provides processes for the application to the Conservator for the issuing of a licence. The clause provides that the application must be in writing and state the activity for the licence.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 103 and DI 2001-47 ss 1 & 3). It has been included as a provision within the Bill and redrafted to provide clarity.

Clause 263. Who is a suitable person to hold a licence? -ch11

This clause provides a definition of a 'suitable person' to hold a licence. A suitable person means a person who the Conservator is satisfied is a suitable person to hold the licence.

In deciding whether a person is a suitable person, the Conservator must consider the suitability information about the person and any further information given to the Conservator.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 46).

Clause 264. What is suitability information about a person? -ch 11

This clause provides a definition of 'suitability information' about a person to hold a licence. Suitability information means information about any conviction of, or finding of guilt against, the person for an offence against this Act or other relevant ACT acts, specifically, the *Animal Welfare Act 1992*; the *Domestic Animals Act 2000*; the *Environment Protection Act 1997*; the *Fisheries Act 2000*; the *Water Resources Act 2007*.

This requirement also applies to information about any conviction of, or finding of guilt against, the person for an offence against a law of another jurisdiction corresponding, or substantially corresponding, to this Act or the Acts mentioned above. Examples of Acts of another jurisdiction with corresponding laws include the EPBC Act, *National Parks and Wildlife Act 1974* (NSW) and the *Threatened Species Conservation Act 1995* (NSW).

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 106 & DI2001-47 s 3). It has been included as a provision within the Bill and redrafted to provide clarity.

A regulation making power allows for other matters to be prescribed.

Clause 265. Suitability of people—further information about people

This clause provides that the Conservator may require further information to inform a decision about whether a person is a suitable person to hold a licence.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 48).

Clause 266. What is a suitable activity for a licence?

This clause provides a definition of a 'suitable activity' for a licence. A suitable activity for a licence means an activity that the Conservator is satisfied is suitable for the licence. An activity prescribed by regulation as an unsuitable activity is not a suitable activity. This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 49).

The Clause provides that in making a decision about where an activity is suitable for a licence, the Conservator must consider any relevant Action Plan and Native Species Conservation Plan.

Clause 267. What is suitability information about an activity?

This clause provides a definition of 'suitability information'. Suitability information about an activity means information about the impact of the activity on the animal, plant or land; the place where the activity is to be carried out; and the purpose of the activity. For native species, if the activity involves a native species, the Conservator is required to consider the number and species of each native species involved. For example, an activity may be for the purpose of research, education, or commercial trade which may have different impacts on the animal, plant or land.

The outcomes of monitoring against action plans and species conservation plans are intended to inform the suitability of activities.

A regulation making power allows for other matters to be prescribed.

Clause 268. Suitability of activities—further information about activity

This clause provides that the Conservator may require further information to inform a decision about the suitability of the activity.

The clause also provides that the Conservator need not decide whether an activity is a suitable activity if the applicant does not comply with a further information notice.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 51).

Clause 269. Suitability of activities—risk management plan

The clause provides that in making a decision about whether an activity is suitable for a licence, if the Conservator is satisfied that carrying on the activity in accordance with the licence is likely to cause undue risk to people or property, may require a risk management plan to be prepared.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 55).

Clause 270. Suitability of activities—inspection of place

The clause provides that in making a decision about whether an activity is suitable for a licence and the activity involves keeping an animal, the Conservator may in writing require an inspection of the place where the animal is to be kept. A reasonable time for the inspection must be stated in the notice.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 56).

Part 11.3 Licences—decision

Clause 271. Licence—decision on application

This clause provides that a licence can only be issued if the Conservator is satisfied that the applicant is a suitable person to hold the licence and that the activity is a suitable activity for the licence. Time limits apply to the issuing of a licence.

There are some activities in wilderness areas that are not allowed. This has required a consequential amendment prohibiting permits for those activities in wilderness areas under the *Public Unleased Land Act 2013*.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 104). This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 57).

Clause 272. Licence—conditions generally

This provision provides that a licence may be subject to conditions. These conditions may include that the licensee may carry on the activity only during a particular season or over a particular time-frame, or that the licence is subject to a financial assurance.

Clause 273. Licence—conditions about Native Species Conservation Plans etc

If a Native Species Conservation Plan is in place for a particular species or over particular land, the licence may specify that the licence is subject to the condition that the activity must be carried out in accordance with the plan.

Clause 274. Licence—term

A licence can be issued for a period of up to 5 years. This timeframe provides for adequate oversight of licences by the Conservator without requiring reapplication too often.

A licence expires on the day stated in the licence.

The clause notes that the escape of a non-exempt animal means that the licence no longer applies in relation to the animal.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 50, 104, 106, 107). This provision also reflects similar provisions within the *Public Unleased Land Act 2013* (s 59).

Clause 275. Licence—form

This clause indicates that a licence must be in writing and include a range of details including the name of the licensee, the licence number and the licensed activity. The licence must also include details about what is licensed and any conditions.

This provision reflects similar provisions within the *Public Unleased Land Act* (s 58).

Part 11.4 Licences—financial assurance conditions

Clause 276. What is a financial assurance condition?

This clause provides that a financial assurance condition can be attached to a licence.

This is similar to provisions in the *Public Unleased Land Act 2013* (s 60), and might be used if a particular project would need restoration following a research experiment, for example.

Clause 277. Financial assurance condition—imposition

This clause provides a description on the circumstances in which a financial condition might be applied. This relates to the likelihood that an activity will cause serious or material damage requiring restoration. The power can be limited through a Ministerial determination.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 61).

Clause 278. Financial assurance condition—show cause

This clause provides that the Conservator must advise the applicant about the intention to impose a financial assurance and the reasons why. The applicant is able to make a submission to the Conservator that the financial assurance should not be imposed. The decision to impose a financial assurance is a reviewable decision because it is a condition of the licence.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 62).

Clause 279. Financial assurance condition—licence cancellation

This clause provides that the Conservator must cancel a licence if a condition about a financial assurance has not been met.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 63).

Clause 280. Financial assurance condition—claim or realisation

This clause provides processes to make a claim in part or in full against a financial assurance condition when harm has occurred to the environment that was subject to the condition.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 64).

Clause 281. Financial assurance condition—notice before claim or realisation

This clause provides that the Conservator must give notice to the licensee before making a claim in part or in full against the financial assurance condition. The notice must include a description of the damage caused and the actions needed to repair the damage and the costs proposed to be recovered.

The applicant is able to make a submission to the Conservator that the financial assurance should not be imposed. The decision to claim against a financial assurance is a reviewable decision.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 65).

Clause 282. Financial assurance condition—recovery of extra costs

This clause provides that the Conservator may make a claim for additional costs for repairing damage if these are more than what was claimed against the financial assurance. The Conservator is required to give written notice to the licensee seeking payment of the additional costs and when it is required to be paid. If the amount is unpaid after the due date it is a debt owed to the Territory.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 66).

Clause 283. Financial assurance condition—money held by Territory

This clause provides requirements about holding financial assurance money.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 67).

Part 11.5 Licences—amendment, transfer, renewal

Clause 284. Licence—amendment initiated by Conservator

This clause provides that the Conservator may amend a licence if they consider it necessary to do so. The Conservator is only able to amend the licence if the licensee has been given notice about the proposed amendment (except in circumstances where the licensee applied or agreed to the amendment).

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 68).

Clause 285. Licence—application to amend licence

This clause provides that licensees can request an amendment to a licence, but must do so where someone else will be responsible for the licence.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 69).

Clause 286. Licence—decision on application to amend licence

This clause provides that the Conservator can only amend the licence if the new person is suitable and the activity remains suitable. The amended licence can be subject to conditions.

Timeframes apply for a decision on the amendments.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 70).

Clause 287. Licence—application to transfer licence

This clause provides that licensees can request to transfer a licence to a proposed new licensee. Suitability information about the proposed new licensee must be included in the application.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 71).

Clause 288. Licence—decision on application to transfer licence

This clause provides processes for deciding a licence. The Conservator may transfer the licence to another licensee if the new licensee is suitable. The transferred licence can be subject to conditions. Timeframes apply for the decision on transfer.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 72).

Clause 289. Licence—application for renewal of licence

This clause provides processes for renewing licences. Renewal of licences can be made for a period of up to 5 years. The clause provides that a licence remains in force until a decision on an application for renewal is made.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 73).

Clause 290. Licence—decision on application for renewal of licence

This clause provides that the Conservator may renew the licence if the licensee continues to be suitable and the activity remains suitable.

Timeframes apply for the decision on renewal.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 74).

Clause 291. Licence—replacing when lost, stolen or destroyed

This clause allows replacement licences to be issued.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 75).

Clause 292. Licence—surrender

This clause provides processes for the surrender of a licence.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 108). This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 76).

Clause 293. Offence—fail to notify change of name or address

This clause provides that an offence is committed if a licensee does not provide the Conservator with change of name or address details. The maximum penalty for this strict liability offence is one penalty unit.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 77).

Clause 294. Licence—Conservator to change name and address

This clause provides that the Conservator must enter changed names and addresses on a licence. This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 78).

Part 11.6 Licences—regulatory action

Clause 295. Licence—grounds for regulatory action

This clause provides a description of the circumstances in which regulatory action can be taken against a licensee. The circumstances include when a licensee contravenes a provision of the Act or its subsidiary instruments, or contravenes a licence condition.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 110). This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 79).

Clause 296. Licence—regulatory action

This clause describes the regulatory action that might be applied. This includes making the licence conditions, suspension or cancellation of the licence, and/or disqualification of the licensee.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 80).

Clause 297. Licence—taking regulatory action

This clause provides that the Conservator must give adequate notice of regulatory action before taking it. The licensee is able to make a submission to the Conservator about the proposed regulatory action.

Following the notice and consideration of any submissions, the Conservator may take the regulatory action if the need for it has been established. The date of effect of the action must be notified to the licensee in writing.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 81).

Clause 298. Licence—immediate suspension

This clause provides for the immediate suspension of a licence in circumstances where there is a potential risk to either public safety or the safety of an animal or plant. The suspension of a licence is a temporary measure and ends when a decision about regulatory action is made and put into effect or within 30 days of the immediate suspension notice.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 82).

An immediate suspension must be given in writing.

Clause 299. Licence—effect of suspension

This clause provides that a suspended licence has the same effect as not having a licence. The person is disqualified from applying for a licence.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 83).

Clause 300. Offence—fail to return amended, suspended or cancelled licences

This clause provides that it is an offence to fail to return an amended, suspended or cancelled licence to the Conservator after a decision has been reviewed.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 84).

Clause 301. Action by Conservator in relation to amended or suspended licence

This clause provides that an amended licence must be returned to the licensee or replaced (as amended). The Conservator must also return a suspended licence to a licensee at the end of the suspension.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 85).

Part 11.7 Licence—register, records and royalties

Clause 302. Licence register

This clause provides a responsibility for the Conservator to keep a register of licences including the details of the licences.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 86).

Clause 303. Licence register - correction and keeping up to date

This clause allows the register of licences to be updated and corrected.

This provision reflects similar provisions within the *Public Unleased Land Act 2013* (s 87).

Clause 304. Offence—fail to keep records

This clause provides that a person commits an offence if required records about the licence are not kept.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 112).

Clause 305. Royalty

This clause provides for royalties. Current provisions in the *Nature Conservation Act 1980* relate to royalties, and it is useful for a royalty provision to remain.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 127).

Chapter 12 Management Agreements with utility suppliers, land developers and others

Overview

This Chapter provides for arrangements with a range of agencies who manage land, in particular, utility suppliers. The provisions within this Chapter are similar to those that currently apply under the *Nature Conservation Act 1980*.

Clause 306. What are agencies and activities of agencies? –ch 12

This clause provides a definition of ‘agency’ and ‘activities of an agency’ for management agreements.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 98).

Clause 307. What are management objectives? –ch12

This clause provides a definition of ‘management objectives’ for public or unleased land. The clause also provides a definition of the natural environment. A definition of public land is provided in the Dictionary.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 98).

Clause 308. What is a management agreement? –ch12

This clause provides a definition of a ‘management agreement’. This means an agreement between the Conservator and an agency that sets out standards and conditions for avoiding or minimising any conflict with land management objectives for the public or unleased land.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 98).

Clause 309. Management Agreement—Conservator may propose

This clause provides that the Conservator may make a Management Agreement where the agency’s activities affect or may affect public or unleased land. The clause provides that the Conservator must consult with the agency in developing the agreement.

This clause provides that the Conservator must submit a proposed agreement to the relevant agency together with a notice indicating the consequences of refusing to sign the proposed agreement, if an agreement is finalised, and the consequences of breaching the agreement.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (ss 99-100).

Clause 310. Management agreement—agency may enter or refuse

This clause provides processes for finalising agreements with agencies. The agencies are able to agree or refuse to enter an agreement. A non-response is taken to be a refusal.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (ss 100 & 101).

Clause 311. Management agreement—refusal and repairing damage

If an agency refuses to enter into an agreement and subsequent damage occurs, this clause provides that the Conservator may repair the damage and recover the costs of the repair from the agency. This aims to ensure that the environmental damage is restored as soon as possible.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 101).

Clause 312. Management Agreement—breach of agreement and repairing damage

If activities of an agency are inconsistent with a Management Agreement, and damage to the land occurs, this clause provides that the Conservator may repair the damage and recover the costs of the repair from the agency. This aims to ensure that the environmental damage is restored as soon as possible, in the event that a person either will not, or cannot restore the site.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 102).

Chapter 13 Enforcement

Overview

The *Nature Conservation Act 1980* contained enforcement power provisions in three different parts (parts 2, 8 and 14). This Bill consolidates enforcement provisions in one part to simplify the administration of the Act.

Over the last 10 years there have been few prosecutions and a handful of infringement notices issued under the *Nature Conservation Act 1980*. This may indicate general community compliance with the *Nature Conservation Act 1980* and that prosecution is seen as an action of last resort. However, certain offences such as illegal vehicle access, encroachment of adjoining properties onto a reserve area, physical disturbance to lands within reserves and hunting do occur from time to time.

Powers of Conservation Officers are similar in extent to those of Environment Protection Officers and Fisheries Officers. Search and seizure powers under the *Nature Conservation Act 1980* have been limited compared to similar ACT statutes. Unlike the *Environment Protection Act 1997*, authorised officers were not able to require the occupier of a premise to answer questions or to make any record or document kept on the premises available if an offence is reasonably suspected. The Bill strengthens search and seizure powers as appropriate for enforcement officers investigating offences under this Act.

The Bill also provides for a range of directions to be given by enforcement officers. These provisions include measures for people to give names and addresses, to produce a licence, records, or other information. The provisions also include powers to enter premises under certain conditions.

The inclusion of these clauses may raise human rights issues for individuals in that they limit, in particular, Sections 12 and 18 of the *Human Rights Act 2004* – the right to privacy and reputation and the right to liberty and security of person.

Section 28 of the *Human Rights Act 2004* allows for reasonable limitations on protected rights, as long as the limitation is lawful and can be demonstrably justified.

A number of people and businesses keep Australian wildlife under licence, or when the animal is exempted from requiring a licence. The keeping of wildlife (apart from wildlife rehabilitation purposes) is generally subject to the wildlife being sourced from captive bred populations, or from sustainable population management. In many countries without adequate regulation the capture of wild animals or the collection of native plants can lead to significant declines in species populations, including of threatened species. Unrestricted and unenforced trade in wildlife is of international concern. It is important to ensure that native species that are kept have not been taken or bought illegally. In addition, the conditions in which native animals are kept are important to the welfare and survival of the individual animal.

Conservation Officers must be provided with an adequately deterrent scheme to ensure the protection of native species. It is also crucial that Conservation Officers have the authority and ability to act quickly and decisively, particularly in circumstances where delay may result in harm to an individual of the species, or where there may be significant impacts through illegal trade and/or keeping native species.

The objective of the legislation can only be achieved by providing adequate powers to Conservation Officers to enter premises to investigate and seize wildlife, for example, and ask people to give names and addresses, to produce a licence, records, or other information.

There is a strong community interest in affording protection against such activities. The community consultation in relation to the Bill indicated that the community, in general, wants the legislation to provide for enhanced compliance.

It is considered that the limitation of human rights in regard to privacy and reputation and to liberty and security of person serves a legitimate objective, it is rationally connected to achieving that objective and it is the least restrictive means of achieving that objective.

Part 13.1 Directions

Clause 313. Direction to give name and address

This clause allows the Conservation Officer to direct the person to immediately give the Conservation Officer the person's full name and/or the person's home address. The circumstances in which this can occur are when the Conservation Officer believes that a person has committed, is committing or is about to commit an offence against this Act; or may be able to assist in the investigation of an offence against this Act.

The clause also provides that 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.

The clause provides that 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.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 131).

Clause 314. Offence—fail to comply with direction to give name and address

This clause provides that it is an offence if the person fails to comply with a direction to provide a name and address direction or an evidence direction.

The clause provides that it is not an offence if the Conservation Officer did not produce the Conservation Officer's identity card for inspection by the person before giving the direction. The offence also does not apply if the Conservation Officer did not, before giving the direction; warn the person that failure to comply with the direction is an offence.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 131).

Clause 315. Direction to produce licence or records

This clause provides that a Conservation Officer may direct a licensee to produce the nature conservation licence; or a licensee to produce a record required to be kept by the licensee under this Act.

The clause provides that the Conservation Officer may also 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.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 111 & s 113). It also reflects provisions of the *Public Unleased Land Act 2013* (s 94)

Clause 316. Offence—fail to comply with direction to produce licence or record

This clause provides that it is an offence to fail to comply with the direction if a person is subject to a direction to produce a permit, licence or record required to be kept by the licensee.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 111 & s 113). It also reflects provisions of the *Public Unleased Land Act 2013* (s 95).

Clause 317. Direction to provide information

This clause provides that a Conservation Officer may direct the person to provide the information or documents to the Conservation Officer. This applies if the 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.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 113).

Clause 318. Offence—fail to comply with information direction

This clause provides that it is an offence to fail to comply with the direction if a person is subject to a direction to provide information.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 113).

Clause 319. Direction to leave reserve

This clause provides that a Conservation Officer may direct a person to leave a reserve. The clause provides that this can occur if the Conservation Officer believes on reasonable grounds that a person has acted in an offensive way or has acted in a way that creates a public nuisance or the person has committed, is committing or is about to commit an offence against this Act.

The clause provides that the Conservation Officer may direct the person to immediately leave the reserve and not re-enter for a period of up to 24 hours.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 69 & 131). It also reflects provisions of the *Public Unleased Land Act 2013* (s 96) and the Major Events Bill 2014 (s 22).

Clause 320. Offence—fail to comply with direction to leave reserve

This clause provides that it is an offence if a person fails to leave a reserve when subject to a direction to leave the reserve. The maximum penalty for this strict liability offence is 10 penalty units. This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 131). It also reflects provisions of the *Public Unleased Land Act 2013* (s 97) and the Major Events Bill 2014 (s 22).

Clause 321. Direction to stop vehicle containing animal or plant

This clause provides that a Conservation Officer may direct a person to stop a vehicle if the Conservation Officer suspects on reasonable grounds that an animal or plant is in a vehicle in contravention of this Act. In this circumstance, the Conservation Officer may direct the driver of

the vehicle to stop the vehicle without delay, or at the nearest place that the vehicle can be safely stopped as indicated by the Conservation Officer.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 130).

Clause 322. Offence—fail to comply with stop vehicle direction

This clause provides that a person commits an offence if the person fails to comply with a direction to stop a vehicle. The penalty is 10 penalty units.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 130). The penalty is consistent with similar offences under the *National Parks and Wildlife Act 1974*.

Clause 323. Urgent directions

This clause provides a power to the Conservator to issue an urgent direction when the Conservator reasonably believes that a person has breached, is breaching or is about to breach, a nature conservation licence.

This clause also provides a power to the Conservator to issue an urgent direction when the Conservator reasonably believes a person has contravened, is contravening or is about to contravene a provision of this Act including plans such as Native Species Conservation Plans or a Controlled Native Species Management Plan.

This clause also provides a power to the Conservator to issue an urgent direction when the Conservator reasonably believes that a person has engaged in, is engaging in or is about to engage in conduct that may threaten a native species that has special protection status or protected status; or the habitat of a native species with special protection status or protected status or the habitat of a threatened ecological community or a Ramsar wetland.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 60).

Clause 324. Offence—fail to comply with urgent direction

This clause provides that a person commits an offence if the person fails to take reasonable steps to comply with an urgent direction.

Clause 325. Conservator's directions

This clause provides for the Conservator to make directions about native species and ecological communities on occupied land, and about the habitat of native species and ecological communities on occupied land.

The clause provides that the Conservator may give the occupier a direction about the protection or conservation of the species, community or habitat on the land if the Conservator reasonably believes that there is conduct that the occupier may engage in that may threaten the native species, community, habitat or wetland; or could engage in that would promote the protection or conservation of the native species, community, habitat or wetland.

A Conservator's direction must be consistent with each of the following (if any) that applies to the species, community, habitat or wetland: a Conservation Advice, an Action Plan, a Native Species Conservation Plan.

The clause provides that a Conservator's direction must be in writing and state when the direction must be complied with. The date for compliance must be at least 14 days after the direction is given.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 80 and 89).

Clause 326. Offence—fail to comply with Conservator's direction

This clause provides that a person commits an offence if the person fails to comply with a Conservator's direction. The maximum penalty for this strict liability offence is 50 penalty units.

If the Conservator direction relates to a direction about a native species that has protection status, or a threatened ecological community, or the habitat of a protected native species or ecological community or Ramsar site, and the person fails to comply with the direction it is a strict liability offence that has a maximum penalty of 100 penalty units. The higher penalty of 100 penalty unit is justified here. The offence only occurs after advice has been provided through the Conservator's direction on what needs to occur on a property. The reason the offence is high is because the species involved are threatened and any adverse actions could lead the species closer to extinction, or in extreme cases, cause extinction.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 80 & 89).

Clause 327. Treatment directions

This clause makes provision for the Conservator to direct a person keeping native plants or animals to treat an animal or plant which is suffering from a disease where it is necessary or desirable for a particular kind of treatment to be carried out in connection with that disease.

The clause provides that the Conservator must consider a number of matters in deciding whether to make a treatment direction. The Conservator must consider the likelihood of the disease infecting other animals or plants, the impact of the disease if it were to infect other animals or plants and any other matter relevant to the protection or conservation of native animals and native plants.

The clause provides a regulation making power to provide for other matters that the Conservator should consider in making a decision to make a treatment direction.

The clause provides that a treatment direction must state in writing the animal or plant to which it relates, the disease to which it relates, the treatment to be carried out and when the direction must be complied with.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 60).

Clause 328. Offence—fail to comply with treatment direction

This clause provides that a person commits an offence if the person fails to take reasonable steps to comply with a treatment direction.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 60).

Clause 329. Treatment of animal or plant by Territory

This clause provides that the Territory can undertake action where a person is subject to a treatment direction and either fails to comply with the direction or complies with the direction but the animal or plant does not respond satisfactorily to the treatment within a reasonable time.

The clause provides that in these circumstances the Conservator may direct the person to give the animal or plant to the Conservator or to destroy the animal or plant.

If the person fails to comply with the direction of the Conservator to give the plant or animal to the Conservator, or to destroy the animal or plant when directed, the Conservator may enter the premises where the animal or plant is kept and seize the animal or plant. The clause provides that this can be undertaken with whatever assistance the Conservator identifies as necessary.

The clause provides that if the Conservator seizes an animal or plant, the Conservator may either carry out the treatment or dispose of the animal or plant in the way that the Conservator considers appropriate and recover the reasonable costs of treating or disposing of the animal or plant from the person.

Clause 330. Injunctions to restrain contravention of urgent directions and Conservator's directions

This clause provides for an injunction process if a person has engaged, is engaging, or proposes to engage, in conduct that was, is, or would be, a contravention of an urgent direction; a Conservator's direction or a treatment direction.

This clause provides that the Conservator or anyone else may apply to the Supreme Court for an injunction. The Supreme Court is able to grant an injunction restraining the relevant person from engaging in the conduct. The Court is also able to require a person to do something, in addition to stopping action.

The Supreme Court may also grant an injunction restraining a person from engaging in conduct of a particular kind whether or not the person is likely to further engage or continue in that conduct.

The Supreme Court may also grant an injunction restraining a person from engaging in an activity if it is likely the person will engage in that activity; whether or not the person has previously engaged in that activity and whether or not there is an imminent danger of substantial damage to someone else if the person engages in conduct of that kind.

The clause also provides that the section applies whether or not a proceeding for an offence against this chapter has begun or is about to begin.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (ss 80 & 89).

Part 13.2 Enforcement by Conservation Officers

Division 13.2.1 Definitions – pt 13.2

Clause 331. Definitions—Part 13.2

This clause provides a range of definitions that apply to this part of the Act which is about how Conservation Officers apply the enforcement provisions in the Bill.

The term 'connected' is related to when an offence occurs and includes if the offence has been committed in relation to it or it will provide evidence of the commission of the offence; or it was used, is being used, or is intended to be used, to commit the offence.

The term 'occupier', of premises, means a person believed on reasonable grounds to be an occupier of the premises or a person apparently in charge of the premises. For a vehicle, occupier means the driver of the vehicle.

The term 'offence' includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

The term 'warrant' means a warrant issued under Division 13.2.3 of the Bill.

Division 13.2.2 Powers of Conservation Officers

Clause 332. Power to enter premises

This clause relates to the powers of Conservation Officers. These powers mirror those of other officers authorised to enforce environmental laws in the ACT including those under the *Environment Protection Act 1997* and the *Fisheries Act 2000*. This clause provides for a range of circumstances where the Conservation Officer has power to enter premises on land to determine whether enforcement of the Act is required.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (ss 80 & 89).

Clause 333. Production of identity card

This clause relates to the powers of Conservation Officers. These powers mirror those of other officers authorised to enforce environmental laws in the ACT including those under the *Environment Protection Act 1997* and the *Fisheries Act 2000*.

This clause provides a responsibility for a Conservation Officer to produce his or her identity card when asked by the occupier in order to remain at premises entered under this part.

Clause 334. Consent to entry

This clause relates to the powers of Conservation Officers. These powers mirror those of other officers authorised to enforce environmental laws in the ACT including those under the *Environment Protection Act 1997* and the *Fisheries Act 2000*.

This clause provides a range of conditions that must be met when seeking entry to premises. This clause provides that when seeking consent to enter premises, the Conservation Officer must produce his or her identity card and tell the occupier the purpose of the entry and that anything found and seized under this part may be used in evidence in Court; and that consent may be refused.

More limited provisions about powers on entry were provided in s 130 of the *Nature Conservation Act 1980*. It has been redrafted to provide similar powers to other environmental regulators.

Clause 335. General powers on entry to premises

This clause relates to the powers of Conservation Officers. These powers mirror those of other officers authorised to enforce environmental laws in the ACT including those under the *Environment Protection Act 1997* and the *Fisheries Act 2000*.

This clause provides for a range of things that can be done by a Conservation Officer who enters premises as allowed under this part of the Act. The Conservation Officer is allowed to inspect or examine objects and things, take measurements or conduct tests, take samples, take photographs, films, or audio, video or other recordings.

More limited provisions about powers on entry were provided in s 130 of the *Nature Conservation Act 1980*. It has been redrafted to provide similar powers to those of other environmental regulators.

Clause 336. Power to seize things

This clause relates to the powers of Conservation Officers. These powers mirror those of other officers authorised to enforce environmental laws in the ACT including those under the *Environment Protection Act 1997* and the *Fisheries Act 2000*.

This clause provides that a Conservation Officer, who has entered a premise or land, may seize things under certain circumstances.

The clause provides that a Conservation Officer may either remove the thing that was seized from the premises or leave it at the place it was seized but restrict access to it.

More limited provisions about powers on entry were provided in s 130 of the *Nature Conservation Act 1980*. It has been redrafted to provide similar powers to those of other environmental regulators.

Clause 337. Seizure and release of distressed native birds

This clause relates to provisions relating to the seizure and release of distressed native birds. This section applies if a Conservation Officer suspects that a person is in possession of a native bird connected with the commission of an offence against this Act, and cannot show the Conservation Officer a licence authorising the possession of the bird. However, the Conservation Officer must show their identity card before taking these actions if asked to do so.

In these circumstances, and when the Conservation Officer believes that the bird is suffering pain or is in a state of distress or that the keeping of the bird in captivity is likely to endanger the life of the bird, or cause distress or harm, the Conservation Officer may seize the bird. The Conservation Officer may release the bird, if the Conservation Officer believes that the welfare of the bird is best provided for by releasing it.

A 'native bird' means a bird that is a native animal but not an exempt animal.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 132).

Clause 338. Release of distressed animals—Court orders

This clause provides that if a seized animal 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.

The clause provides that 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 if a prosecution for an offence against this Act relating to the animal is not started within 6 months after the seizure or when an offence is not proved.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 134).

Division 13.2.3 Search warrants

Clause 339. Warrants generally

This clause relates to the provision and execution of search warrants. This clause provides that a Conservation Officer may apply to a magistrate for a warrant to enter premises. The application must be sworn and state the grounds on which the warrant is sought.

The clause provides that a warrant must state that a Conservation Officer may, with any necessary assistance and force, enter the premises and exercise the Conservation Officer's powers under this part. The warrant must state the offence for which the warrant is issued and the things that may be seized under the warrant. The warrant must also state the hours when the premises may be entered and the date, within 7 days after the day of the warrant's issue, the warrant ends.

Clause 340. Warrants—application made other than in person

This clause provides for processes for application for a warrant in urgent or other special circumstances where the Conservation Officer may not be able to apply for the warrant in person. In these circumstances, a Conservation Officer may apply for a warrant by phone, fax, email, radio or other form of communication.

Clause 341. Search warrants—announcement before entry

The clause provides that before anyone enters premises under a search warrant, a Conservation Officer must announce that the Conservation Officer is authorised to enter the premises and give anyone at the premises an opportunity to allow entry to the premises.

Clause 342. Details of search warrant to be given to occupier etc

A copy of the warrant and a document setting out the rights and obligations of the person must be made available to the occupier of premises (or to someone else representing the occupier) if they are present while a search warrant is being executed.

Clause 343. Occupier entitled to be present during search etc

The clause provides that, if present at the time a warrant is being executed, the occupier of premises (or someone else representing the occupier) is entitled to observe the search being conducted unless this would interfere with the objectives of the search. The clause provides that this does not prevent two or more areas of the premises being searched at the same time.

Division 13.2.4 Return and forfeiture of things seized

Clause 344. Receipt for things seized

This clause provides that a Conservation Officer must give a receipt for something seized to the person from whom it was seized for something seized as soon as practicable after it was seized. If the receipt is not able to be given to the person, the Conservation Officer must leave the receipt, secured conspicuously, at the place of seizure.

Clause 345. Moving things to another place for examination or processing under search warrant

This clause provides that a thing found at a premise through execution of a search warrant may be taken somewhere else for examination or processing to decide whether it may be seized. The Conservation Officer must tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out and allow the occupier or the occupier's representative to be present during the examination or processing.

Clause 346. Access to things seized

A person who would, apart from the seizure, be entitled to inspect a thing seized under this part may inspect it and, if it is a document, take extracts from it or make copies of it.

Clause 347. Return of things seized

A thing seized under this part must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory in certain circumstances.

However, these provisions do not apply where the Conservator believes on reasonable grounds that the only practical use of the thing would be an offence or if possession of it by its owner would be an offence.

Clause 348. Forfeiture of seized things

This clause applies in circumstances where something seized has not been returned, or in other circumstances. If these circumstances apply then the seized thing is forfeited to the Territory and may be sold, destroyed or otherwise disposed of as the Conservator directs.

This provision reflects similar provisions within the *Environment Protection Act 1997* (s 109). Similar provisions were also provided in the *Nature Conservation Act 1980* (s 134).

Clause 349. Power to destroy unsafe things

This clause provides that if an inspection of a seized thing finds that the thing poses a risk to the health or safety of people or of damage to property or the environment, the Conservation Officer may direct a person in charge of the premises where the thing is to destroy or otherwise dispose of the thing.

Alternatively, the Conservation Officer may destroy or otherwise dispose of the thing at the expense of the person who owned the thing and each person in control of the premises where the thing was.

Clause 350. Application for order disallowing seizure

This clause provides that 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. However, the application may be heard only if the applicant has served a copy of the application to the Conservator. The Conservator is entitled to appear as a respondent at the hearing of the application.

Clause 351. Order for return of seized thing

This clause provides that where a person claiming to be entitled to anything seized under this part applies to the Magistrates Court for an order disallowing the seizure, the Magistrates Court must make an order disallowing the seizure in certain circumstances. This clause provides the Magistrates Court may also make an order disallowing the seizure if satisfied there are exceptional circumstances justifying the making of the order.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 134).

Division 13.2.5 Enforcement—damage and compensation

Clause 352. Damage etc to be minimised

The clause provides that a Conservation Officer must take all reasonable steps to ensure that the officer causes as little inconvenience, detriment and damage as practicable. If damage occurs then other provisions apply to remedying the damage or loss.

Clause 353. Compensation for exercise of enforcement powers

This clause provides that 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. A regulation making power is provided for the prescription of 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

Clause 354. Meaning of reviewable decision—Chapter 14

This clause provides a definition of a reviewable decision.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 114).

Clause 355. Reviewable decision notices

This clause provides that the Conservator must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 about the reviewable decision.

The clause notes that the Conservator must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision.

Clause 356. Applications for review

This clause provides that the person who requested the decision is able to request a review of the decision, and that other persons whose interests are affected by the decision can seek a review (third party appeals). A person would have to show how their interests are affected by the decision before they would have standing to apply for review of the decision.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 116). It has been redrafted to provide clarity and to cover new decisions that might impact an individual. Third party appeals are provided for in this clause, as such, duplicative recognition of third-parties has been removed from Schedule 1.

Decisions about the implementation of statutory plans by Government are not intended to be merit reviewable decisions.

Chapter 15 Miscellaneous

Clause 357. Certain information may be kept confidential

The clause provides that if a relevant person considers that the survival of a native species or ecological community could be threatened by disclosure of information, a general description of the location of the species or community need only be provided.

Clause 358. Offences—use or divulge protected information

This is a standard clause that aims to protect privacy. The maximum penalty for this offence is 50 penalty units, imprisonment for 6 months or both. The offence does not apply when the information is used or divulged according to territory law or in a Court proceeding. The offence does not apply when the person has consented to the use of the information.

Clause 359. Acts and omissions of representatives

This is a standard clause that applies to a prosecution for any offence against this Act. The clause provides that an offence done, or omitted to be done, by a representative of a person can be taken to have been done by the person.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 135).

Clause 360. Criminal liability of executive officers

This is a standard clause that applies to a prosecution for any offence against this Act. The clause provides that an executive officer of a corporation is liable for an offence if the corporation contravenes a provision of this Act. This section does not apply if the corporation would have a defence to a prosecution for the relevant offence.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 136).

Clause 361. Evidentiary certificates

This clause provides that the Conservator can provide a signed evidentiary certificate about a nature conservation licence.

This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 138).

Clause 362. Determination of fees etc

This clause provides that the Minister may determine fees and annual percentage rates for interest for the Act. A determination is a disallowable instrument. This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 139).

Clause 363. Approved forms

This clause provides that forms may be approved by the Director-General for the Act. An approved form is a notifiable instrument. This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 137).

Clause 364. Regulation-making power

This clause provides a regulation making power to the Executive. If a regulation includes offences then the maximum penalty that can be applied is 30 penalty units. This provision reflects similar provisions within the *Nature Conservation Act 1980* (s 140).

Chapter 16 Repeals and consequential amendments

Clause 365. Legislation repealed

This clause indicates the legislation that is repealed by this Act. The clause notes that all legislative instruments under the *Nature Conservation Act 1980* (A1980-20) are also repealed.

Clause 366. Legislation amended—Schedule 2

This clause notes that the Act amends the legislation mentioned in Schedule 2 as Consequential amendments.

The clause also notes amendments to Schedule 1 relating to reviewable decisions. This amendment reflects the range of new licences and other decisions that are subject to review and the parties that are directly impacted by the decision.

This provision reflects similar provisions within the Nature Conservation Act 1980 (s 116). It has been redrafted to provide clarity and to cover new decisions that might impact an individual. Third party appeals are provided for in Clause 356.

Chapter 20 Transitional

Clause 400. Meaning of commencement day—ch 20

This clause provides a definition of the commencement day. This is the day the Nature Conservation Act 2014, commences.

Clause 401. Nature Conservation Strategy

This provision provides a transitional arrangement for the current Nature Conservation Strategy to become the new Nature Conservation Strategy for the ACT and recognises the commencement from the original date the strategy was finalised.

Clause 402. Endangered species

This clause transitions species on the current endangered species list to the new list, in the existing category of endangered.

Clause 403. Vulnerable species

This clause transitions species on the current vulnerable species list to the new list, in the existing category of vulnerable.

Clause 404. Endangered ecological communities

This clause transitions ecological communities on the current endangered ecological communities to the new list, in the existing category of endangered.

Clause 405. Threatening processes to be key threatening processes

This clause transitions threatening processes on the current threatening processes list to new list of key threatening processes.

Clause 406. Action Plans

This provision provides a transitional arrangement for current Action Plans to become the new Action Plans for the ACT and recognises the commencement from the original date the Action Plans were made.

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

This clause transitions protected fish, invertebrates, native plants and native animals to be protected species. 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.

Clause 408. Exempt animals

This clause transitions exempt animals on the current list to the new exempt animals list.

Clause 409. Plans of management for reserves to be Reserve Management Plans

This provision provides that old plans of management under the *Planning and Development Act 2007* part 10.4 (plans of management for public land) is a new Reserve Management Plan that would be prepared under the Nature Conservation Act 2014. A new Reserve Management Plan is,

for section 179 (Reserve Management Plan—review), taken to have commenced on the day the old plan of management commenced under the *Planning and Development Act 2007*. 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.

Clause 410. Draft Plans of management for reserves- public consultation stage

This clause provides transitional arrangements for draft management plans that have undergone consultation. The clause provides that these processes are recognised under the Nature Conservation Act 2014 so that the processes do not need to be undertaken again as this would be duplicative and resource intensive.

Clause 411. Draft Plans of Management for reserves – submission to Minister stage

This clause provides transitional arrangements for draft management plans that have been referred to a Legislative Assembly Committee. The clause provides that these processes are recognised under the Nature Conservation Act 2014 so that the processes do not need to be undertaken again as this would be duplicative and resource intensive.

Clause 412. Licences

This clause provides transitional arrangements so that an old licence under the *Nature Conservation Act 1980* is taken to be a new nature conservation licence. The same terms and conditions apply as the old licence.

The nature conservation licence is taken to expire on the day stated in the old licence but must not be amended, transferred or renewed.

Clause 413. Management agreements

This clause provides transitional arrangements so that an old management agreement under the *Nature Conservation Act 1980* is taken to be a new management agreement. The same terms and conditions apply as the old licence.

Clause 414. Transitional regulations

This clause provides a regulation making power to prescribe additional transitional arrangements matters. 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.

Clause 415. Expiry—ch 20

This clause provides that this part expires 2 years after the day it commences. 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 [refer chapter 14]

This Schedule provides a list of reviewable decisions. It reflects similar provisions to those under the *Nature Conservation Act 1980*.

Schedule 2 Consequential amendments [refer clause 366]

Part 2.1 Animal Welfare Act 1992

[2.1] Section 2, note 1, paragraph 2

This clause updates references to native animals.

[2.2] Section 27 (2) (e)

This clause updates references from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.3] Section 38 (2) (c)

This clause updates references from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.4] Section 55 (4) (e)

This clause updates references from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.5] Dictionary, definition of native animal

This clause updates references to native animals.

Part 2.2 Common Boundaries Act 1981

[2.6] Section 2B (b)

This clause updates references to reflect the amendments to reserve management.

[2.7] New section 2B (2)

This clause updates references to reflect the amendments to reserve management. This clause updates references from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014. Reserves include wilderness areas, national parks, nature reserves, catchment areas and other areas of public land.

Part 2.3 Emergencies Act 2004

[2.8] Section 77 (3)

This clause updates references to reflect the amendments to Reserve Management Plans and also to recognise 'Public Land Management Plans' to be prepared for areas of public land. The term 'Public Land Management Plan' for an area of public land, means either a 'Reserve Management Plan' or 'Land Management Plan' for the area.

Reserves include wilderness areas, national parks, nature reserves, catchment areas and other areas of public land. Some plans of management, for example for urban parks will still be done under the *Planning and Development Act 2007*. Plans of management for these areas will be called

a Land Management Plan to distinguish these from the Reserve Management Plans undertaken under the Nature Conservation Act 2014.

Part 2.4 Environment Protection Regulation 2005

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

This clause updates references to reflect the amendments to reserve management. 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

This clause updates references to reflect the amendments to reserve management.

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

This clause updates references to reflect the amendments to reserve management.

[2.12] Dictionary, new definition of reserve

This clause updates references to reflect the amendments to reserve management. Reserves include wilderness areas, national parks, nature reserves, catchment areas and other areas of public land.

[2.13] Dictionary, definition of reserved area

This clause updates references to reflect the amendments to reserve management.

Part 2.5 Firearms Act 1996

[2.14] New section 61 (4)

This clause updates references to nature conservation licences, public unleased land permits and reserves. 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

This clause updates references to the need for a nature conservation licence or a public unleased land permit to use a firearm in a reserve for the management of pest control.

Part 2.6 Firearms Regulation 2008

[2.16] Section 3, note 1, paragraph 2

This clause updates references to reflect the amendments to reserve management.

[2.17] Table 15, item 3, column 2

This clause updates references to reflect the amendments to reserve management.

[2.18] Section 15, table 15, item 3, column 3

This clause updates references to reflect the amendments to reserve management.

[2.19] Dictionary, new definition of reserve

This clause updates references to reflect the amendments to reserve management. Reserves include wilderness areas, national parks, nature reserves, catchment areas and other areas of public land.

[2.20] Dictionary, definition of reserved area

This clause updates references to reflect the amendments to reserve management.

Part 2.7 Fisheries Act 2000

[2.21] Section 26 (1) (a)

This clause updates references from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.22] Section 28 (1) (a)

This clause updates references from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.23] Section 28 (1) (d)

This clause recognises the new listing of threatened species, special protection status, protected native species and exempt animals.

[2.24] New section 28 (3)

This clause updates the definitions of threatened species, special protection status, protected native species and exempt animals in the Nature Conservation Act 2014 through amendments to the signpost definitions.

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

This clause updates references from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.26] Section 34 (1) (b)

This clause updates references from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.27] Dictionary, definition of Conservation Officer

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

Part 2.8 Heritage Act 2004

[2.28] Section 76 (1), definition of Conservation Officer

This clause updates references from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

Part 2.9 Legislation Act 2001

[2.29] Dictionary, part 1, definition of Conservator of Flora and Fauna

This clause updates references from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

Part 2.10 Magistrates Court (Fisheries Infringement Notices) Regulation 2004

[2.30] Section 12

This clause updates references from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.31] New section 12 (2)

This clause updates references from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

Part 2.11 Planning and Development Act 2007

[2.32] Section 120 (e)

This clause updates references to reflect the amendments to Reserve Management Plans and also to recognise 'Public Land Management Plans' to be prepared for areas of public land. The term 'Public Land Management Plan' for an area of public land, means either a 'Reserve Management Plan' or 'Land Management Plan' for the area.

Reserves include wilderness areas, national parks, nature reserves, catchment areas and other areas of public land. Some plans of management, for example for urban parks will still be done under the *Planning and Development Act 2007*. Plans of management for these areas will be called a Land Management Plan to distinguish these from the Reserve Management Plans undertaken under the Nature Conservation Act 2014.

[2.33] Section 129 (f)

This clause updates references to reflect the amendments to Reserve Management Plans and also to recognise 'Public Land Management Plans' to be prepared for areas of public land. The term 'Public Land Management Plan' for an area of public land, means either a 'Reserve Management Plan' or 'Land Management Plan' for the area.

Reserves include wilderness areas, national parks, nature reserves, catchment areas and other areas of public land. Some plans of management, for example for urban parks will still be done under the *Planning and Development Act 2007*. Plans of management for these areas will be called a Land Management Plan to distinguish these from the Reserve Management Plans undertaken under the Nature Conservation Act 2014.

[2.34] Part 10.1

This clause moves the definitions previously in part 10.1 to Part 10.4.

[2.35] Section 316 (b)

This clause updates references to reflect the amendments to Reserve Management Plans and also to recognise 'Public Land Management Plans' to be prepared for areas of public land. The term 'Public Land Management Plan' for an area of public land, means either a 'Reserve Management Plan' or 'Land Management Plan' for the area.

Reserves include wilderness areas, national parks, nature reserves, catchment areas and other areas of public land. Some plans of management, for example for urban parks will still be done under the *Planning and Development Act 2007*. Plans of management for these areas will be called a Land Management Plan to distinguish these from the Reserve Management Plans undertaken under the Nature Conservation Act 2014.

[2.36] Part 10.4

This clause updates references to reflect the amendments to Reserve Management Plans and also to recognise 'Public Land Management Plans' to be prepared for areas of public land. The term 'Public Land Management Plan' for an area of public land, means either a 'Reserve Management Plan' or 'Land Management Plan' for the area.

Reserves include wilderness areas, national parks, nature reserves, catchment areas and other areas of public land. Some plans of management, for example for urban parks will still be done under the *Planning and Development Act 2007*. Plans of management for these areas will be called a Land Management Plan to distinguish these from the Reserve Management Plans undertaken under the Nature Conservation Act 2014.

Division 10.4.1 Public Land Management Plans

This clause updates references to reflect the amendments to Reserve Management Plans and also to recognise 'Public Land Management Plans' to be prepared for areas of public land. The term 'Public Land Management Plan' for an area of public land, means either a 'Reserve Management Plan' or 'Land Management Plan' for the area.

Reserves include wilderness areas, national parks, nature reserves, catchment areas and other areas of public land. Some plans of management, for example for urban parks will still be done under the *Planning and Development Act 2007*. Plans of management for these areas will be called a Land Management Plan to distinguish these from the Reserve Management Plans undertaken under the Nature Conservation Act 2014.

Provisions within the Bill establish that management planning for conservation reserves will be undertaken under the proposed Nature Conservation Act 2014. However, other plans of management for public land are also required under the *Planning and Development Act 2007*. These primarily relate to urban parks, but also to urban lakes etc. The clauses below make consequential changes to management planning provisions to reflect the revised processes in the

Bill but retain decision making under the Minister responsible for the *Planning and Development Act 1997* which is more appropriate. The name of the management plan under the *Planning and Development Act 2007* has been changed to a Land Management Plan to distinguish it from a Reserve Management Plan under the Nature Conservation Act 2014 and the previous plans of management applying to all public land, the Plan of Management.

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

This clause provides a definition of a ‘Public Land Management Plan’ for an area of public land, meaning either a ‘Reserve Management Plan’ for the area; or ‘Land Management Plan’ for the area.

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

Division 10.4.2 Land Management Plans

Clause 319. What is a Land Management Plan? Pt 10.4

This clause provides a definition of a ‘Land Management Plan’, for an area of public land. Land Management Plans are also made for lakes and includes the water parts of the lake as well as its foreshores.

Clause 320. What is a draft Land Management Plan? Div 10.4.2

This clause provides a definition of a ‘draft Land Management Plan’, for an area of public land. A draft Land Management Plan, for an area of public land, means a draft management plan that identifies the area; and describes how the planning and development management objectives for the area are to be implemented or promoted in the area.

Clause 321. Draft Land Management Plan—Custodian to prepare

This clause provides that the Custodian of an area of public land is responsible for preparing a draft Land Management Plan for the area.

The clause provides that the Custodian must consult with the Conservator and the planning and land authority.

This mirrors a provision of the Nature Conservation Bill for Reserve Management Plans.

Clause 322. Draft Land Management Plan—planning reports and strategic environmental assessments

This clause provides that the Minister may direct the Planning and Land Authority to prepare either a planning report or a strategic environmental assessment to inform the development of the Land Management Plan. The Custodian must consider any planning report in developing the Land Management Plan.

This mirrors a provision of the Nature Conservation Bill for Reserve Management Plans.

Clause 323. Draft Land Management Plan—public consultation

This clause provides that public consultation must be undertaken on a draft Land Management Plan. Consultation is commenced through a public consultation notice.

The clause provides that the Conservator can make arrangements for people with particular communication need to have adequate opportunity to comment on the draft plan. This aims to ensure that a range of people are able to comment including the opportunity for people to make submissions other than in writing.

This mirrors a provision of the Nature Conservation Bill for Reserve Management Plans.

Clause 324. Draft Land Management Plan—revision and submission to Minister

This clause provides processes relevant to the Custodian finalising the Land Management Plan. The Custodian of the reserve is required to revise the plan as appropriate and submit the revised plan to the Minister.

This clause provides processes to be followed for submission of the finalised Land Management Plan to the Minister for approval. The submission to the Minister seeking approval of the plan needs to be accompanied by a report outlining the issues raised through the consultation process. The report must include advice about any submissions the planning and land authority or the Conservator made including the reasons the Custodian did not revise the draft plan to incorporate the change.

This mirrors a provision of the Nature Conservation Bill for Reserve Management Plans.

Clause 325. Draft Land Management Plan—referral to Legislative Assembly committee

This clause provides for processes to refer a Draft Land Management Plan for public land to a Committee of the Legislative Assembly. The Minister must refer the plan to a Committee within 5 working days of receiving it. The Plan must be accompanied by the report setting out the issues raised during the consultation process.

The Committee can make recommendations about the draft plan, including that the Minister should approve it. The Committee is required to tell the Minister about the recommendations and refer the matter back to the Minister.

This mirrors a provision of the Nature Conservation Bill for Reserve Management Plans.

Clause 326. Draft Land Management Plan—committee to report

This clause provides that if the Minister has provided a draft reserve plan to a Committee, the Minister cannot approve, return or reject the plan until the Committee has referred the plan back to the Minister. The clause also provides that the Minister must take action to approve or return the plan to the Custodian for revision or reject the plan once the Committee has referred the plan back to the Minister.

This mirrors a provision of the Nature Conservation Bill for Reserve Management Plans.

Clause 327. Draft Land Management Plan—Minister to approve, return or reject

This clause provides that the Minister can approve, return or reject a Land Management Plan where the Legislative assembly has reported back to the Minister, or where the Minister decides to take this action because 6 months has passed and the Legislative Assembly Committee has not reported back.

The clause provides that the Minister must consider the Legislative Assembly Committee's recommendations, and the Minister can direct the Custodian to consider the Committee's recommendations.

The Minister must make a decision on a management plan within 45 days.

Previous processes include processes for withdrawing and delaying implementation of a plan of management. These processes were never utilised and have been dropped.

This mirrors a provision of the Nature Conservation Bill for Reserve Management Plans.

Clause 328. Land Management Plan—Minister’s approval and notification

This clause provides that a draft Land Management Plan approved by the Minister is a disallowable instrument.

The clause notes that 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.

This mirrors a provision of the Nature Conservation Bill for Reserve Management Plans.

Clause 329. Draft Land Management Plan—Minister’s direction to revise etc

This clause provides for processes that must be undertaken if the Minister gives the Custodian of public land a direction to consider the Assembly’s recommendations, to carry out further consultation or to revise the draft plan in a stated way.

The clause requires the Custodian to give effect to the direction and resubmit the draft plan to the Minister for approval. The clause also provides that the Minister must decide to approve, return or reject a resubmitted draft plan.

This mirrors a provision of the Nature Conservation Bill for Reserve Management Plans.

Clause 330. Draft Land Management Plan—Minister’s rejection

This clause provides that the Minister can, by issuing a rejection notice, reject a draft Land Management Plan. A rejection notice is a notifiable instrument.

Clause 331. Land Management Plan—minor amendments

This clause provides for minor amendments of an existing plan of management if the Custodian considers that minor amendments to the existing plan are appropriate.

The minor amendments process requires the Custodian to prepare a new draft Land Management Plan for the reserve, incorporating the minor amendments into the existing plan and submit the new draft Land Management Plan to the Minister for approval. Provisions about public consultation and referral to a Legislative Assembly Committee do not apply to a Land Management Plan that has had minor amendments. The Minister is able to approve an amended plan, with or without revisions, or reject the plan.

This mirrors a provision of the Nature Conservation Bill for Reserve Management Plans.

Clause 332. Land Management Plan—Custodian to implement

This clause provides that if a Land Management Plan is in force for public land the Custodian of the public land must take reasonable steps to implement the plan.

This provision aims to increase accountability for the implementation of management plans.

This does not mean that management plans should not include aspirational elements. Long-term plans sometimes need to include longer-term visions, which may depend on further information or additional resources that are not currently available.

This mirrors a provision of the Nature Conservation Bill for Reserve Management Plans.

Clause 332A. Land Management Plan—review

This clause provides that if a Land Management Plan is in force for public land the Custodian of the reserve report to the Minister about the plan at least once every 5 years. The clause also provides that the Custodian of the reserve must review the plan 10 years after the plan commences. This is aimed at ensuring that regular reviews of management are undertaken. It is intended that if the review finds that the plan is largely effective, the minor amendments process can be used to update the plan without the requirement to write a new plan.

This provision aims to increase accountability for the monitoring of the effectiveness of management plans.

This mirrors a provision of the Nature Conservation Bill for Reserve Management Plans.

[2.37] New chapter 20

This clause provides for transitional arrangements for plans of management. There is a new Chapter 20 to facilitate this.

Clause 473. Definitions—ch 20

In this part commencement day means the day the Nature Conservation Act 2014 commences.

Clause 474. Certain plans of management to be Land Management Plans

This clause provides transitional arrangements for an old plan of management to become a new Land Management Plan. A new Land Management Plan is taken to have commenced on the day the old plan of management commenced under the *Planning and Development Act 2007*.

Clause 475. Draft Plans of management - public consultation stage

This clause provides transitional arrangements for draft management plans that have undergone consultation. The clause provides that these processes are recognised so that the processes do not need to be undertaken again as this would be duplicative and resource intensive.

Clause 476. Draft Plans of Management – submission to Minister stage

This clause provides transitional arrangements for draft management plans that have been referred to a Legislative Assembly Committee. The clause provides that these processes are recognised so that the processes do not need to be undertaken again as this would be duplicative and resource intensive.

Clause 477. Transitional regulations

This clause provides a regulation making power to prescribe additional transitional arrangements matters. 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.

Clause 478. Expiry—ch 20

This clause provides that this part expires 2 years after the day it commences. 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).

[2.38] Schedule 4, section 4.1, new definition of action plan

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.39] Schedule 4, section 4.1, definition of biodiversity corridor and clearing

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.40] Schedule 4, section 4.1, new definitions

This clause includes new definitions from the Nature Conservation Act 2014.

[2.41] Schedule 4, section 4.1, definitions of ecological community and endangered

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.42] Schedule 4, section 4.1, new definition of endangered species

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.43] Schedule 4, section 4.1, definition of flora and fauna committee

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.44] Schedule 4, section 4.1, new definitions

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.45] Schedule 4, section 4.1, definition of native vegetation

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.46] Schedule 4, section 4.1, new definitions

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.47] Schedule 4, section 4.1, definition of protected

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.48] Schedule 4, section 4.1, new definitions

This clause includes definitions from the Nature Conservation Act 2014.

[2.49] Schedule 4, section 4.1, definition of special protection status

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.50] Schedule 4, section 4.1, new definition of threatened ecological community

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.51] Schedule 4, section 4.1, definition of threatening process and vulnerable

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.52] Schedule 4, section 4.1, new definition of vulnerable species

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.53] Schedule 4, part 4.3, item 1

The amendments to the schedule reflect the new listing categories under the Bill that require an environmental impact statement to be prepared. A further change has been to directly refer to matters of National Environmental Significance rather than in the past referring to species with special protection status, which was unclear, but had the same effect. This applies unless the Conservator provides an environmental significance opinion indicating that the proposal is not likely to have a significant adverse environmental impact. Normally, a newly listed species would not need to be considered in an environmental impact statement once a draft EIS for a development proposal has been publicly notified and the public consultation period for the draft EIS has ended, except where representations seek for a newly listed species or ecological community to be listed.

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

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

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

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.56] Dictionary, new definition of action plan

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.57] Dictionary, definition of clearing

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.58] Dictionary, new definitions

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.59] Dictionary, definitions of ecological community and endangered

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.60] Dictionary, new definition of endangered species

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.61] Dictionary, definition of flora and fauna committee

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.62] Dictionary, new definitions

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.63] Dictionary, definition of native vegetation

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.64] Dictionary, new definitions

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.65] Dictionary, definition of plan of management

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.66] Dictionary, definition of proponent

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.67] Dictionary, definition of protected

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.68] Dictionary, new definitions

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.69] Dictionary, definition of special protection status and technical variation

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.70] Dictionary, new definition of threatened ecological community

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.71] Dictionary, definition of threatening process

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.72] Dictionary, definition of variation

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.73] Dictionary, definition of vulnerable

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.74] Dictionary, new definition of vulnerable species

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

Part 2.12 Planning and Development Regulation 2008

[2.75] Schedule 1, section 1.1, definitions of clearing and native vegetation

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

[2.76] Schedule 1, section 1.4 (1) (d)

This clause updates references from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

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

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

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

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

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

This clause updates definitions from the *Nature Conservation Act 1980* to the *Nature Conservation Act 2014*.

[2.80] Dictionary, definition of clearing and native vegetation

This clause updates definitions from the *Nature Conservation Act 1980* to the *Nature Conservation Act 2014*.

[2.81] Dictionary, new definition of native vegetation area

This clause updates definitions from the *Nature Conservation Act 1980* to the *Nature Conservation Act 2014*.

Part 2.13 Public Unleased Land Act 2013

[2.82] New section 19 (2A)

This clause provides that if the public unleased land is a reserve, the Director-General must consult the Conservator about the application. The purpose of this is to reduce duplication of process by the *Nature Conservation Act 2014* using processes for permitting of the *Public Unleased Land Act 2013*. However, it is important that the Conservator have a say on what permits get issued for nature conservation reserves.

[2.83] Section 21 (1) (b)

This clause identifies that a nature conservation licence under the *Nature Conservation Act 2014* is an exception to an offence under this part of the Act.

[2.84] Section 43 (4) (a)

This clause identifies that a nature conservation licence under the *Nature Conservation Act 2014* is an exception to an offence under this part of the Act.

[2.85] New section 43 (4A)

This clause provides an exception for this offence for an action complying with an Activities Declaration under the *Nature Conservation Act 2014*, if stated directions or requirements are complied with.

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

This clause notes that some activities are not permitted in wilderness areas under the *Nature Conservation Act 2014* and thus a permit cannot be issued.

[2.87] New section 52A

This clause provides for consultation with the Conservator about whether activities are suitable for a public unleased land permit, where the permit is for a reserve managed under the *Nature Conservation Act 2014*.

[2.88] New section 57 (2A)

This clause provides that some activities are not permitted in wilderness areas under the Nature Conservation Act 2014 and thus a permit cannot be issued.

[2.89] Dictionary, new definitions

This clause updates definitions from the *Nature Conservation Act 1980* to the Nature Conservation Act 2014.

Dictionary

The Dictionary sets out the definitions for the Nature Conservation Act 2014.