

2019

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

FISHERIES LEGISLATION AMENDMENT BILL 2019

EXPLANATORY STATEMENT

**Presented by
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EXPLANATORY STATEMENT

This explanatory statement relates to the Fisheries Legislation Amendment Bill 2019 (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. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

The 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.

Background

This explanatory statement provides information about why the Bill is proposed together with an explanation about the proposed legislative amendments.

The *Fisheries Act 2000* (the Fisheries Act) provides for the protection and conservation of native fish species and their habitats, and for the sustainable management of the fisheries to ensure high quality and viable recreational fishing. In addition, the Act enables management of commercial fish production and fishing enterprises, fish dealing and live fish transport to ensure that the sustainable management of the fisheries is consistent with other Australian jurisdictions.

A review of the Fisheries Act identified the need to update the legislation to include broader aspects of fisheries management such as cultural fishing and aquaculture, and to modernise provisions to improve protection for native fish and habitats, compliance and enforcement, and management of trade issues.

The purpose of the Bill is to update the Fisheries Act through changes to the legislation to address the issues raised during the review as detailed below.

Overview of the Bill

The Bill proposes a number of amendments to the Fisheries Act. Amendments are both of a minor technical nature and more significant, including new provisions and changes to the structure of sections.

The significant amendments in the Bill relate to:

- the use of prohibited gear such as enclosed yabby traps in private waters;
- changes to offences and penalties;
- compliance and enforcement;
- aspects of aquatic pest management;
- licensing; and
- aquaculture and aquaponics.

The Bill also proposes changes to the *Nature Conservation Act 2014* (Nature Conservation Act) relating to cultural resource use and trade in protected species and makes changes to the *Pest Plants and Animals Act 2005* (Pest Plants and Animals Act) to recognise licences under the Fisheries Act as an exception to offences under that Act.

Prohibition of the use of gear in private waters

The use of enclosed yabby traps is not permitted in public waters in the ACT as it is not declared as permitted gear which currently applies to use in public rather than private waters.

Amendments include the ability to declare gear as prohibited, with associated higher penalties for use. The amendments make it clear that the prohibition applies to all waters within the ACT, both public and private. This is intended to ban the use of gear to catch yabbies that can cause the death of native animals and other air breathing animals. It does not restrict the catching of yabbies on private land using permitted gear which is readily available. Amendments include a requirement on retailers to provide point of sale information that the use of certain gear is prohibited in the ACT. This would assist consumers to avoid buying equipment that they cannot lawfully use in the ACT. It should also reduce this equipment's illegal use and impacts on non-target species.

Offences and Penalties

A comparison of penalties between ACT and NSW showed that ACT penalties are often significantly lower than those in NSW for similar offences. Offences and penalties throughout the Fisheries Act are amended to align with other jurisdictions, in particular NSW, where appropriate to the ACT's circumstances. These include updates to offences and associated penalties relating to commercial fishing (sale without licence, taking, possession and trafficking of priority species), recreational fishing (fishing closure offences, prohibited size, weight and quantity offences and non-permitted gear), and habitat protection (increased penalties for interference/damage etc. of spawning or other important habitat and new offences and penalties relating to unauthorised activities, including acting in contravention of a licence or a direction.

Strict liability offences

The Bill includes a number of offences where strict liability applies to a specific element of the offence or to the offence. These offences are in relation to failure to comply with directions (for example, direction to remove gear from water or direction to stop a vehicle), and failure to comply with conditions of a licence.

A strict liability offence under section 23 of the *Criminal Code 2002* means that there are no fault elements for the physical elements of the offence to which strict liability applies. Essentially, this means conduct alone is sufficient to make the defendant culpable. The strict liability offences in the Bill arise in the context where defendants can reasonably be expected to know the requirements of the law.

In all the circumstances, it is considered that the strict liability offences in the Bill are appropriate and do not unduly trespass on personal rights and liberties.

The use of strict liability was carefully considered in developing the offences. The rationale for their inclusion was that people engaged in the conduct of for example trading priority species under licence, can be expected to be aware of their duties and obligations. The provisions are drafted so that, if a particular set of circumstances exists, a specified person is guilty of an offence.

Strict liability offences are an efficient and cost effective deterrent for breaches of regulatory provisions. They are appropriate where the Fisheries 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. Compliance with the provisions of the Bill is important to ensure protection of the environment and economic assets and the use of strict liability offences can assist with enforcing compliance.

In all the circumstances, it is considered that the strict liability offences in the Bill are appropriate and do not unduly trespass on personal rights and liberties. Compliance with the provisions of the Bill is important to ensure protection of fisheries generally, of native species and of aquatic environments and ecosystems.

The strict liability offences in the Bill have a maximum penalty of 50 penalty units in accordance with the Justice and Community Services Directorate Guide to Framing Offences.

Compliance and enforcement

Comments and submissions received during public consultation showed that there is a perceived lack of enforcement of the Fisheries Act amongst the ACT recreational fishing community. Respondents reported observing non-compliance. Concern was also raised penalties for non-compliance are not strong enough to act as a deterrent.

The powers of authorised officers are amended to reflect similar powers to those included in Chapter 14 of the Nature Conservation Act and to include additional powers relevant to commercial fishing trades similar to other jurisdictions, particularly NSW.

The changes also provide for the appointment of fisheries officers under the Fisheries Act which could allow for officers from other jurisdictions to be appointed to assist with cross border commercial trade.

A range of powers relating to giving directions are included.

Aquatic pest management

The release of invasive aquatic species back into waterways can have a significant environmental impact. For example, European Carp in our waterways can cause decline in native fish populations and Redfin Perch carry disease which could significantly threaten the endangered Macquarie Perch.

Amendments propose that a power is provided to the Conservator to declare areas and fish species where it would be an offence to return invasive species to the water. The declaration would be a Disallowable Instrument under the Fisheries Act. To promote compliance, notices and information would be needed to advise people of this requirement. The proposal would be consistent and expand on existing provisions within the Fisheries Act (section 79) that makes it an offence to release a live fish into public waters (apart from the immediate return of a caught fish to the area it was caught) without the Conservator's written approval.

The Community raised concerns during public consultation that the imposition of a broad ban on the return of pest fish to the water would likely stop them fishing as they are averse to killing animals. And in most of the urban lakes the return of a pest fish is not likely to have a significant impact, or a significant conservation benefit. The provisions have therefore provided the ability to respond to the risk from returning pest fish to waterways where there would be an environmental impact. This may stop people fishing in those waterways, but not in all ACT waterways.

Licensing

Current provisions under the Fisheries Act allow licensing of a limited amount of activities. The replacement of the existing provisions with a new Licensing part allow a broader range of activities to be licenced and bring licencing provisions in line with those of the Nature Conservation Act to provide greater consistency.

Aquaculture and aquaponics

Broad environmental risks from aquaculture are considered under the *Environment Protection Act 1997* (EP Act) (Schedule 1 (16)).

In addition to the provisions of the EP Act, new provisions in the Fisheries Act will allow the development of guidelines and licencing conditions to manage:

- which species of fish are appropriate to farm;
- species, activities and facilities that are prohibited; and
- activities where additional assessment is required for licensing.

Aquaculture activities with a capacity of over 10,000L will require a fisheries licence.

Changes to the Nature Conservation Act

Cultural fishing practices

Provisions will enable the Conservator of Flora and Fauna (the Conservator) to develop a statutory plan and guidelines in partnership with traditional custodians that will allow for Aboriginal cultural activity, including fishing under certain circumstances.

The provisions provide an exception for certain offences under the Fisheries Act and the Nature Conservation Act where the activities are done in accordance with the Plan.

Changes to the Pest Plants and Animals Act

The Pest Plants and Animals Act does not provide an exception for offences relating to trade or keeping of prohibited pest plants or animals. This means that research institutions cannot keep or import pest animals for the purpose of research. The Bill provides a minor change to the Act to provide an exception for a licence under the Fisheries Act to allow licences to be issued for research and similar purposes.

Human rights implications

The Bill engages the *Human Rights Act 2004* (Human Rights Act) including the right to privacy and reputation (section 12), the right to be presumed innocent within section 22, and cultural rights within section 27.

Section 28 (1) of the Human Rights Act provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28 (2) of the Human Rights Act then provides that, in deciding whether a limit on a human right is reasonable, all relevant factors must be considered. Section 28 (2) further provides five factors that must be considered when determining whether a limit on human rights is considered justified, namely:

- (a) the nature of the right affected;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relationship between the limitation and its purpose; and
- (e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

To the extent that any provision of this Bill limits an individual's human rights, any limitation is reasonable and justified as outlined below and against relevant clauses.

Right to equality

Section 8 of the Human Rights Act provides that everyone has the right to recognition and equality before the law.

Clause 27 of the Bill (section 79B) provides that an authorised person may direct a person to carry out certain treatment activities. A treatment direction could impose costs on a person and in doing so may cause financial hardship, particularly to people from a low socio-economic background.

The section provides that an authorised person must consider a number of matters in deciding whether to make a treatment direction. They must consider factors such as the likelihood of a disease infecting other fish, the impact of the disease if it were to infect other fish, the impact if a direction is not followed and any other matter prescribed by legislation. 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.

Given the extent of the considerations needed before a treatment direction can be made it is likely to be used only when there are significant risks to the environment or to animal welfare. The potential restriction on the right to equality is considered to be reasonable and justifiable, taking into account section 28 (2) of the Act.

Right to privacy and reputation

Section 12 of the Human Rights Act provides that everyone has the right:

- a) Not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and*
- b) Not to have his or her reputation unlawfully attacked.*

Clause 16 of the Bill amends section 54 of the Fisheries Act to provide a power to enter premises (including land, a vehicle or a vessel) where the occupier provides consent, the entry is authorised by a warrant or in serious and urgent circumstances. The Bill also provides a power for an authorised officer to stop and search a vehicle (proposed section 67) if the officer believes on reasonable grounds that a vehicle contains fish or aquatic matter in contravention of the Fisheries Act.

The requirement to obtain consent or a warrant to enter a place in all but serious and urgent circumstances provides safeguards to ensure the exercise of these powers does not unreasonably limit or restrict the right to privacy.

The right to privacy is also protected by the fact that an authorised officer can only enter a place to protect life or property if the officer believes on reasonable grounds the circumstances are so serious and urgent that immediate entry to the premises without authority of a warrant is necessary.

Clause 27 of the Bill amends section 64 and provides authorised persons with the ability to direct a person to provide information. This may affect the right to privacy.

The right to privacy at section 64 is protected by the fact that an authorised person can only direct the provision of information that is reasonably required for the administration or enforcement of the Act. The direction must also include why such information and documents are required. It is considered that the possible restriction on the right to privacy is necessary for the effective administration of the Act, and is reasonable and justifiable, taking into account section 28 (2) of the Act.

Freedom of thought, conscience, religion or belief.

Section 14 of the Human Rights Act provides that:

(1) Everyone has the right to freedom of thought, conscience and religion. This right includes—

(a) the freedom to have or to adopt a religion or belief of his or her choice;
and

(b) the freedom to demonstrate his or her religion or belief in worship, observance, practice and teaching, either individually or as part of a community and whether in public or private.

The Bill includes provisions prohibiting the release of fish into waterways in certain circumstances at section 79. This may limit the religious practices of certain cultural groups to undertake karma release of fish. The Bill limits the release of fish unless a licence is obtained, in order to protect the aquatic ecosystems of the ACT from inadvertent release of invasive or diseased fish. Guidelines will be developed under the Fisheries Act to address issues related to karma release, and work with the community to facilitate this practice in an appropriate manner that does not cause environmental damage. The limit that this Bill places on the right at section 14 is considered reasonable and justifiable, taking into account section 28 (2) of the Act.

Right to be presumed innocent

Section 22 (1) of the Human Rights Act states that:

Everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to the law.

The Bill includes several sections which contain strict liability offences. Offences of strict liability engage the right to be presumed innocent under section 22 (1) of the Human Rights Act as they may reverse the onus of proof from the prosecution onto the defendant. 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 fishery and the wider aquatic environment.

The limit that this Bill places on the right to the presumption of innocence in section 22 (1) of the Human Rights Act is considered reasonable and justifiable, taking into account section 28 (2) of the Act.

The strict liability offences in the Bill are regulatory in nature and of a type that those affected by the offences could be expected to be aware of. They are appropriate where an authorised officer is in a position to readily assess the truth of a matter and determine that an offence has been committed.

The purpose of providing strict liability offences is to ensure the effective enforcement of and compliance with these sections of the Fisheries Act.

Under the *Criminal Code 2002*, all strict liability offences have a specific defence of mistake of fact. Section 23 (3) of the Criminal Code further provides that other defences may still be available for use in strict liability offence cases.

It is considered that the possible restriction on the right to be presumed innocent is reasonable and justified in the circumstances. In the circumstances this is the least restrictive means available to achieve the purpose of the legislation.

Section 22(2)(i) – the right not to be compelled to testify against himself or herself to confess guilt - may be affected by section 64 (Direction to provide information) and section 65 which makes it an offence to fail to comply with an information direction. However, section 170 of the Legislation Act 2001 will operate to preserve the common law privileges against self-incrimination thus these sections will not limit the right not to be compelled to testify.

Cultural and other rights of Aboriginal and Torres Strait Islander Peoples and other minorities

Section 27 (2) of the Human Rights Act states that:

Aboriginal and Torres Strait Islander peoples hold distinct cultural rights and must not be denied the right—

(a) to maintain, control, protect and develop their—

(i) cultural heritage and distinctive spiritual practices, observances, beliefs and teachings; and

(ii) languages and knowledge; and

(iii) kinship ties; and

(b) to have their material and economic relationships with the land and waters and other resources with which they have a connection under traditional laws and customs recognised and valued.

The Bill includes provisions to amend the Nature Conservation Act to enable cultural resource use by Aboriginal people through the development of a cultural resource management plan. This positively engages cultural rights contained within section 27 of the Human Rights Act by increasing the access of Aboriginal people to cultural resources including fish. The provision directs that a plan be developed in partnership with Ngunnawal traditional custodians in order to empower them to develop provisions for cultural resource access reflecting traditional customs about cultural resources. The Bill does not exclude consultation with other parties with an interest in the development of the plan.

Scrutiny of Bills Committee Principles

The following addresses the Scrutiny of Bills Committee principles.

Unduly trespass on personal rights and liberties

There are a number of offences including strict liability offences created by the Bill. These may be seen as engaging a number of rights under the Human Rights Act and unduly trespassing on personal rights and liberties. A justification for this is provided in the overview under Offences and Penalties and against requirements for the Human Rights Act.

Make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers

The Bill does not make rights liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

Make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions

The Bill does not make rights liberties and/or obligations unduly dependent upon non-reviewable decisions.

Inappropriately delegate legislative powers

The Bill does not provide for the delegation of legislative powers.

Insufficiently subject the exercise of legislative power to parliamentary scrutiny

The Bill does not insufficiently subject the exercise of legislative power to parliamentary scrutiny.

Costs and Benefits

A regulatory impact statement (RIS) was prepared and concluded that the introduction of the new and amended provisions proposed is the preferred policy option. The benefits of the new and amended provisions to the environment and to the sustainability of the recreational and commercial fishery, and the social benefits associated with the introduction of Aboriginal cultural fishing provisions, outweigh the potential costs.

Outline of Provisions

Part 1 Preliminary

Clause 1 – Name of Act

This clause states the title of the Act as the *Fisheries Legislation Amendment Act 2019*.

Clause 2 – Commencement

This clause provides for the commencement for the Act on a day fixed by the Minister by written notice.

Clause 3 – Legislation amended

This clause indicates that this Act amends the *Fisheries Act 2000* (Fisheries Act); the Fisheries Regulation 2001 (Fisheries Regulation); the Nature Conservation Act; and the Pest Plants and Animals Act.

Part 2 Fisheries Act 2000

Clause 4 – Objects (section 3b)

This clause amends the objects of the Fisheries Act to omit the mention of principles of ecologically sustainable development (ESD) as defined in the *Environment Protection Act 1997* as ESD is no longer defined in that Act.

Clause 5 –New section 3 (2)

This clause amends the objects to insert mention of ESD as defined in the Nature Conservation Act.

Clause 6 – Part 2 Fisheries Management Plan

This clause substitutes the existing provisions for a Fisheries Management Plan with new provisions in order to allow a fisheries management plan to be made for a broad range of fisheries management issues and to align the preparation and approval process with that of plans under the Nature Conservation Act.

The new provisions are outlined below.

Section 5 provides a definition for a fisheries management plan and what a plan may include, this broadens the scope of the previous Part 2, section 5 which defined the content of a fisheries management plan.

Section 6 provides for the preparation of and public consultation on a draft fisheries management plan.

Section 7 provides for approval of the plan and specifies under which circumstances the Minister must approve a plan, and when the Conservator may approve the plan. This amends the current legislation which states that the Minister must approve all fisheries management plans. Ministerial oversight is not needed for example on a plan to outline fish stocking policies or aquatic habitat improvements. The Minister is responsible for approval of plans for significant activities such as commercial fishing.

Section 8 sets out the steps for the Minister to approve the plan or direct the Conservator to revise the Plan under section 9.

Section 9 provides that the Conservator must revise the plan and resubmit it to the Minister if directed to revise the plan under Section 8.

Section 10 allows for the Conservator to make minor amendments to improve the effectiveness or efficiency of the plan or to omit something redundant without changing the substance of the plan without further consultation. This is not provided for in the current legislation.

Section 11 provides requirements for a review of a Fisheries Management Plan. The requirements vary depending upon who approves the Plan. A public review process is provided for significant activities.

Section 12 provides a responsibility for the Conservator to implement the plan.

Clause 7 –Section 13 – Fishing closures

This clause amends section 13 to allow the Conservator to prohibit introduction or release of fish into public waters, as well as prohibit take, and to allow the commencement of a fishing closure before it is notified if urgent closure is required. This may include a closure to contain an outbreak of disease or to protect fish under unusual environmental conditions. The clause provides that the Conservator must give public notification about the closure at or near the waters affected.

Clause 8 – Sections 14-16

This clause omits the words ‘in writing’ from these sections. The intent of the sections remain unchanged, however the words ‘in writing’ are unnecessary.

Clause 9 – New section 16A

This clause inserts a provision to allow the Minister to declare a possession limit for species of fish. A possession limit allows only a certain number of a species of fish to be in a person’s possession at any one time. The intention of this provision is to prevent people catching above the allowable bag limit and using the excuse that the fish have been caught over a period of time. This provision will be applied to fish found to be possessed only in certain circumstances, such as, in or beside public waters as indicated in the example at s16A, and is not intended for fish that a person may be keeping in their freezer at home.

Clause 10 – Section 17 (1) Declaration of fishing gear

This clause provides that the Minister may explicitly declare gear that is prohibited for use in taking fish, as well as declaring gear that may be used for taking fish.

Clause 11 – New sections 18 and 18A

Section 18 Declaration of exempt species - This clause provides that the Conservator may declare a species of fish to be an exempt species. The intention of this provision is to allow certain species to be exempt from requiring a licence for an import or export licence. This aims to ensure situations such as a person buying a goldfish in Queanbeyan and bringing it into the ACT does not require an import licence.

Section 18A Declaration of critical habitat -This clause provides that the Conservator may declare aquatic habitat to be critical habitat. This aims to offer greater protection to habitat that is important to the protection or sustainability of a certain species and inform the public of the importance of such habitat and the need for its protection.

Clause 12 – Part 4 Fisheries Licences

This clause broadens the scope of licencing under the Fisheries Act (i.e. a wider range of activities can be licensed) and brings licencing provisions in line with those of the Nature Conservation Act.

The new provisions under this part are outlined below.

Division 4.1 Licences - Preliminary

Section 19 defines the meaning of a fisheries licence as a licence providing authority to carry out an activity that would otherwise be an offence under the Fisheries Act.

Section 20 defines the meaning of a recreational group licence as a licence authorising a group of people to undertake an activity that would otherwise be an offence under the Fisheries Act.

Division 4.2 Licences - application and suitability

Section 21 provides that a person may apply to the Conservator for a fisheries licence and outlines the steps required to do so and the information required to be provided in the application.

Section 22 provides that a person may apply to the Conservator for a recreational group licence on a behalf of a group, to undertake recreational fishing activity that may otherwise be an offence. The section also outlines the application process and information requirements. It also provides that it is an offence to fail to comply with a condition of such a licence.

Section 23 defines who may be considered as a suitable person to hold a fisheries licence.

Section 24 defines the meaning of suitability information about a person. The Conservator must consider suitability information about a person in determining a person's suitability for a fisheries licence.

Section 25 provides that in considering whether to approve an application for a fisheries licence, the Conservator may request further information about a person in order to judge suitability, including any member of a group when an application is for a group licence.

Section 26 defines a suitable activity for a fisheries licence as an activity the Conservator is satisfied is suitable and is not defined as an unsuitable activity by regulations.

Section 27 defines the meaning of suitability information about an activity. The Conservator must consider suitability information about an activity in determining the suitability of an activity to be licensed, this includes the impact and purpose of an activity.

Section 28 provides that in considering whether to approve an application for a fisheries licence, the Conservator may request further information about an activity in order to judge suitability.

Section 29 provides that the Conservator may request a risk management plan be developed for a licence.

Division 4.3 Licences – decision

Section 30 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.

Section 31 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 may only be for non-commercial purposes.

Section 32—term provides that a licence can be issued for a period of no longer than 5 years. This timeframe provides for adequate oversight of licenses without requiring reapplication too often.

Section 33 provides 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.

Division 4.4 Licences – amendment

Section 34 provides that the Conservator may provide an amendment notice to amend a fisheries licence under specific circumstances and must provide written notice to the licensee of a proposed amendment. Written submissions about the amendment may be received and must be considered by the Conservator.

Section 35 allows a licensee to apply to the Conservator for an amendment to a licence. An amendment must be applied for, for example, where a new person is going to have management of the licence.

Section 36 provides that the Conservator may amend the licence as requested under s34, only if satisfied that the amendments do not affect suitability requirements for the licensee or activity and the licence is not inconsistent with a Conservator guideline. The section includes timeframes for the Conservator to inform the person about their decision.

Section 36A provides that the Conservator may issue a replacement licence if satisfied that an original licence has been lost, stolen or destroyed.

Section 36B provides that a licensee may surrender a licence in writing to the Conservator. If surrendering a licence, a person must provide their licence or a statement verifying the licence has been lost stolen or destroyed, to the Conservator.

Section 36C provides that it is an offence for licensee to fail to notify the Conservator of a change to their name or address.

Section 36D provides that the Conservator must change the details on the licence and return it to the licensee if notified of a change to name and address.

Division 4.5 Licences – regulatory action

Section 36E provides that Division 4.5 also applies to the licensee of a group recreational licence.

Section 36F outlines the grounds for regulatory action against a licensee for a fisheries licence. These include if the licensee has contravened a provision of the Fisheries Act or a condition of their licence.

Section 36G outlines the regulatory action that may be taken against a licensee. These include imposing conditions, suspension of a licence or cancellation of a licence.

Section 36H provides that the Conservator must give a licensee written notice stating details of any regulatory action that is to be undertaken and that a licensee may provide a written submission in response to this notice. The Conservator must consider any submission made in deciding whether or not to take regulatory action.

This section also outlines what action the Conservator may take and when the action takes effect.

Section 36I provides for immediate suspension of a fisheries licence if the Conservator believes that the licence should be suspended due to risk to public safety, fish or the sustainability of a fishery. In this circumstance the Conservator must give written notice of the suspension, the suspension takes effect when this notice is given to the person.

If regulatory action is taken against the person, the suspension ends when the action is taken or 30 days after the suspension notice is given to the person.

If regulatory action is not taken, the suspension ends when the person is given written notice of the decision not to take regulatory action, or 30 days after the suspension notice is given to the person.

Section 36J provides that if the Conservator suspends a fisheries licence, the licensee does not hold the licence and is disqualified from applying for a fisheries licence. Undertaking a licensed activity is not allowed if a licence is suspended.

Section 36K provides that it is an offence to fail to return an amended, suspended or cancelled licence. A licensee must return a licence to the Conservator as soon as practicable and within 7 days of a licence being amended, suspended or cancelled. An offence against this section is a strict liability offence.

Section 36L outlines the action the Conservator must take in relation to amended or suspended licences. It provides that the Conservator must amend and return an amended licence to a licensee and must return a suspended licence to the licensee once the suspension is over.

Division 4.6 Licence Register

Section 36M states that the Conservator must keep a register of fisheries licences, including recreational group licence, that must include details of each licence including the name of the licensee, licence number, licensed activity and the conditions of the licence. The register may also include anything else that the Conservator considers relevant.

Section 36N provides that the register may make corrections to errors or omissions to the licence register and may change details as required to keep the register up to date.

Section 36O provides that it is an offence for a licensee to fail to keep records as required by regulation for their licence. This is a strict liability offence as the licensee can be expected to be aware of the records they are required to keep.

Clause 13 – Section 41, Suspension of registration

This clause omits reference to notice under section 49 (3) in section 41, and replaces it with reference to direction under section 64 (2), Direction to provide information.

Clause 14 – Section 42, Cancellation of registration

This clause omits reference to notice under section 49 (3) in section 41, and replaces it with reference to direction under section 64 (2), Direction to provide information.

Clause 15 – Part 6 Aquaculture

This clause inserts new provisions in order to allow management of aquaculture under the Fisheries Act.

The new provisions are outlined below.

Section 46 defines the meaning of aquaculture for this Act.

Section 47 provides that the Conservator may make guidelines about how aquaculture may be undertaken. These guidelines must include consideration of risks to biosecurity and the species and numbers of certain species of fish that are appropriate for aquaculture activity.

Section 48 provides that a regulation may prescribe a capacity for an aquaculture activity, over which a fisheries licence authorising the activity is required. The regulation sets this limit at 10,000 litres in line with aquaculture management in NSW and other jurisdictions.

Section 49 provides that it is an offence for a person to undertake aquaculture in contravention of the guidelines and it is an offence to undertake aquaculture without a licence if one is required.

Clause 16 – Part 7 heading

This clause substitutes the new heading 'Part 7 Enforcement' for the existing heading, 'Conservation Officers Powers'. The part now includes appointment of fisheries officers and covers powers for fisheries officers, conservation officers who are authorised officers under the Act. This part also adds broader powers for authorised officers, in line with those in the Nature Conservation Act.

The new provisions are outlined below in clauses 17–27.

Clause 17 – New Division 7.1A Fisheries Officers

Section 50 allows for the appointment of fisheries officers by the Director-General.

Section 51 provides that each fisheries officer must have an identity card stating their name and appointment as a fisheries officer.

Section 52 provides that fisheries officers must show their identity card when exercising powers under the Fisheries Act.

Clause 18 – Section 54 Entry to places

This clause substitutes the new heading ‘Power to enter premises’ for the existing heading, ‘Entry to places’ and expands on the existing powers afforded under the Fisheries Act and aligns with the powers of conservation officers under the Nature Conservation Act. Section 54A provides that powers under Section 54 cannot be exercised unless an identity card is produced.

Clause 19 – Section 55, Consent to Entry

This clause substitutes ‘authorised person’ for the term ‘conservation officer’. Section 55 Provides that an authorised person must tell the occupier the purpose of entry on asking for consent. The occupier is not required to give consent.

Clause 20 – Section 55

This clause substitutes ‘authorised person’ for the term ‘the officer’.

Clause 21 – Section 55 (1)

This clause substitutes ‘another authorised person’ for the term ‘another conservation officer’.

Clause 22 – Sections 56-58

This clause substitutes ‘fisheries officer’ for ‘conservation officer’ in sections 56, 57 and 58.

Clause 23 – Section 59 Powers on entry with consent

This clause substitutes current section 59 ‘powers on entry with consent’ with new section ‘General powers on entry to premises’ to align with the powers of conservation officers under the Nature Conservation Act.

Clause 24 – Sections 60 and 61

This clause substitutes ‘fisheries officer’ for ‘conservation officer’ in sections 60 and 61.

Clause 25 – Section 62, Identity cards must be produced

This clause omits section 64. It is replaced by section 52 - Fisheries officer must show identity card on exercising power

Clause 26 –Section 63 - Entry into waters and along banks etc.

This clause omits the text stating that a conservation officer ‘may pass along (with a boat or otherwise) any public water’s’ and replaces it with ‘An authorised person may for this Act, at any time, pass along’.

Clause 27 – Divisions 7.2 and 7.3

Division 7.2 provides for other powers for authorised officers under the Fisheries Act. These provisions are detailed below.

Section 64 provides that an authorised person may direct a person to provide information or documents required for the administration or enforcement of the Fisheries Act (an information direction).

The direction must be in writing and state who it is for, the information required, why the information is required and when it must be provided.

Section 65 provides that it is an offence to fail to comply with an information direction without a reasonable excuse. A reasonable excuse for this section includes not being reasonably expected to know or find out the information and not having access to the information.

Section 66 provides that an authorised person may direct a person to state their name and address (a name and address direction). In order to issue a name and address direction an authorised person must believe on reasonable grounds that an offence is or has been committed against the Fisheries Act. **Section 66 (2)** provides that an authorised person must tell the person the reason for requesting their name and address **Section 67 (3)** indicates that an authorised officer may request evidence (an evidence direction) of the details requested in a name and address direction if they suspect on reasonable grounds that false information has been provided. The requested information is to be provided as soon as practicable, or within 2 business days, in the case that a person does not have evidence available at the time of the request. **Section 67 (4)** provides that it is an offence to fail to comply with a name and address direction or an evidence direction.

Section 67 provides that an authorised person may direct a vehicle to stop if they suspect that a person has committed, is committing or is about to commit an offence against the Fisheries Act. The section informs how an authorised officer may exercise this function.

Section 68 provides that it is an offence to fail to comply with a direction to stop a vehicle unless exceptions apply.

Section 69 substitutes the existing provision ‘power to require gear to be removed from water’. The new provision allows an authorised person to direct a person to remove fishing gear from waters if they hold a reasonable belief that the gear is being used in contravention of the Fisheries Act. 69 (4) includes a strict liability offence provision for failure to comply with this direction without reasonable excuse.

Section 70 provides for an authorised officer to issue an urgent direction to stop any activity or conduct when they reasonably believes that a person has breached, is breaching or is about to breach, the Fisheries Act.

Section 71 provides a strict liability offence for failing to take reasonable steps to comply with a direction. This provision reflects similar provisions within the Nature Conservation Act.

Section 72 provides for an authorised person to issue a direction about the protection or conservation of native fish species or critical habitat in waters in order to stop or prevent conduct that may threaten fish or habitat.

Section 72A makes it an offence for failing to comply with the direction however an offence is not committed if evidence is provided that reasonable steps were taken to comply.

Section 72B provides that an authorised person may direct a keeper of fish or an occupier of land with aquatic habitat to undertake a treatment on the fish or land if they believe that it is necessary to treat a disease or condition. The section provides that a treatment direction must state in writing the fish or habitat to which it relates, the disease to which it relates, the treatment to be carried out and when the direction must be complied with.

Section 72C provides that it is an offence to not comply with such a direction. This provision reflects similar provisions within the Nature Conservation Act. Not complying with a treatment direction presents an unacceptable risk to the environment and/or to animal welfare. For this reason the clause does not provide a reasonable excuse defence for non-compliance. On an administrative basis, the Conservator could consider assisting people with costs of treatment.

Section 72D substitutes the existing section 66 (Seizure of fish etc.) and 67 (Seizure and destruction of noxious fish) with the more general section 72D Power to seize things. This provides a broader power for authorised officers to seize anything from a premises that is connected to an offence under the Fisheries Act. This includes the power to remove the thing from the premises. An authorised officer must ask for consent to enter premises under **section 55, consent to entry**, this includes stating the purpose for entry when asking for consent and stating that a person is not required to provide consent.

Section 72E provides that an authorised person must provide a receipt for anything that has been seized under section 72D.

Section 72F provides that an authorised person may move a thing found under a search warrant to another premises for examination or processes and outlines the steps that must be taken to undertake this action.

Section 72G provides that a person entitled to inspect a thing be allowed to inspect, photograph or otherwise document a thing after it has been seized.

Section 72H provides that a thing must be returned to its owner or compensation paid to its owner of a thing is lost by the Territory under certain circumstances. For example, if an infringement notice is not served on the owner of the thing within 1 year of seizure.

Section 72I provides that, in exercising powers to seize a thing, reasonable steps must be taken to ensure that damage is minimised and that a person is informed of any damage that may occur.

Section 72J provides that a person may claim compensation due to loss or expenses incurred.

Clause 28 – New Division 8.1A - Preliminary

This clause inserts Division 8.1A before existing division 8.1 (unauthorised activities) and section 73 provides for exempt conduct under part 8 of the Fisheries Act if the conduct is undertaken in accordance with a licence or plan, or is undertaken by an authorised person exercising a function under the Act.

Clause 29 – Sections 74 and 75

This clause amends sections 74 and 75 which relate to taking fish without or contrary to a licence.

Section 74 is amended to include a scaled penalty approach for the offence of taking fish for sale without licence and to include that the section does not apply if the person's conduct is exempt.

Section 75 is amended to cover taking fish contrary to any licence, rather than solely for a scientific licence.

Clause 30 – Section 76 (1) (b) (i), Importing or exporting live fish without authority

This clause amends section 76 (1) (b) (i) about committing an offence under this section if they do not hold a licence permitting import or export. This is to reflect changes to licensing under Part 4 of the Act.

Clause 31 – Section 76 (2) and (3)

This clause amends **section 76 (2)** to state that a person commits an offence if they hold a licence to import or export live fish and they import or export fish contrary to the conditions of their licence. **Section 76 (3)** is amended to include that the section does not apply when importing or exporting a fish of an exempt species (in line with new section 18) or of the person's conduct is exempt conduct.

Clause 32 – Section 76A to 76C

This clause updates provisions relating to trafficking commercial quantities of priority species.

Section 76A is amended to add that the section does not apply if the person receives or processes fish for personal use or consumption **and** the fish was received from a licenced supplier. This amendment allows possession of a commercial quantity of a priority species, for example, abalone for a wedding feast, but provides that the person may have to provide evidence that the fish were gained from a licenced dealer. This allows authorised officers to better manage illegal trade in priority species.

Section 76B (taking commercial quantity of priority species) is amended to remove the defence that a person takes the fish for personal use or consumption. A commercial quantity of a priority species cannot be taken legally without a licence so this defence is not valid for take of fish.

Section 76C (possessing a commercial quantity of a priority species) is amended to add that the section does not apply if the person receives or processes fish for personal use or consumption **and** the fish was received from a licenced supplier. As at section 76A, this provision allows authorised officers to better manage illegal trade in priority species.

Clause 33 – Section 78 Noxious Fish

This clause includes that the offence of possessing a noxious fish does not apply if a person holds a permit under the Pest Plants and Animals Act or if the conduct is exempt conduct. This amends the Pest Plants and Animals Act to allow noxious fish to be kept under a permit and allows a noxious fish to be kept in line with a licence under the Fisheries Act, to support, for example, universities possessing noxious fish for research.

Clause 34 – Section 79 (1) (b) Release of fish

This clause substitutes the requirement for the Conservator’s written approval to release fish, for the requirement to hold a licence authorising the release of fish. This is in line with broader licencing provisions at part 4.

Clause 35 – Section 79 (1) penalty

This clause raises the penalty for unauthorised release of fish from 10 penalty units to 50 penalty units. This reflects the potential seriousness of damage caused to ecosystems from the release of non-native or non-local fish species into waterways.

Clause 36 – Section 79 (2)

This clause provides that the offence of releasing fish does not apply if the fish is released into public waters from which it was taken, as long as this does not contravene a fishing closure. This supports the declaration of areas where certain species of fish may not be returned to waters, this could be used to stop noxious species being returned to sensitive waters.

Clause 37 – Section 80

This clause substitutes the existing provisions at section 80 (fishing closure offences) which provide for separate offences for taking and for possessing fish in contravention of a fishing closure. This clause provides for a single offence for contravening a fishing closure. This clause also adds that the section does not apply to exempt conduct.

Clause 38 – Section 81 (3), penalty, Prohibited size and weight offences

This clause raises the penalty for possessing fish of a prohibited size or weight to 50 penalty units. This updates the penalty to bring into line with similar offences in other jurisdictions and under other legislation.

Clause 39 – Section 82, heading

This clause substitutes ‘Offence- exceed quantity limit’ for the current heading ‘Quantity of fish offences’. This substitution is made for clarity in describing what the offences are for and does not change the intent of the section.

Clause 40 – Section 82 (2), penalty

This clause raises the penalty for taking more fish than allowed under declaration in any one day to 50 penalty units. This updates the penalty to bring into line with similar offences in other jurisdictions and under other legislation.

Clause 41 – New section 82 (4)

This clause provides that an offence has not been committed if the person's conduct is exempt conduct.

Clause 42 – New section 82A

This clause provides that it is an offence to be in possession of fish in excess of the declared possession limit introduced at clause. It provides for a strict liability penalty of 50 penalty units for this offence.

Clause 43 – Section 85 (1) – Use of fishing gear generally

This clause raises the penalty for the use of fishing gear in contravention of the Fisheries Act to 50 penalty units. This updates the penalty to bring into line with similar offences in other jurisdictions and under other legislation.

Clause 44 – Section 86 (2) (a) Non-permitted fishing gear

This section inserts that a person commits an offence if they are in possession of fishing gear in or beside public waters.

Clause 45 – New section 86 (4) - Non-permitted fishing gear

This clause provides that an offence has not been committed of the person's conduct is exempt conduct.

Clause 46 – New sections 86A and 86B

Section 86A provides that a person commits an offence if they use prohibited gear in any waters. It also provides for a penalty of 100 penalty units for use of prohibited gear and of 50 penalty units for possession. The higher penalty for use of gear reflects the seriousness of the offence. Possession of the gear is a strict liability offence. The offence does not apply if the conduct is exempt.

Section 86B provides that a retailer who sells fishing gear that is prohibited in the ACT through a declaration at section 17 must display a sign to inform customers that the gear is prohibited or restricted from use in the ACT. Failure to display such a sign is an offence under this section. The section prescribes the following specific wording for retailers to display 'Use of this gear is restricted/prohibited in the ACT'. The wording is prescribed in the legislation to ensure that a correct and consistent message is displayed by all retailers selling this type of gear. The font size is also prescribed to ensure that the sign is easy to read and understand.

Clause 47 – Section 87 (1) to 87 (3) – Use and possession of commercial fishing gear

This clause amends section 87 (1) to increase the penalty for use of commercial gear to 100 penalty units and amends the penalty at 87 (2) to 50 penalty units for possession. The higher penalty for use of gear reflects the seriousness of the offence. 87(3) provides that an offence against 87 (2) is a strict liability offence.

Clause 48 – Section 88

This clause amends section 88 to include a definition of aquatic habitat.

Section 88A provides for offences relating spawning areas and aquatic habitat. It retains the existing offence provision for damage to spawning areas and provides that it is also an offence for a person to disturb, damage or remove aquatic habitat from public waters without the Conservator’s approval, unless the conduct is exempt.

Section 88A (3) provides that a person commits an offence if they damage or disturb declared critical habitat without authority or if the activity is exempt conduct. The penalty for this offence is set at 100 penalty units to reflect the impact to native fish and ecosystems from damage to declared critical habitat.

Clause 49 – Section 109 –Delegation

This clause inserts the term ‘authorised person’ after the term ‘conservation officer’ so that the Conservator may delegate their functions to an authorised person under the Fisheries Act. This is to account for the amendments to the Act allowing the appointment of fisheries officers as well as conservation officers (all authorised officers).

Clause 50 – Section 111 (6) – Criminal liability of executive officers – definition of relevant offence, new paragraph (aa)

This clause inserts at (aa) mention of section 36) – fail to keep records, providing that it is an offence for an executive officer to fail to keep records if required.

Clause 51 – Section 111 (6) definition of relevant offence, paragraph (b)

This clause inserts of section 49 (2) – aquaculture offences.

Clause 52 – New section 111A - Evidentiary certificates

This clause provides that the Conservator may provide evidence that a person was or was not a licensee during a stated period. This may be used, for example, in a case where having or not having a licence may determine whether an offence has been committed under the Fisheries Act.

Clause 53 – Section 112 (1) Production of licences

This clause amends section 112 (1) to provide an offence for failing to comply with a request to produce a licence within 2 days.

Clause 54 –Section 113 Minister’s Guidelines and New Section 113A – Conservator Guidelines

This clause substitutes the existing section on Guidelines with a new section 113, Minister’s Guidelines. The change in heading is to differentiate the Minister’s guidelines from the Conservator Guidelines at section 113A. This section also provides that the Minister may make guidelines on aspects of the administration of the Fisheries Act including licencing of significant activities and the registration of fish dealers.

Section 113A provides that the Conservator may make guidelines under the Act relating to how they exercise their functions, matters relating to fisheries licences, the conservation and management of fisheries and any other matters prescribed by legislation. This allows for a broader range of matters to be covered under guidelines (than those that may be made by the Minister) so that guidelines may be made about fisheries management issues as they arise. This section displaces section 47(6) of the Legislation Act 2001 regarding the need to notify instruments applied, adopted or incorporated under the guidelines. The Guidelines may incorporate instruments made under other Acts or by other Governments. This might include, for example, reference to threatened species listings made under Federal law. These listings would be incorporated as in force from time to time. In this case the, the guideline would relate to all species listed under that Act, irrespective of when it was listed.

Clause 55 – Sections 114 (1) and 115 (1)

This clause omits the words ‘in writing’ from sections 114 (1) and 115 (1). By their nature instruments are made in writing. The intent of the sections remain unchanged.

Clause 56 – New section 116 (2) (d) Regulation-making power

This clause provides that the Executive may make regulations that may make provision relating to the administration of licences. This supports changes to the licencing provisions at Part 4.

Clause 57 – New part 13

This clause inserts a new part ‘Part 13 Transitional – Fisheries Legislation Amendment Act 2019’ which provides transitional arrangements for licences issued under the current Act that may be affected by the new licencing provisions at Part 4.

The provisions are outlined below.

Section 122 provides definitions for Part 13 for commencement day, meaning the day the Fisheries Legislation Amendment Act (the Amendment Act) commences, and for old licence, meaning licences that were in place before the commencement of this Act.

Section 123 provides that an old licence is taken to be a licence under section 29 of the Amendment Act and that the same terms and conditions will apply to the licence.

Section 124 provides that a licence applied for prior to the commencement of the Amendment Act, but not decided upon, will be taken as an application for licence under section 21 of the Amendment Act.

Section 125 provides that this part expires 4 years after the commencement day. There are not likely to be any licences brought across under transitional arrangements that will still be valid within 4 years of commencement.

Clause 58 – Reviewable decisions -Schedule 1, Table

This clause amends the reviewable decisions table at schedule 1 to reflect changes to the licensing provisions under Part 4.

Clause 59 – Dictionary – definition of aquaculture

This clause substitutes the existing definition of aquaculture for the new definition at section 46.

Clause 60 – Dictionary

New definitions

This clause inserts new definitions for aquatic habitat and authorised person and authorised person's directions in line with changes to the Act.

Clause 61 – Dictionary, definition of commercial fishing licence

This clause omits the definitions of commercial fishing licence which is replaced by the new meaning of fisheries licence.

Clause 62 – Dictionary -New definitions

This clause inserts new definitions for

- conservator guidelines
- critical habitat
- critical habitat declaration
- cultural resource management plan as defined in the Nature Conservation Act dictionary
- custodian for an area of land as defined in the *Planning and Development Act 2007*
- exempt conduct as defined
- exempt species
- exempt species declaration
- fisheries licence
- fisheries licence register
- fisheries management plan
- fisheries officer

Clause 63 – Dictionary, definition of fish of a priority species, new paragraph (ba)

This clause inserts new paragraph (ba) into the definition of fish of a priority species to include Murray Cod in this definition. This will align the species defined as priority species with those in NSW and Victoria.

Clause 64 – Dictionary, new definitions

This clause inserts definitions for:

- ground for regulatory action in line with changes to licence provisions at clause 7
- identity card – meaning a card issued to a fisheries officer under the Fisheries Act or a card issued to a conservation officer under the Nature Conservation Act, or proof of identity required by a police officer.

Clause 65 – Dictionary, definition of import and export licence

This clause omits the existing definitions of import and export licence which are replaced by the new meaning of fisheries licence at section 19.

Clause 66 – Dictionary, new definitions

This clause provides for a new definition of information direction and for lease, as defined at section 235 of the *Planning and Development Act 2007*.

Clause 67 – Dictionary, new definition of licence

This clause omits the existing definitions of licence which is replaced by the new meaning Part 4 (clause 12).

Clause 68 - Dictionary, new definition of licensee

This clause substitutes the existing definition of licensee for a new definition meaning the holder of a fisheries licence, or the holder of a recreational group licence.

Clause 69 – Dictionary, new definitions

This clause inserts new definitions for:

- Possession limit
- Premises, meaning land (whether vacant or occupied), a vehicle, and a vessel.

Clause 70 - Dictionary, definition priority species licence

This omits the current definition of priority species licence.

Clause 71 – Dictionary, definitions of private waters and public waters

This clause substitutes the current definitions for private and public waters for the new definitions:

- Private waters means waters on private land that are not public waters and waters under aquaculture licence.
- Public waters means waters on public land, and a waterway and waters of a dam or impoundment situated on a waterway.

Clause 72 – Dictionary, new definition of recreational group licence

This clause inserts the definitions of recreational group licence as defined in Part 4 (clause 12).

Clause 73 – Dictionary, definition of register

This clause omits the definition of register.

Clause 74 – Dictionary, new definition of regulatory action

This clause inserts a new definition of regulatory action as at section 36E.

Clause 75 – Dictionary, definition of scientific licence

This clause omits the existing definition of scientific licence, in line with amended licencing provisions.

Clause 76 – Dictionary, new definitions

This clause inserts definitions for:

- stop vehicle direction.
- suitability information for licence applicants
 - about a person, for part 4 (Fisheries licences)

- about an activity, for part 4 (Fisheries licences)
- suitable activity, for a fisheries licence, for part 4 (Fisheries licences)
- suitable person, to hold a fisheries licence, for part 4 (Fisheries licences)

Clause 77 – Dictionary, new definitions

This clause inserts the following new definitions:

- traffic, in fish, means - sell the fish; possess or gain possession or control of the fish with the intention of selling any of it; receive the fish or process the fish.
- treatment direction and urgent direction as at clause 25.
- waterway, as defined at section 10 of the *Water Resources Act 2007*

Part 3 Fisheries Regulation 2001

Clause 78 - New section 4AA – Aquaculture capacity limit – Act, section 48

This clause inserts a new section 4AA, before section 4A, prescribing the aquaculture capacity limit as 10,000 litres.

Clause 79 – Commercial quantity – Act, dict def commercial quantity, new paragraph (aa)

This clause inserts a commercial quantity for Murray Cod of 20 or more at section 4A of the *Fisheries Regulation 2001*. This brings the ACT into line with NSW regarding commercial sale of Murray Cod to better support cross border efforts to control illegal trade.

Part 4 Nature Conservation Act 2014

Clause 80 – Chapter 6 exceptions - New Section 153 (2) (a) (iv) and (v)

This clause provides exceptions to Chapter 6 offence provisions for anything done in accordance with a cultural resource management plan or a fisheries management plan.

Clause 81 New chapter 7A - Cultural Resource Management Plan

This clause inserts a new chapter 7A into the Nature Conservation Act, allowing the Conservator to develop a draft cultural resource management plan for the approval of the Minister and in consultation with traditional Ngunnawal custodians. The plan will enable access to land and resources for cultural use and may turn of offences under the Nature Conservation Act and Fisheries Act. This ensures compliance with Section 27 (2) of the Human Rights Act.

The provisions in this chapter are outlined below:

Section 168A defines the meaning of cultural resource management plan as a plan about access to land and resources for cultural use.

Section 168B provides that the Conservator may prepare a draft cultural resource management plan and that they must develop the plan in partnership with Ngunnawal traditional custodians and in consultation with the United Ngunnawal Elders Council and the lessee or custodian of the land. The Plan must consider any relevant requirements under the Territory Plan. The provisions are not meant to be exclusionary in how the plan is developed and who is consulted. They aim to empower the Ngunnawal traditional custodians to develop the provisions for cultural resource access reflecting traditional customs about cultural resources.

Sections 168C and **168D** provide for the revision of the draft plan following consultation and the submission of the revised draft to the Minister, and for the Minister to approve, or reject the plan, or return it for revision.

Section 168E provides that if the Minister directs revisions to the plan, the Conservator must make required revisions and resubmit the plan.

Section 168F allows the Conservator to make minor amendments to an existing plan without consultation or submission to the Minister. This allows for minor amendments that are of a technical nature and do not impact the intent of the plan.

Section 168G provides that the Conservator must implement a plan once it is in force and **Section 168H** provides that the Conservator must report on this plan to the Minister at least once every 5 years.

Section 168I provides that the Conservator must review the plan on request from the Human Rights Commissioner (HRC) or the Minister. This allows for review of a plan as required, rather than at a mandated interval and allows the community to request, through the HRC or Minister, a review of the plan. The Conservator must consult with traditional Ngunnawal custodians, and if relevant, lessees and custodians of the land, in conducting a review. The Conservator must report to the Minister following the review.

Clause 82 – Chapter 9 exceptions - New section 252 (2) (a) (v)

The clause provides that a person has not committed an offence under chapter 9 of the Nature Conservation Act if the conduct constituting an offence was undertaken in accordance with a cultural resource management plan.

Clause 83 – Conservator may close reserve Section 259 (1)

This clause amends section 259 (1) to include that the Conservator may close a reserve if an area of the reserve is to be used as part of a cultural resource management plan.

Clause 84 – Part 10.2 exceptions - New section 261 (2) (c)

The clause provides that a person has not committed an offence under part 10.2 of the Nature Conservation Act if the conduct constituting an offence was undertaken in accordance with a cultural resource management plan.

Clause 85 Power to enter premises – section 338 (4)

This clause aligns provisions for entering premises with those at clause 16.

Clause 86 – Dictionary, new definition of cultural resource management plan

This clause inserts new definitions for cultural resource management plan and Fisheries Management Plan.

Schedule 1 Consequential amendments - Part 1.1 *Pest Plants and Animals Act 2005*

New Section 10 (2) (c)

This clause recognises a licence under the Fisheries Act as an exception for keeping prohibited aquatic species. This is done to provide, for example, researchers to keep prohibited species to undertake work on their control.

New Section 10A (2) (b)

This clause recognises a licence under the Fisheries Act as an exception for keeping prohibited aquatic species. This is done to provide, for example, researchers to keep prohibited species to undertake work on their control.

New Section 22 (2)

This clause recognises a licence under the Fisheries Act as an exception for keeping prohibited aquatic species. This is done to provide, for example, researchers to keep prohibited species to undertake work on their control.

New Section 24 (2) and 24 (3)

This clause aligns provisions of the Pest Plants and Animals Act with those of the Fisheries Act relating to noxious fish and adds a definition of noxious fish as defined in the Fisheries Act into the Pest Plants and Animals Act.

Dictionary, new definition of fisheries licence

This clause adds a definition of a fisheries licence into the Pest Plants and Animals Act.