

Queensland



# **NATURE CONSERVATION AMENDMENT ACT 1994**

**Act No. 42 of 1994**

# Queensland



## NATURE CONSERVATION AMENDMENT ACT 1994

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**OTHER AMENDMENTS**

Queensland



## **Nature Conservation Amendment Act 1994**

**Act No. 42 of 1994**

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*An Act to amend the Nature Conservation Act 1992*

*[Assented to 14 September 1994]*

**The Parliament of Queensland enacts—****Short title**

1. This Act may be cited as the *Nature Conservation Amendment Act 1994*.

**Act amended**

2. This Act amends the *Nature Conservation Act 1992*.

**Amendment of s 5 (How object is to be achieved)**

3. Section 5—

*insert—*

**‘(f) Recognition of interest of Aborigines and Torres Strait Islanders in nature and their cooperative involvement in its conservation**

- the recognition of the interest of Aborigines and Torres Strait Islanders in protected areas and native wildlife;
- the cooperative involvement of Aborigines and Torres Strait Islanders in the conservation of nature;

**(g) Cooperative involvement of land-holders**

- the cooperative involvement of land-holders in the conservation of nature.’.

**Amendment of s 7 (Definitions)**

4.(1) Section 7 (definitions “**Aboriginal people**”, “**Aboriginal tradition**”, “**Aborigine**”, “**chief executive**”, “**conservation plan**”, “**Island custom**”, “**management plan**”, “**native wildlife**”, “**Torres Strait Islander**”, “**wild by nature**”, and “**wildlife**”)—

*omit.*

(2) Section 7—

*insert—*

‘ **“appliance”** means anything used or capable of being used for taking, or facilitating the taking of, wildlife or a cultural or natural resource, and includes—

- (a) a weapon within the meaning of the *Weapons Act 1990*; and
- (b) an explosive within the meaning of the *Explosives Act 1952*; and
- (c) a trap, snare, net or birdlime; and
- (d) a decoy; and
- (e) poison; and
- (f) a torch or other artificial light; and
- (g) a shovel, hoe, pick, mattock, saw, axe, knife or other implement;

**“conservation plan”** means a conservation plan approved under Part 7;

**“conviction”** includes a plea of guilty or a finding of guilt by a court even though a conviction is not recorded;

**“fee”** includes tax;

**“management plan”** means a management plan approved under Part 7;

**“native wildlife”** means any taxon or species of wildlife indigenous to Australia;

**“official name”** of trustees of a protected area means Trustees of (*name of the area*);

**“procaryote”** means a unicellular organism lacking a true nucleus, and includes bacteria and cyanobacteria;

**“protista”** means a unicellular organism other than a procaryote;

**“wild by nature”**, in relation to wildlife, means derived because of natural ecological and biological processes and not because of manipulation by humans;

**“wildlife”** means any taxon or species of an animal, plant, protista, procaryote or virus;’.

(3) Section 7, definition **“indigenous to Australia”**, paragraph (a)—



*omit, insert—*

- ‘(a) wildlife that was not originally introduced to Australia by human intervention (other than wildlife introduced before the year 1600); or’.

**(4)** Section 7, definition “**indigenous to Queensland**”, paragraph (a)—

*omit, insert—*

- ‘(a) wildlife that was not originally introduced to Queensland by human intervention (other than wildlife introduced before the year 1600); or’.

## **Replacement of ss 16 and 17**

**5.(1)** Sections 16 and 17—

*omit, insert—*

### **‘Management principles of National Parks (Scientific)**

**‘16.(1)** A National Park (Scientific) is to be managed to—

- (a) protect the area’s exceptional scientific values and, in particular—
  - (i) to ensure that the processes of nature continue unaffected in the area; and
  - (ii) to protect the area’s biological diversity to the greatest possible extent; and
- (b) allow controlled scientific study and monitoring of the area’s natural resources.

**‘(2)** However, if threatened wildlife is a significant natural resource for the area, management of the area may include—

- (a) manipulation of the wildlife’s habitat; and
- (b) the control of threatening processes relating to the wildlife, including threatening processes caused by other wildlife.

### **‘Management principles of National Parks**

**‘17.(1)** A National Park is to be managed to—

- (a) provide, to the greatest possible extent, for the permanent preservation of the area's natural condition and the protection of the area's cultural resources and values; and
- (b) present the area's cultural and natural resources and their values; and
- (c) ensure that the only use of the area is nature-based and ecologically sustainable.

‘(2) The management principle mentioned in subsection (1)(a) is the cardinal principle for the management of National Parks.’

### **Amendment of s 31 (Trustees of protected areas)**

**6.** Section 31(6) and (7)—

*omit, insert—*

‘(6) Trustees may, in their official name—

- (a) sue or be sued; and
- (b) take action for removal of trespassers or protection of property under their management.

‘(7) For the purpose of any legal proceeding, trustees are taken to be the owners of property under their management.’

### **Replacement of s 34 (Creation of interests in protected areas)**

**7.** Section 34—

*omit, insert—*

#### **‘Leases etc. over protected areas**

‘**34.(1)** A lease, agreement, licence, permit or other authority over, or in relation to, land in a protected area (other than a licence, permit or other authority issued or given under a regulation) may be granted, made, issued or given only—

- (a) by—
  - (i) if the area is a National Park (Scientific) or National Park—the chief executive under this Act; or

- (ii) if the area is a Conservation Park or Resources Reserve—the chief executive or trustees of the area with the consent of the chief executive; or
- (b) under another Act by—
  - (i) the Governor in Council; or
  - (ii) someone else with the consent of the Minister or chief executive.

‘(2) A lease, agreement, licence, permit or other authority mentioned in subsection (1) must be consistent with—

- (a) the management principles for the area; and
- (b) the management plan for the area.

### **‘Chief executive’s powers about permitted uses in National Parks**

‘**34A.(1)** The chief executive may grant, make, issue or give a lease, agreement, licence, permit or other authority over, or in relation to, land in a National Park if—

- (a) the use under the authority is a permitted use for the area under a regulation; and
- (b) the chief executive is satisfied—
  - (i) the cardinal principle for the management of National Parks will be observed to the greatest possible extent; and
  - (ii) the use will be in the public interest; and
  - (iii) the use is ecologically sustainable; and
  - (iv) there is no reasonably practicable alternative to the use.

‘(2) Subsection (1) has effect despite sections 15 (Management of protected areas) and 34(2) (Leases etc. over protected areas).

### **‘Chief executive’s powers to grant authorities for new National Parks**

‘**34B.(1)** If, immediately before the dedication of an area as National Park, the area or part of it was being used in a way that is inconsistent with the management principles for National Parks (the “**previous use**”), the

chief executive may grant, make, issue or give a lease, agreement, licence, permit or other authority over or in relation to the area or part of it to allow the continued use of the area or part after the areas dedication.

‘(2) The authority may only be granted, made, issued or given—

(a) if the previous use was stock grazing or the location of beehives under—

(i) a stock grazing permit or apiary permit under the *Forestry Act 1959*; or

(ii) a special lease under the *Land Act 1962*;

for a term not longer than the term that would have been the unexpired term of the permit or lease if the area had not been dedicated; or

(b) if paragraph (a) does not apply—for a term not longer than 3 years after the dedication of the area.

‘(3) The authority must not be renewed beyond the end of the term mentioned in subsection (2).

‘(4) This section has effect despite sections 15 (Management of protected areas) and 34(2) (Leases etc. over protected areas).

### ‘Chief executive’s powers to renew existing authorities for National Parks

‘34C.(1) In this section—

“**authority**” means a lease, agreement, permit or other authority (other than an authority permitting stock grazing or the location of beehives)—

(a) granted, made, issued or given under the former Act or the *Land Act 1962* over, or in relation to, a National Park under the former Act; and

(b) in force immediately before the repeal of the former Act; and

(c) continued in force under this Act;

“**former Act**” means the *National Parks and Wildlife Act 1975*.

‘(2) The chief executive may renew, or consent to the renewal of, an authority for the National Park if the use of the area under the authority is a

permitted use for the area under a regulation.

‘(3) The authority may only be renewed for—

- (a) if no management plan is in force for the area when the renewal is granted—not longer than 10 years; or
- (b) if a management plan is in force for the area when the renewal is granted—the term authorised under the plan.

‘(4) The authority may be renewed subject to the conditions the chief executive considers appropriate.

‘(5) This section has effect despite sections 15 (Management of protected areas) and 34(2) (Leases etc. over protected areas).’.

### **Amendment of s 35 (Special leases may be granted under Land Act 1962)**

8. Section 35(2)—

*omit, insert—*

‘(2) The special lease must—

- (a) be consistent with—
  - (i) the management principles for the area; and
  - (ii) the management plan for the area; and
- (b) be granted only with the consent of, and subject to the conditions decided by, the chief executive.’.

### **Insertion of new s 35A**

9. After section 35—

*insert—*

#### **‘Creation of interests in protected areas**

‘35A. Despite any other Act, an interest in land in a protected area may be created only in accordance with this Act.’.

**Amendment of s 47 (Conservation agreements and covenants binding)****10.** Section 47—*insert—*

‘(1A) A conservation agreement (other than an agreement mentioned in subsection (1)) is binding on the persons mentioned in section 41(2) (Conservation agreements).’.

**Insertion of new s 47A****11.** After section 47—*insert—***‘Liability of State**

‘47A.(1) In this section—

“private land” means land other than Crown land.

‘(2) The State is not legally liable for an act or omission merely because—

- (a) a conservation agreement has been entered into under section 41 (Conservation agreements) for private land; or
- (b) private land has been declared under section 42 (Declaration of protected area) or 45 (Compulsory declaration of Nature Refuge) as, or as part of, a protected area.’.

**Amendment of s 57 (Restriction on taking etc. of cultural and natural resources of protected areas)****12.(1)** Section 57(1)(c) and (d)—*omit, insert—*

‘(c) a lease, agreement, licence, permit or other authority granted, made, issued or given—

- (i) by the chief executive under section 34 (Leases etc. over protected areas); or

- (ii) under the *Forestry Act 1959* or *Mineral Resources Act 1989*; or
- (iii) under another Act by the Governor in Council, or someone else with the consent of the Minister or chief executive; or
- (d) a licence, permit or other authority issued or given under a regulation; or
- (e) if the area is a Conservation Park, Resources Reserve, Nature Refuge, Coordinated Conservation Area, Wilderness Area, World Heritage Management Area or International Agreement Area—an exemption under a regulation.

**(2) Section 57—**

*insert—*

‘**(4)** Despite subsection (1) and section 15 (Management of protected areas), a person may take fish (other than for a commercial purpose) in a National Park prescribed by regulation subject to the conditions prescribed by regulation.

‘**(5)** Subsection (4) and this subsection expire on 31 December 1999.’.

**Amendment of s 61 (Cancellation of licences etc.)**

**13.(1)** Section 61(1), ‘conservation plan’—

*omit, insert—*

‘regulation giving effect to a management plan’.

**(2)** Section 61(2), ‘approval of the conservation plan’—

*omit, insert—*

‘making of the regulation’.

**(3)** Section 61(4), ‘of approval of the conservation plan’—

*omit, insert—*

‘the regulation commences’.

**Replacement of s 62 (Compensation when protected area declared)****14. Section 62—**

*omit, insert—*

**‘Compensation when protected area declared**

**‘62.(1)** This section applies if—

- (a) a Nature Refuge is declared under section 45 (Compulsory declaration of Nature Refuge); or
- (b) a regulation giving effect to a management plan for a World Heritage Management Area or International Agreement Area commences.

**‘(2)** If a land-holder’s interest in land is injuriously affected by a restriction or prohibition imposed under the declaration or regulation on the land-holder’s existing use of the land, the land-holder is entitled to be paid by the State the reasonable compensation because of the restriction or prohibition that is agreed between the State and the land-holder or, failing agreement, decided by the Land Court.

**‘(3)** The land-holder’s interest in the land is not injuriously affected if the restriction or prohibition under the declaration or regulation is the same, or to the same effect, as a provision of another law applying to the land immediately before the commencement of the declaration or regulation.

**‘(4)** Compensation is not payable if compensation has already been paid for—

- (a) the restriction or prohibition; or
- (b) a restriction or prohibition to the same effect.

**‘(5)** A claim for compensation must—

- (a) be made in a form approved by the chief executive; and
- (b) be made to the chief executive within 6 months after the declaration of the protected area or the commencement of the regulation, or the longer period the chief executive or Land Court in special circumstances allows.



‘(6) In making a determination, the Land Court must have regard to the following matters—

- (a) the capacity of the land to sustain the existing use;
- (b) any change in the value of the land because of the declaration or regulation;
- (c) any change in the profitability of the land because of the declaration or regulation;
- (d) any conservation agreement with the land-holder.

‘(7) Subsection (6) does not limit the matters to which the Land Court may have regard in making a determination.

‘(8) Subsection (2) does not apply to land—

- (a) if—
  - (i) a regulation giving effect to a management plan for a Nature Refuge is in force; and
  - (ii) the Nature Refuge is declared to be included in a World Heritage Management Area or International Agreement Area; and
  - (iii) the regulation continues to apply to the Nature Refuge after declaration; and
  - (iv) the land-holder receives, or is entitled to receive, compensation under this section in relation to the land because of the declaration of the Nature Refuge; or
- (b) if—
  - (i) an area is identified in a conservation plan as, or including, a critical habitat or an area of major interest; and
  - (ii) the area is declared to be a protected area; and
  - (iii) the regulation making the declaration declares that the plan continues to apply to the area after declaration; and
  - (iv) the land-holder receives, or is entitled to receive, compensation under section 115 (Compensation) in relation to the land because of the approval of the plan.

‘(9) In this section—

“**existing use**” of land includes a lawful use made of the land immediately before the commencement of the declaration or regulation that restricts or prohibits the use.’.

### **Replacement of s 65 (Unlawful use of certain words)**

15. Section 65—

*omit, insert—*

#### **‘Unlawful use of certain words**

‘65.(1) A person must not use words about an area that is not a protected area in a way that is likely to cause someone else reasonably to believe the area is a protected area.

‘(2) A person must not use words about a protected area in a way that is likely to cause someone else reasonably to believe the area is a protected area of a different class.

Maximum penalty—50 penalty units.’.

### **Insertion of new ss 79A and 79B**

16. After section 79—

*insert—*

#### **‘Property in newly protected animals**

‘79A.(1) In this section—

“**commencing day**” means the day on which this Division commences;

“**declaration day**” for an animal means the day on which the animal becomes a newly protected animal;

“**newly protected animal**” means a protected animal that, immediately before the commencing day, was not fauna under the *Fauna Conservation Act 1974*.

‘(2) If a person is keeping a newly protected animal at the beginning of the declaration day, the animal and its progeny do not become the property of the State merely because of the animal becoming a protected animal.

**‘Preservation of existing property rights**

‘**79B.** Sections 78 (Property in protected animals) and 79 (Property in protected plants) do not affect property rights a person (other than the State) has in native wildlife immediately before the wildlife becomes protected wildlife.’.

**Amendment of s 81 (Restriction on taking etc. protected animals)**

**17.** Section 81(1)—

*insert—*

‘(c) an exemption under a regulation.’.

**Amendment of s 82 (Restriction on taking etc. protected plants)**

**18.** Section 82(1)—

*insert—*

‘(c) an exemption under a regulation.’.

**Insertion of new s 82A**

**19.** After section 82—

*insert—*

**‘Restriction on using threatened or rare plants**

‘**82A.** Subject to section 85 (Aborigines’ and Torres Strait Islanders’ rights to take etc. protected wildlife), a person must not use a protected plant that is threatened or rare wildlife other than under—

- (a) a licence, permit or other authority issued under a regulation; or
- (b) an exemption under a regulation.

Maximum penalty—1 000 penalty units.’.

**Amendment of s 85 (Aborigines' and Torres Strait Islanders' rights to take etc. protected wildlife)**

**20.** Section 85—

*insert—*

‘(4) Subsection (1) does not apply to the taking, using or keeping of protected wildlife in a protected area.<sup>1</sup>’

**Amendment of s 100 (Compensation)**

**21.** Section 100(2)(b)—

*omit, insert—*

‘(b) be made to the chief executive within 6 months after the making of the order or the longer period the chief executive or the Land Court in special circumstances allows.’

**Insertion of new s 101A**

**22.** Before section 102, in Part 7—

*insert—*

**‘Meaning of “land-holder” in Part**

**‘101A.** In this Part—

**“land-holder”** includes a person having an interest in land.’

**Amendment of s 102 (When plans must or may be prepared)**

**23.(1)** Section 102, heading—

*omit, insert—*

---

<sup>1</sup> Section 57 deals with, among other things, the taking, using or keeping of protected wildlife in a protected area.

**‘Management plans’.****(2)** Section 102(2)(a)—*omit, insert—*

- ‘(a) the dedication or declaration is a dedication or declaration of a change in the class of a protected area; and’.

**(3)** Section 102(3) and (4)—*omit, insert—***‘(3)** Subsection (1) does not apply if—

- (a) on the dedication or declaration of a protected area (the **“new area”**), the new area is amalgamated with another protected area for which a management plan is in force; and
- (b) the regulation dedicating or declaring the new area declares that the management plan applies to the amalgamated area.

**‘(4)** If—

- (a) on or after the dedication or declaration of a protected area (the **“new area”**), the new area is amalgamated with another protected area (the **“original area”**) for which a management plan is in force; and
- (b) a management plan is required to be prepared for the new area under this section;

the Minister may prepare a management plan for the amalgamated area or a management plan amending the plan for the original area to apply the plan to the new area.

**‘(5)** If—

- (a) on or after the dedication or declaration of a protected area, the area is included in an aggregation of protected areas assigned a name under section 59 (Naming of protected areas); and
- (b) a management plan is required to be prepared for the area under this section;

the Minister may prepare a management plan for the aggregation of areas instead of a plan for the area (whether or not plans have been prepared for other areas included in the aggregation of areas).

‘(6) If the Minister decides to prepare a management plan for an amalgamated area or aggregation of areas, this Part applies to the preparation and approval of the plan with any necessary changes and any changes prescribed by regulation.’.

### **Amendment of s 103 (When Minister may require plan)**

**24.(1)** Section 103, heading—

*omit, insert—*

#### **‘Conservation plans’.**

**(2)** Section 103(1) to (3)—

*renumber* as section 103(2), (3) and (4) respectively.

**(3)** Section 103—

*insert—*

‘**103.(1)** The Minister may prepare a conservation plan for any native wildlife, class of wildlife, native wildlife habitat or area that is, in the Minister’s opinion, an area of major interest.’.

**(4)** Section 103(3) (as renumbered), ‘(1)’—

*omit, insert—*

‘(2)’.

**(5)** Section 103(4) (as renumbered), ‘(1)’—

*omit, insert—*

‘(2)’.

**(6)** Section 103—

*insert—*

‘**(5)** A conservation plan may make provision for any matter for which a regulation may be made under this Act, including, for example, prescribing offences for contraventions of the plan, and fixing a maximum penalty of a fine of not more than 165 penalty units for the contravention.’.

**Amendment of s 106 (Notice of preparation of draft plan)**

**25.(1)** Section 106(2)(c), ‘the prescribed’—

*omit, insert—*

‘the appropriate fee’.

**(2)** Section 106(2)(d), ‘authorities, interested groups and persons’—

*omit, insert—*

‘governments, interested groups and persons, including Aborigines and Torres Strait Islanders,’.

**(3)** Section 106—

*insert—*

‘**(3)** The fee for the purchase of a copy of a draft plan is the amount that—

- (a) the chief executive considers to be reasonable; and
- (b) is not more than the reasonable cost of preparing the plan.’.

**Replacement of s 107 (Preparation of final plan)**

**26.(1)** Section 107—

*omit, insert—*

**‘Submissions to be considered when preparing final plans**

**‘107.** When preparing a final management or conservation plan, the Minister must consider all submissions properly made to the Minister.

**‘Final management plans**

**‘107A.(1)** A final management plan for a protected area must—

- (a) be consistent with the management principles for the class of the area and, if the area is a Nature Refuge, Coordinated Conservation Area or Wilderness Area, any conservation agreement or covenant for the area; and

- (b) specify management outcomes for the protection, presentation and use of the area and the policies, guidelines and actions to achieve the outcomes.

‘(2) A final management plan for a protected area may divide the area into management zones.

### **‘Final conservation plans**

‘**107B.(1)** A final conservation plan for wildlife must be consistent with the management principles for the class of wildlife.

‘(2) A final conservation plan for wildlife, or a class of wildlife, may provide for the State to be divided into wildlife districts.’.

### **Amendment of s 108 (Approval of final plan)**

**27.(1)** Section 108(1) and (2)—

*omit, insert—*

‘**108.(1)** A final management or conservation plan does not have effect until it has been approved by the Governor in Council.

‘(2) A final conservation plan is subordinate legislation.’.

**(2)** Section 108(3)(b)—

*omit.*

### **Omission of s 110 (Compliance with plan)**

**28.** Section 110—

*omit.*

### **Replacement of s 111 (Plan replaces interim or declared management intent)**

**29.** Section 111—

*omit, insert—*



**‘Plan replaces interim or declared management intent**

‘**111.(1)** A management plan for a Coordinated Conservation Area or Wilderness Area replaces the interim or declared management intent for the area.

‘**(2)** A conservation plan for wildlife, or a class of wildlife, replaces the declared management intent for the wildlife, or class of wildlife, unless the plan declares that this subsection does not apply to the plan.’

**Replacement of s 112 (Plans prevail over planning schemes)**

**30.** Section 112—

*omit, insert—*

**‘Conservation plans and regulations prevail over planning schemes**

‘**112.** If there is any conflict between a conservation plan, or regulation giving effect to a management plan, and a planning scheme (whether made before or after the plan or regulation), the plan or regulation prevails over the planning scheme.

**‘Local governments’ decisions to be consistent with plans**

‘**112A.(1)** This section applies to land in—

- (a) a protected area for which a regulation is in force giving effect to a management plan for the area; or
- (b) an area identified under a conservation plan as, or including, a critical habitat or an area of major interest.

‘**(2)** A local government must not issue or give any approval, consent, permit or other authority for a development on the land that is inconsistent with the regulation or plan.’

**Amendment of s 114 (Review of plans)**

**31.(1)** Section 114(1), after ‘each’—

*insert—*

‘management and’.

(2) Section 114(2)—

*omit, insert—*

‘(2) The procedures applying to the preparation and approval of plans under this Part apply to the review of plans with any necessary changes and any changes prescribed by regulation.’

### **Replacement of s 115 (Compensation)**

32. Section 115—

*omit, insert—*

#### **‘Compensation**

‘115.(1) This section applies if—

- (a) a conservation plan is approved for an area identified under the plan as, or including, a critical habitat or an area of major interest; and
- (b) a land-holder’s interest in land in the area is injuriously affected by a restriction or prohibition imposed under the plan on the land-holder’s existing use of the land.

‘(2) The land-holder is entitled to be paid by the State the reasonable compensation because of the restriction or prohibition that is agreed between the State and the land-holder or, failing agreement, decided by the Land Court.

‘(3) The land-holder’s interest in the land is not injuriously affected if the restriction or prohibition under the conservation plan is the same, or to the same effect, as a provision of another law applying to the land immediately before the commencement of the plan.

‘(4) Compensation is not payable if compensation has already been paid for—

- (a) the restriction or prohibition; or
- (b) a restriction or prohibition to the same effect.

‘(5) A claim for compensation must—

- (a) be made in a form approved by the chief executive; and

- (b) be made to the chief executive within 6 months after the approval of the conservation plan or the longer period the chief executive or Land Court in special circumstances allows.

‘(6) In making a determination, the Land Court must have regard to the following matters—

- (a) the capacity of the land to sustain the existing use;
- (b) any change in the value of the land because of the approval of the conservation plan;
- (c) any change in the profitability of the land because of the approval of the conservation plan;
- (d) any conservation agreement with the land-holder.

‘(7) Subsection (6) does not limit the matters to which the Land Court may have regard in making a determination.

‘(8) In this section—

“**existing use**” of land includes a lawful use made of the land immediately before the commencement of the conservation plan that restricts or prohibits the use.’

### **Amendment of s 116 (Appointment of conservation officers)**

**33.** Section 116(4)—

*omit, insert—*

‘(4) A police officer—

- (a) is, without further appointment, a conservation officer; and
- (b) has the same powers as a conservation officer.’

### **Insertion of new s 117A**

**34.** After section 117—

*insert—*

**‘Minister may inquire into suitability of proposed appointees**

‘**117A.(1)** Before appointing a person as a conservation officer or honorary protector, the Minister may inquire into the suitability of the person.

‘**(2)** The Minister may obtain a report from the Commissioner of the Police Service about the criminal history of the person.

‘**(3)** The report must include reference to, or disclosure of, convictions mentioned in section 6 of the *Criminal Law (Rehabilitation of Offenders) Act 1986*.’

**Amendment of s 122 (Records to be maintained by Registrar)**

**35.(1)** Section 122, ‘conservation agreement’ —

*omit, insert—*

‘registrable conservation agreement’.

**(2)** Section 122(1)(c) and (d)—

*omit, insert—*

‘(c) a regulation giving effect to a management plan for a World Heritage Management Area or International Agreement Area commences; or’.

**(3)** Section 122(1), after ‘declaration made’—

*insert—*

‘, the regulation has commenced’.

**(4)** Section 122(2)(a)—

*insert—*

‘(ia)the subject of a management plan and the regulation giving effect to it; or’.

**(5)** Section 122(2)(b)—

*insert—*

‘(ia)the management plan for the area and regulation; or’.

(6) Section 122(3), words from ‘of the conservation’ —  
*omit, insert—*

‘of—

- (a) the registrable conservation agreement; or
- (b) the conservation covenant; or
- (c) the management plan and regulation; or
- (d) the conservation plan.’.

(7) Section 122(4)—

*insert—*

‘(ba)a regulation giving effect to a management plan is repealed; or’.

(8) Section 122(4), words from ‘that the agreement’ —

*omit, insert—*

‘of the termination, revocation, repeal or removal.’.

(9) Section 122(6)—

*insert—*

‘**“registrable conservation agreement”** means a conservation agreement expressed to be binding on the land-holder’s successor’s in title and other persons who have an interest in the land the subject of the agreement;’.

### **Amendment of s 124 (Confidentiality of information)**

**36.** Section 124(2)(b)—

*omit, insert—*

‘(b) information obtained under section 117A (Minister may inquire into suitability of proposed appointees) or 123 (Chief executive may inquire into applications).’.

**Insertion of new s 125A**

37. After section 125—

*insert—*

**‘Compensation not payable**

**‘125A.(1)** In this section—

**“authority”** means a licence, permit or other authority issued or given under a regulation or conservation plan.

**‘(2)** Compensation is not payable if, under a regulation or conservation plan—

- (a) the renewal of an authority is refused; or
- (b) conditions are imposed on an authority, or anything previously permitted under an authority is prohibited or regulated; or
- (c) an authority is amended, or anything previously permitted under an authority is prohibited or regulated; or
- (d) an authority is suspended or cancelled.

**‘(3)** However, subsection (2) does not prevent a regulation or conservation plan providing for payment of compensation.’.

**Replacement of s 128 (Delegation by chief executive)**

38. Section 128—

*omit, insert—*

**‘Delegation by chief executive**

**‘128.(1)** The chief executive may delegate the chief executive’s powers under this Act to a conservation officer or an officer of the public service.

**‘(2)** However, the chief executive may not delegate powers under the following sections—

- section 34 (Leases etc. over protected areas)
- section 34A (Chief executive’s powers about permitted uses in National Parks)

- section 34B (Chief executive's powers to grant authorities for new National Parks)
- section 34C (Chief executive's powers to renew existing authorities for National Parks)
- section 35 (Special leases may be granted under Land Act 1962)
- section 124 (Confidentiality of information).'

### **Insertion of new s 129A**

**39.** Section 129A—

*insert—*

#### **'Immunity from prosecution**

**'129A.(1)** A conservation officer is not liable to be prosecuted for an offence against this Act for anything done or omitted to be done—

- (a) under the direction of the Minister or chief executive; or
- (b) in the exercise of a power or performance of a function conferred or imposed on the officer under this Act.

**'(2)** A person acting under the direction of the Minister, chief executive or a conservation officer is not liable to be prosecuted for an offence against this Act for anything done or omitted to be done under the direction.'

### **Amendment of s 130 (Power to stop and search vehicles etc.)**

**40.** Section 130(6)(b)—

*omit, insert—*

- (b) to bring the vehicle, boat or aircraft to a specified place and remain in control of the vehicle, boat or aircraft at the place for a reasonable time to enable the officer to exercise the officer's powers in relation to the vehicle, boat or aircraft.'

**Replacement of s 137 (Conservation officer may require name and address)**

**41.** Section 137—

*omit, insert—*

**‘Conservation officer may require name and address**

**‘137.(1)** This section applies if a conservation officer—

- (a) finds a person committing an offence against this Act; or
- (b) finds a person in circumstances that lead the officer to suspect, on reasonable grounds, that the person has just committed an offence against this Act; or
- (c) has information that leads the officer to suspect, on reasonable grounds, that a person has just committed an offence against this Act; or
- (d) believes, on reasonable grounds, that the name and address of a person is required for the administration or enforcement of this Act.

**‘(2)** The conservation officer may require the person to state the person’s name and address.

**‘(3)** When making the requirement, the conservation officer must warn the person it is an offence to fail to state the person’s name and address, unless the person has a reasonable excuse.

**‘(4)** The conservation officer may require the person to give evidence of the correctness of the person’s name or address if the officer suspects, on reasonable grounds, that the name or address given is false.

**‘(5)** A person must comply with a conservation officer’s requirement under subsection (2) or (4), unless the person has a reasonable excuse for not complying with the requirement.

Maximum penalty—100 penalty units.

**‘(6)** The person does not commit an offence against this section if—

- (a) the conservation officer required the person to state the person’s name and address on suspicion of the person having committed an offence against this Act; and



(b) the person is not proved to have committed the offence.’.

### **Replacement of s 138 (Power to require answers to questions)**

**42.** Section 138—

*omit, insert—*

#### **‘Power to require information from certain persons**

‘**138.(1)** This section applies if a conservation officer suspects, on reasonable grounds, that—

- (a) an offence against this Act has happened; and
- (b) a person may be able to give information about the offence.

‘**(2)** The conservation officer may require the person to give information about the offence.

‘**(3)** When making the requirement, the conservation officer must warn the person it is an offence to fail to give the information, unless the person has a reasonable excuse.

‘**(4)** The person must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—100 penalty units.

‘**(5)** It is a reasonable excuse for the person to fail to give information if giving the information might tend to incriminate the person.

‘**(6)** The person does not commit an offence against this section if the information sought by the conservation officer is not in fact relevant to the offence.’.

### **Insertion of new s 141A**

**43.** After section 141—

*insert—*

#### **‘Court may order compensation**

‘**141A.(1)** A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise

of a power under this Part, including, for example, in complying with a requirement made of the person under this Part.

‘(2) Payment of compensation may be claimed and ordered in a proceeding for—

- (a) compensation brought in a court of competent jurisdiction; or
- (b) an offence against this Act brought against the person making the claim for compensation.

‘(3) A court may order the payment of compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.’.

### **Insertion of new s 146A**

**44.** After section 146—

*insert—*

#### **‘Executive officers must ensure corporation complies with Act**

‘**146A.(1)** The executive officers of a corporation must ensure that the corporation complies with this Act.

‘(2) If a corporation commits an offence against a provision of this Act, each of the executive officers of the corporation also commit an offence, namely, the offence of failing to ensure that the corporation complies with this Act.

Maximum penalty—the penalty for the contravention of the provision by an individual.

‘(3) Evidence that the corporation has committed an offence against this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with this Act.

‘(4) However, it is a defence for an executive officer to prove that—

- (a) the corporation’s offence was committed without the officer’s knowledge or consent; and
- (b) the officer took all reasonable steps to ensure that the corporation complied with this Act.’.

**Replacement of s 148 (Proceedings for offences)**

45. Section 148—

*omit, insert—*

**‘Indictable and summary offences**

‘148.(1) An offence against this Act for which the maximum penalty of imprisonment is 2 years or more is an indictable offence.

‘(2) Any other offence against this Act is a summary offence.

**‘Proceedings for indictable offences**

‘148A.(1) A proceeding for an indictable offence against this Act may be taken, at the election of the prosecution—

- (a) by way of summary proceedings under the *Justices Act 1886*; or
- (b) on indictment.

‘(2) A Magistrate must not hear an indictable offence summarily if—

- (a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or
- (b) the Magistrate considers that the charge should be prosecuted on indictment.

‘(3) If subsection (2) applies—

- (a) the Magistrate must proceed by way of an examination of witnesses for an indictable offence; and
- (b) a plea of the person charged at the start of the proceeding must be disregarded; and
- (c) evidence brought in the proceeding before the Magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
- (d) before committing the person for trial or sentence, the Magistrate must make a statement to the person as required by section 104(2)(b) of the *Justices Act 1886*.

‘(4) The maximum penalty that may be summarily imposed for an indictable offence is 165 penalty units or imprisonment for 1 year.

**‘Limitation on who may summarily hear indictable offence proceedings**

‘148B.(1) A proceeding must be before a Magistrate if it is a proceeding—

- (a) for the summary conviction of a person on a charge for an indictable offence; or
- (b) for an examination of witnesses for a charge for an indictable offence.

‘(2) However, if a proceeding for an indictable offence is brought before a justice who is not a Magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

**‘Limitation on time for starting summary proceedings**

‘148C.(1) A proceeding for an offence against this Act by way of summary proceeding under the *Justices Act 1886* must start—

- (a) within 1 year after—
  - (i) the commission of the offence; or
  - (ii) the offence comes to the complainant’s knowledge, but not later than 2 years after the commission of the offence;whichever is the later; or
- (b) if section 147 (Offence committed over a period) applies to the offence—within 1 year after—
  - (i) the end of the relevant period; or
  - (ii) the offence comes to the complainant’s knowledge, but not later than 2 years after the end of the relevant period;whichever is the later.’.

### **Replacement of s 156 (Orders in council to be tabled and disallowable)**

**46.** Section 156—

*omit, insert—*

#### **‘Application of Statutory Instruments Act**

‘**156.(1)** Sections 43 (Tabling) and 44 (Disallowance) of the *Statutory Instruments Act 1992* do not apply to a regulation mentioned in section 30 (Revocation of State Forests and Timber Reserves), 32(2) (Revocation of protected areas) or 51 (Revocation of World Heritage Management Area).

‘(2) Subsection (1) has effect despite section 46 of the *Statutory Instruments Act 1992*.’

### **Amendment of s 157 (Regulations)**

**47.(1)** Section 157(2)(b)—

*omit, insert—*

‘(b) the use of land, and activities, in protected areas;’.

**(2)** Section 157(2)(e), ‘impounding, removal and disposal’—

*omit, insert—*

‘seizure’.

**(3)** After section 157(2)(e)—

*insert—*

‘(ea) the seizure for the protection of native wildlife of vehicles, boats, aircraft and appliances—

(i) found on land without the land-holder’s consent; or

(ii) found abandoned on land;

(eb) the removal and disposal of seized vehicles, boats, aircraft property and appliances;’.

**(4)** Section 157(2)(m)—

*omit.*

(5) Section 157(3)—  
*omit.*

### **Insertion of new s 164A**

48. After section 164—  
*insert—*

#### **‘Management plans may be prepared for existing National Parks**

‘164A.(1) The Minister may, before the commencing day, prepare a management plan for a National Park under the repealed Act.

‘(2) The procedures applying to the preparation and approval of plans under Part 7 apply to the preparation of the plan under this section.

‘(3) Section 102 (Management plans) does not apply to a protected area dedicated under section 164 (Dedication of existing National Parks) for which a plan is prepared under this section.’.

### **Replacement of s 165 (Agreements etc. in relation to National Parks)**

49. Section 165—  
*omit, insert—*

#### **‘Agreements etc. about existing National Parks**

‘165.(1) Every lease, agreement, permit or other authority granted, made, issued or given under section 33 or 35 of the repealed Act and in force immediately before the commencing day continues in force until it expires, or is earlier terminated, under its terms.

‘(2) The repealed Act (other than the power to extend the authority) continues to apply to the authority as if this Act had not been enacted.’.

### **Insertion of new s 166A**

50. After section 166—  
*insert—*

**‘Fauna refuges**

**‘166A.(1)** In this section—

**“applicable day”** for a fauna refuge means the day—

- (a) the refuge is declared as a protected area; or
- (b) that is 1 year after the commencing day.

**‘(2)** This section applies to declarations of fauna refuges under the repealed Act and in force immediately before the commencing day.

**‘(3)** Each declaration continues in force, and the repealed Act continues to apply to the fauna refuge, until the applicable day as if this Act had not been enacted.

**‘(4)** This section expires 1 year after the commencing day.’.

**Insertion of new s 169A**

**51.** After section 169—

*insert—*

**‘Newly prohibited animal**

**‘169A.(1)** In this section—

**“newly prohibited animal”** means a protected animal that, immediately before the commencing day, was not prohibited fauna under the repealed Act.

**‘(2)** If a person is keeping a newly prohibited animal at the beginning of the commencing day, the person is taken, for the purposes of section 83 (Prohibition on release etc. of international and prohibited wildlife), to be the holder of a licence issued under a regulation permitting the person to keep the animal until the earlier of—

- (a) the day the person gets a licence to keep the animal; or
- (b) 6 months after the commencing day.’.

**Insertion of new ss 171–173**

52. After section 170—

*insert—*

**‘References to conservation plans**

‘171. A reference to a conservation plan for a protected area in an Act, statutory instrument or other document enacted, made or entered into before the commencement of this section is a reference to a management plan for the area.

**‘Numbering and renumbering of Act**

‘172. In the first reprint of the Act produced under the *Reprints Act 1992*, section 43 (Numbering and renumbering of provisions) of the *Reprints Act 1992* must be used.

**‘Expiry of Part**

‘173.(1) Divisions 2 and 3, other than section 166A (Fauna refuges), expire at the end of the commencing day.

‘(2) Division 1 and this Division, other than section 171 (References to conservation plans), expire 1 year after the commencing day.’.



**SCHEDULE****OTHER AMENDMENTS**

section 2

**1. Sections 5(e) (1st mention), 120(2)(d), 121(1)(f) and 157(2)(g),  
'conservation plans'—***omit, insert—*

'management and conservation plans'.

**2. Sections 15(1)(b)(iv)(A), 15(1)(c), 37(3), 38(3), 41(6)(l), 49, 50(1), 53,  
54(1), 60(1)(b), 102(1) and (2), 109(1), 125(1)(b), Sch 2 (amendment 2 of  
Aboriginal Land Act 1992 and amendment 2 of Torres Strait Islander  
Land Act 1992), 'conservation plan'—***omit, insert—*

'management plan'.

**3. Sections 104–106 and 113, 'conservation plan'—***omit, insert—*

'management or conservation plan'.

**4. Sections 15(2), 29, 30, 31, 32, 33, 36, 37, 38, 42, 45, 46, 50, 51, 54, 55,  
59, 60, 97 and 102, 'order in council'—***omit, insert—*

'regulation'.

**5. Section 5(c)(iii)—***omit, insert—*

## SCHEDULE (continued)

‘(iii) the management plans;’.

**6. Sections 5(e) (2nd mention) ‘conservation’—**

*omit.*

**7. Section 6, after ‘persons’—**

*insert—*

‘, including Aborigines and Torres Strait Islanders’.

**8. Section 7, definition “natural resources”, ‘animals, plants’—**

*omit, insert—*

‘wildlife’.

**9. Section 7, definition “protected animal”, paragraph (b), after ‘under a’—**

*insert—*

‘regulation or’.

**10. Section 7, definition “protected plant”, paragraph (b), after ‘under a’—**

*insert—*

‘regulation or’.

**11. Section 15(1)(b)(i)—**

*omit.*

## SCHEDULE (continued)

**12. Section 15(3)(b) and (c)—***omit, insert—*

‘(b) the proposed management intent for, and any proposed use of, the area.’.

**13. Section 20(a), after ‘conserve’—***insert—*

‘and present’.

**14. Section 29(2)—***omit.***15. Section 42(2)(b), ‘order’—***omit, insert—*

‘declaration’.

**16. Section 48(1)—***omit—*

‘, and any other neighbouring area.’.

**17. Section 48(2)(b), ‘intent for’—***omit, insert—*

‘of’.

**18. Section 52(2)(b), ‘intent for’—***omit, insert—*

‘of’.

## SCHEDULE (continued)

**19. Section 64(a), after ‘by the’—***insert—*

‘dedication or’.

**20. Section 64(b)—***omit, insert—*

‘(b) a regulation giving effect to the management plan for the area.’.

**21. Section 78(1), after ‘and (5)’—***insert—*

‘and sections 79A (Property in newly protected animals) and 79B (Preservation of existing property rights)’.

**22. Section 79(1), after ‘and (4)’—***insert—*

‘and section 79B (Preservation of existing property rights)’.

**23. Section 84(1), ‘conservation plan for the protected animal’—***omit, insert—*

‘regulation or exemption under a regulation’.

**24. Section 96(1)(b), ‘authority’—***omit, insert—*

‘government’.

**25. Section 97(2), ‘order in council’—***omit, insert—*

## SCHEDULE (continued)

‘Gazette notice’.

**26. Section 99(3) (2nd mention)—**

*omit—*

‘holder’.

**27. Part 7, heading—**

*omit, insert—*

**‘PART 7—MANAGEMENT AND CONSERVATION  
PLANS’.**

**28. Section 104(2)(c), ‘authorities, interest groups and persons’—**

*omit, insert—*

‘governments, interested groups and persons, including Aborigines and Torres Strait Islanders,’.

**29. Section 109(1), ‘ensure that activities in the area are carried out only in accordance with’—**

*omit, insert—*

‘give effect to’.

**30. Section 120(3), ‘by order in council’—**

*omit.*

## SCHEDULE (continued)

**31. Section 125, heading—**

*omit, insert—*

**‘Licences to be consistent with management principles, and management intent or plan’.**

**32. Section 129(2), ‘which’—**

*omit, insert—*

‘whom’.

**33. Section 129(3), ‘which’—**

*omit, insert—*

‘whom’.

**34. Section 130(5)(b)—**

*omit, insert—*

‘(b) the person obeys the signal as soon as it is practicable to obey the signal.’.

**35. Section 132(4), ‘, a conservation officer’—**

*omit.*

**36. Section 132(4)(a), ‘finds a thing that the conservation’—**

*omit, insert—*

‘a conservation officer finds a thing that the’.

**37. Section 133(6)—**

*omit.*

## SCHEDULE (continued)

**38. Section 145(4)(b), ‘a regulation’—**

*omit, insert—*

‘this or another Act’.

**39. Section 149—**

*omit.*

**40. Section 152, heading—**

*omit, insert—*

‘Photographs and fingerprints of offenders’.

**41. Section 167—**

*omit.*

**42. Schedule 2, after amendments of Aboriginal Land Act 1992—**

*insert—*

**‘ACQUISITION OF LAND ACT 1967****‘1. Schedule 2 (paragraph (a)), after ‘Act 1988,’—**

*insert—*

‘protected areas within the meaning of Division 2 of Part 4 of the *Nature Conservation Act 1992*,’.’.

**43. Schedule 2 (amendment 1 of Community Services (Aborigines) Act 1984), ‘section’—**

*omit, insert—*

‘sections 57 and’.

## SCHEDULE (continued)

**44. Schedule 2 (amendment 2 of Community Services (Aborigines) Act 1984), ‘section’—***omit, insert—*

‘sections 57 and’.

**45. Schedule 2 (amendment 1 of Community Services (Torres Strait) Act 1984), ‘section’—***omit, insert—*

‘sections 57 and’.

**46. Schedule 2 (amendment 2 of Community Services (Torres Strait) Act 1984), ‘section’—***omit, insert—*

‘sections 57 and’.

**47. Schedule 2, after amendment 1 of amendments of Deer Farming Act 1985—***insert—***‘1A. Section 9(4)—***omit.***‘1B. Section 12(2)—***omit.***‘1C. Section 13(1)—***omit, insert—*



## SCHEDULE (continued)

**‘13.(1)** A person may make the prescribed earmark on deer in the person’s possession for the purpose of making it farm deer if it is—

- (a) a prescribed species of deer; and
- (b) the young of a dam that—
  - (i) is farm deer; and
  - (ii) is owned by the person.’.

**‘1D. Section 15—**

*omit.*’.

**48. Schedule 2, amendments 1 to 3 of Forestry Act 1959—**

*omit, insert—*

**‘1. Section 5, definitions “Environmental Park” and “National Park”—**

*omit.*

**‘1A. Section 5, definitions “Crown land”, paragraph (d), National Park—**

*omit, insert—*

“protected area”.

**‘1B. Section 5—**

*insert—*

**“protected area”** means an area dedicated under the *Nature Conservation Act 1992* as a National Park (Scientific), National Park, National Park (Aboriginal land), National Park (Torres Strait Islander land), Conservation Park or Resources Reserve;’.

## SCHEDULE (continued)

**‘2. Section 45(1), ‘Timber Reserves and National Parks’—***omit, insert—*

‘and Timber Reserves’.

**‘3. Section 46(1), ‘National Parks or on Environmental Parks’—***omit, insert—*

‘protected areas’.’.

**49. Schedule 2, after amendments of Land Act 1962—***insert—***‘LIQUOR ACT 1992****‘1. Section 173B(1)(a)(ii)—***‘omit ‘an environmental park under the Land Act 1962’,**‘insert—**‘a Conservation Park or Resources Reserve under the Nature Conservation Act 1992’.’.***50. Schedule 2, amendments of the Local Government (Aboriginal Lands) Act 1978, ‘section’—***omit, insert—*

‘sections 57 and’.

**51. Schedule 2, amendments of Transport Infrastructure (Roads) Act 1991—***omit.*

