



# Nature Conservation Act 1992

Reprinted as in force on 1 April 2006

Reprint No. 4D

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This Act is reprinted as at 1 April 2006. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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Queensland

# Nature Conservation Act 1992

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# **Nature Conservation Act 1992**

[as amended by all amendments that commenced on or before 1 April 2006]

## **An Act to provide for the conservation of nature**

### **Part 1 Preliminary**

#### **1 Short title**

This Act may be cited as the *Nature Conservation Act 1992*.

#### **3 Act binds all persons**

- (1) This Act binds all persons, including the State, and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the Commonwealth, the State or another State liable to be prosecuted for an offence.

#### **3A Territorial application of Act**

- (1) This Act applies both within and outside the State.
- (2) This Act applies outside the State to the full extent of the extraterritorial legislative power of the Parliament.

### **Part 2 Object of Act**

#### **4 Object of Act**

The object of this Act is the conservation of nature.

## **5 How object is to be achieved**

The conservation of nature is to be achieved by an integrated and comprehensive conservation strategy for the whole of the State that involves, among other things, the following—

- (a) Gathering of information and community education etc.
  - gathering, researching, analysing, monitoring and disseminating information on nature;
  - identifying critical habitats and areas of major interest;
  - encouraging the conservation of nature by the education and cooperative involvement of the community, particularly land-holders;
- (b) Dedication and declaration of protected areas
  - the dedication and declaration of areas representative of the biological diversity, natural features and wilderness of the State as protected areas;
- (c) Management of protected areas
  - the management of protected areas in accordance with—
    - (i) the management principles; and
    - (ii) the interim and declared management intent; and
    - (iii) the management plans;for the areas;
- (d) Protection of native wildlife and its habitat
  - the protection of the biological diversity of native wildlife and its habitat by—
    - (i) the dedication and declaration of protected areas; and
    - (ii) prescribing protected and prohibited wildlife; and
    - (iii) the management of wildlife in accordance with—

- (A) the management principles; and
  - (B) the declared management intent; and
  - (C) any conservation plan;
- for the wildlife; and
- (iv) entering into conservation agreements;
- (e) Use of protected wildlife and areas to be ecologically sustainable
- providing for the ecologically sustainable use of protected wildlife and areas by the preparation and implementation of management and conservation plans consistent with the values and needs of the wildlife or areas concerned, particularly plans dealing with the management of—
    - (i) protected areas; and
    - (ii) the taking or use of wildlife; and
    - (iii) protected wildlife and its habitat; and
    - (iv) critical habitats and areas of major interest;
- (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.

## **6 Community participation in administration of Act**

This Act is to be administered, as far as practicable, in consultation with, and having regard to the views and interests

of, land-holders and interested groups and persons, including Aborigines and Torres Strait Islanders.

## **Part 3 Interpretation**

### **Division 1 Dictionary**

#### **7 Definitions**

The dictionary in the schedule defines particular words used in this Act.

### **Division 2 Key definitions**

#### **8 Meaning of *nature***

- (1) *Nature* includes all aspects of nature.
- (2) Without limiting subsection (1), *nature* includes—
  - (a) ecosystems and their constituent parts; and
  - (b) all natural and physical resources; and
  - (c) natural dynamic processes; and
  - (d) the characteristics of places, however large or small, that contribute to—
    - (i) their biological diversity and integrity; or
    - (ii) their intrinsic or scientific value.

#### **9 Meaning of *conservation***

*Conservation* is the protection and maintenance of nature while allowing for its ecologically sustainable use.



**10 Meaning of *biological diversity***

- (1) *Biological diversity* is the natural diversity of native wildlife, together with the environmental conditions necessary for their survival, and includes—
- (a) regional diversity, that is, the diversity of the landscape components of a region, and the functional relationships that affect environmental conditions within ecosystems; and
  - (b) ecosystem diversity, that is, the diversity of the different types of communities formed by living organisms and the relations between them; and
  - (c) species diversity, that is, the diversity of species; and
  - (d) genetic diversity, that is, the diversity of genes within each species.
- (2) In subsection (1)—
- landscape components* includes landforms, soils, water, climate, wildlife and land uses.

**11 Meaning of *ecologically sustainable use***

*Ecologically sustainable use* is—

- (a) in relation to wildlife—the taking or use of the wildlife; or
- (b) in relation to protected areas—the use of the areas; within their capacity to sustain natural processes while—
- (c) maintaining the life support systems of nature; and
- (d) ensuring that the benefit of the use to present generations does not diminish the potential to meet the needs and aspirations of future generations.

**12 Meaning of *threatening process***

A *threatening process* is any process that is capable of—

- (a) threatening the survival of any protected area, area of major interest, protected wildlife, community of native wildlife or native wildlife habitat; or

- (b) affecting the capacity of any protected area, area of major interest, protected wildlife, community of native wildlife or native wildlife habitat to sustain natural processes.

### **13 Meaning of *critical habitat***

- (1) ***Critical habitat*** is habitat that is essential for the conservation of a viable population of protected wildlife or community of native wildlife, whether or not special management considerations and protection are required.
- (2) A ***critical habitat*** may include an area of land that is considered essential for the conservation of protected wildlife, even though the area is not presently occupied by the wildlife.

## **Part 4 Protected areas**

### **Division 1 Basic concepts**

#### **14 Classes of protected areas to which Act applies**

The classes of protected areas to which this Act applies are—

- (a) national parks (scientific); and
- (b) national parks; and
- (c) national parks (Aboriginal land); and
- (d) national parks (Torres Strait Islander land); and
- (e) national parks (recovery); and
- (f) conservation parks; and
- (g) resources reserves; and
- (h) nature refuges; and
- (i) coordinated conservation areas; and
- (j) wilderness areas; and

- (k) World Heritage management areas; and
- (l) international agreement areas.

## **15 Management of protected areas**

- (1) Each protected area is to be managed in accordance with—
  - (a) the management principles prescribed by this division for the class of protected area; and
  - (b) if the area is—
    - (i) a national park (Aboriginal land) or national park (Torres Strait Islander land)—the lease or sublease of the area; or
    - (ii) a nature refuge or a wilderness area—the declared management intent, and the conservation agreement or covenant, for the area; or
    - (iii) a coordinated conservation area—
      - (A) the interim management intent for the area until a management plan is approved for the area; and
      - (B) the conservation agreement for the area; and
  - (c) the management plan for the area.
- (2) The interim or declared management intent for a protected area is the management intent for the area specified in the regulation dedicating or declaring the area.
- (3) The interim or declared management intent for a protected area must contain a statement of—
  - (a) the area's significant cultural and natural resources and values; and
  - (b) the proposed management intent for, and any proposed use of, the area.

## **16 Management principles of national parks (scientific)**

- (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.

## **17 Management principles of national parks**

- (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.

## **18 Management principles of national parks (Aboriginal land)**

- (1) A national park (Aboriginal land) is to be managed as a national park.
- (2) Subject to subsection (1), a national park (Aboriginal land) is to be managed, as far as practicable, in a way that is consistent

with any Aboriginal tradition applicable to the area, including any tradition relating to activities in the area.

**19 Management principles of national parks (Torres Strait Islander land)**

- (1) A national park (Torres Strait Islander land) is to be managed as a national park.
- (2) Subject to subsection (1), a national park (Torres Strait Islander land) is to be managed, as far as practicable, in a way that is consistent with any Island custom applicable to the area, including any Island custom relating to activities in the area.

**19A Management principles of national parks (recovery)**

A national park (recovery) is to be managed to do the following—

- (a) protect or restore, to the greatest possible extent, the park's natural condition and protect its cultural resources and values so that it can be dedicated as a national park;
- (b) provide for the manipulation of the park's natural resources to restore its conservation values;
- (c) ensure any commercial or other use of the park's natural resources to restore its conservation values is consistent with an approved regeneration plan for the park;
- (d) ensure any other use of the park is nature-based.

**20 Management principles of conservation parks**

A conservation park is to be managed to—

- (a) conserve and present the area's cultural and natural resources and their values; and
- (b) provide for the permanent conservation of the area's natural condition to the greatest possible extent; and

- (c) ensure that any commercial use of the area's natural resources, including fishing and grazing, is ecologically sustainable.

## **21 Management principles of resources reserves**

- (1) Subject to subsection (2), a resources reserve is to be managed to—
  - (a) recognise and, if appropriate, protect the area's cultural and natural resources; and
  - (b) provide for the controlled use of the area's cultural and natural resources; and
  - (c) ensure that the area is maintained predominantly in its natural condition.
- (2) The felling of timber for a commercial purpose must not be conducted in a resources reserve.

## **22 Management principles of nature refuges**

A nature refuge is to be managed to—

- (a) conserve the area's significant cultural and natural resources; and
- (b) provide for the controlled use of the area's cultural and natural resources; and
- (c) provide for the interests of land-holders to be taken into account.

## **23 Management principles of coordinated conservation areas**

A coordinated conservation area is to be managed to—

- (a) conserve the area's natural and cultural values by coordinated management involving the area's various land-holders; and
- (b) take account of the area's values, including its recreational, educational and commercial values; and

- (c) provide for the interests of the various land-holders to be maintained.

## **24 Management principles of wilderness areas**

A wilderness area is to be managed to—

- (a) protect or restore the wilderness values, and the cultural and natural resources, of the area to the greatest possible extent; and
- (b) maintain the area to preserve its capacity to evolve in the absence of significant human interference; and
- (c) provide opportunities for solitude and appropriate self-reliant recreational and spiritual activities.

## **25 Management principles of World Heritage management areas**

A World Heritage management area is to be managed to—

- (a) meet international obligations in relation to the area; and
- (b) protect the area's internationally outstanding cultural and natural resources and its biological diversity; and
- (c) transmit the area's world heritage values to future generations.

## **26 Management principles of international agreement areas**

An international agreement area is to be managed to—

- (a) maintain the area's importance to the conservation of nature that is the subject of significant international concern; and
- (b) conserve the area's native wildlife habitat as far as practicable; and
- (c) provide for the interests of land-holders to be taken into account.

**27 Prohibition on mining**

- (1) A mining interest can not be granted in relation to—
  - (a) a national park (scientific); or
  - (b) a national park; or
  - (c) a national park (Aboriginal land); or
  - (d) a national park (Torres Strait Islander land); or
  - (e) a national park (recovery); or
  - (f) a conservation park.
- (2) However, subsection (1) does not apply if—
  - (a) the mining interest is—
    - (i) an authorised activity for a survey licence under the *Petroleum and Gas (Production and Safety) Act 2004* (the **P&G Act**), section 394<sup>1</sup> other than in relation to a petroleum facility under that Act; or
    - (ii) an authorised activity for a pipeline licence under the P&G Act; and
  - (b) an authority under section 34 or 35<sup>2</sup> has been given for the licence.
- (3) In this section—

**mining interest** means any activity authorised under—

  - (a) the *Mineral Resources Act 1989*; or
  - (b) the *Petroleum Act 1923*; or
  - (c) the P&G Act.

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1 *Petroleum and Gas (Production and Safety) Act 2004* section 394 (Surveying activities)

2 Section 34 (Leases etc. over protected areas) or 35 (Chief executive's powers about permitted uses in national parks or national parks (recovery))



## **Division 2                    Protected areas (State land)**

### **Subdivision 1            Preliminary**

#### **28            Meaning of *protected area* in division**

In this division—

*protected area* means—

- (a) a national park (scientific); or
- (b) a national park; or
- (c) a national park (recovery); or
- (d) a conservation park; or
- (e) a resources reserve.

### **Subdivision 2            Dedication, revocation and amalgamation**

#### **29            Dedication of protected areas**

- (1) The Governor in Council may, by regulation, dedicate a specified area of State land or a forest reserve that is subject to a lease under the *Land Act 1994* as—
  - (a) a national park (scientific); or
  - (b) a national park; or
  - (c) a national park (recovery); or
  - (d) a conservation park; or
  - (e) a resources reserve.
- (2) The regulation may define the extent of the area by reference to—
  - (a) a specified depth below the surface of land; or
  - (b) a specified height above the surface of land.

- (3) The classes of protected areas mentioned in subsection (1) are listed in descending order of the level of protection given to them under this Act.

### **30 Revocation of State forests and timber reserves**

- (1) Despite the *Forestry Act 1959*, if an area that is to be dedicated as a protected area is, or includes part of, a State forest or timber reserve set apart and declared under that Act, the regulation dedicating the area may revoke, in whole or part, the setting apart and declaration of the State forest or timber reserve.
- (2) The regulation may be made only if the Legislative Assembly has, on a motion of which at least 28 days notice has been given, passed a resolution requesting the Governor in Council to dedicate the area.

### **31 Trustees of protected areas**

- (1) If an area is dedicated as a conservation park or resources reserve, the Governor in Council may, by regulation, place the area under the management of trustees.
- (2) The trustees are to be appointed by the Governor in Council.
- (3) The trustees must comply with section 15 in the management of the protected area.
- (4) The *Acts Interpretation Act 1954*, section 25 applies to an office as trustee.
- (5) The *Trusts Act 1973* does not apply to—
  - (a) trusts created under this section; and
  - (b) the trustees of such trusts.
- (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.

- (8) The Governor in Council may, by gazette notice, revoke a trust created under this section.
- (9) The persons who were the trustees of a trust immediately before its revocation must, within 30 days of receipt of written notice given to them by the Minister, repay to the State any unspent amount that—
  - (a) was paid to them by the State for the purposes of the trust; and
  - (b) was held by them when the trust was revoked.
- (10) An amount payable to the State under subsection (9) is a debt due to the State and may be recovered in a court having jurisdiction for the recovery of debts up to the amount concerned.

### **32 Revocation of protected areas**

- (1) The Governor in Council may, by regulation, revoke the dedication of a protected area in whole or part.
- (2) The regulation may be made only if the Legislative Assembly has, on a motion of which at least 28 days notice has been given, passed a resolution requesting the Governor in Council to make the revocation.

### **33 Amalgamation etc. of protected areas**

- (1) The Governor in Council may, by regulation—
  - (a) amalgamate protected areas of the same class, and assign a name to the amalgamated area; or
  - (b) change the class of a protected area by dedicating the area as another class of protected area; or
  - (c) change the boundaries of a protected area.
- (2) If—
  - (a) because of the change in the class of a protected area, the area will be given less protection under this Act; or
  - (b) because of the change in the boundaries of a protected area, land will be removed from the area (other than for

the purpose of dedicating the removed land as land with a higher level of protection under this Act);

the regulation may be made only if the Legislative Assembly has, on a motion of which at least 28 days notice has been given, passed a resolution requesting the Governor in Council to make the revocation.

### **Subdivision 3      Interests in protected areas**

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

- (1) A lease, agreement, licence, permit or other authority over, or in relation to, land in a protected area (other than an agreement or 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), national park or national park (recovery)—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) if a management plan has been approved for the area, the management plan.

**35 Chief executive's powers about permitted uses in national parks or national parks (recovery)**

- (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 or national park (recovery) if—
  - (a) the use under the authority is only for a service facility; and
  - (b) the chief executive is satisfied—
    - (i) if the land is in a national park, the cardinal principle for the management of national parks will be observed to the greatest possible extent; and
    - (ii) if the land is in a national park (recovery), the management principle under section 19A(a) will be observed to the greatest possible extent; and
    - (iii) the use will be in the public interest; and
    - (iv) the use is ecologically sustainable; and
    - (v) there is no reasonably practicable alternative to the use; and
  - (c) the use under the authority is prescribed under a regulation made for this section to be a permitted use for the area.
- (2) Subsection (1) has effect despite sections 15 and 34(2).

**36 Authorities for new national park or national park (recovery)**

- (1) This section applies if—
  - (a) land is dedicated as a national park or national park (recovery); and
  - (b) immediately before the dedication, the land was being used (the *previous use*) in a way that is inconsistent with the management principles of the park.
- (2) The chief executive may grant an authority (a *previous use authority*) over, or in relation to, the land to allow the

previous use to continue for no more than the allowable term after the dedication.

- (3) However, a previous use authority must not be granted for a national park if the previous use was under a sales permit under the *Forestry Act 1959*, section 46.
- (4) A previous use authority must not be renewed.
- (5) This section—
  - (a) applies despite sections 15 and 34(2); but
  - (b) does not limit section 35.<sup>3</sup>
- (6) In this section—

***allowable term***, for a previous use of a national park or national park (recovery), means a term no longer than—

- (a) if the previous use was under a permit or lease as follows, the term that is the unexpired term of the permit or lease—
  - (i) an occupation permit under the *Forestry Act 1959*, section 35(1)(a) under which the right of occupation is only for a service facility;
  - (ii) a stock grazing permit under the *Forestry Act 1959*, section 35(1)(c);
  - (iii) an apiary permit under the *Forestry Act 1959*, section 35(1)(d);
  - (iv) a sales permit under the *Forestry Act 1959*, section 46, for the taking of plant parts if it does not authorise cutting or pruning of plants so severely that the plant is likely to die;<sup>4</sup>
  - (v) a lease under the *Land Act 1994*; or
- (b) otherwise—3 years after the dedication.

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3 Sections 15 (Management of protected areas), 34 (Leases etc. over protected areas) and 35 (Chief executive's powers about permitted uses in national parks or national parks (recovery))

4 *Forestry Act 1959*, sections 35 (Granting of permit for land within State forest) and 46 (Sale of forest products or quarry material)

**authority** means an agreement or a lease, licence, permit or other authority.

**plant parts** means the flowers, foliage, seeds or stems of the plant.

### **37 Chief executive's powers to renew existing authorities for national parks**

(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 under the authority is prescribed under a regulation made for this section to be a permitted use for the area.
- (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 and 34(2).

### **38 Leases may be granted under Land Act 1994**

- (1) Subject to subsection (2), a term lease under the *Land Act 1994* may be granted over any land within a protected area as

if the land were reserved and set apart under that Act for public purposes.

- (2) The 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.
- (3) The *Land Act 1994* applies to the lease to the extent that it is not inconsistent with this Act.

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

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

## **Subdivision 4 Environmental impact statements**

### **39A Application of sdiv 4**

- (1) This subdivision applies if a person seeks, under section 34, 35, or 38, an interest in land in a protected area.
- (2) This subdivision applies despite any other Act under which the interest is to be created.

### **39B Chief executive may require EIS**

- (1) The chief executive may, before the interest is created, require the person to give the chief executive an EIS for the use, or a stated use, of the land under the interest.



- (2) The EIS process under the *Environmental Protection Act 1994* applies for the EIS as if the use or stated use were a project to which chapter 3, part 1 of that Act applies.<sup>5</sup>
- (3) The person must pay the costs of preparing the EIS.

### **39C EIS must be considered**

- (1) If an EIS has been required, the interest must not be created before the EIS has been given to the chief executive.
- (2) If an EIS has been given, the chief executive or other person who may create the interest must take the EIS into account before deciding whether or not to create the interest.

## **Division 3 Protected areas (Aboriginal land and Torres Strait Islander land)**

### **40 Dedication of national park as national park (Aboriginal land) or national park (Torres Strait Islander land)**

- (1) This section applies to a national park, or part of a national park, (the *national park land*) that becomes Aboriginal land or Torres Strait Islander land.
- (2) On approval of the management plan for the national park land under section 119, the Governor in Council must, by regulation, dedicate the national park land as national park (Aboriginal land) or national park (Torres Strait Islander land).
- (3) Despite any other Act, a regulation under this section takes effect on the delivery of the deed of grant over the national park land to the grantees of the area under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*.

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<sup>5</sup> *Environmental Protection Act 1994*, chapter 3, part 1 (EIS process)  
See section 37 (When EIS process applies) of that Act.

**41 Dedication of Aboriginal land as national park (Aboriginal land) or Torres Strait Islander land as national park (Torres Strait Islander land)**

- (1) This section applies to Aboriginal land or Torres Strait Islander land that is not a national park or included in a national park.
- (2) If the grantees of the land and the Minister agree on a proposal for the lease of the land, or part of the land, to the State for the purpose of the land being managed as a national park (Aboriginal land) or national park (Torres Strait Islander land), the Minister may prepare a management plan for the land.
- (3) Part 7 applies to the management plan as if it were a management plan required to be prepared under section 111(1).
- (4) The Minister must prepare the management plan in cooperation with the grantees of, and the board of management for, the land.
- (5) On—
  - (a) the signing of the lease; and
  - (b) the approval of a management plan for the land;the Governor in Council must, by regulation, dedicate the land as national park (Aboriginal land) or national park (Torres Strait Islander land).
- (6) The regulation may define the extent of the area by reference to—
  - (a) a specified depth below the surface of land; or
  - (b) a specified height above the surface of land.
- (7) Despite any other Act, a regulation under this section takes effect on the registration of the lease.

**42 Dedication of leasehold land as national park (Aboriginal land) or national park (Torres Strait Islander land)**

- (1) Despite the *Land Act 1994*, an authorised lessee may, under this section, sublease land to the State for the purpose of the

land being managed as a national park (Aboriginal land) or national park (Torres Strait Islander land).

- (2) If an authorised lessee and the Minister agree on a proposal for the sublease of land to the State for the purpose of the land being managed as a national park (Aboriginal land) or national park (Torres Strait Islander land), the Minister may prepare a management plan for the land.
- (3) Part 7 applies to the management plan as if it were a management plan required to be prepared under section 111(1).
- (4) The Minister must prepare the management plan in cooperation with the lessees of, and the board of management for, the land.
- (5) On—
  - (a) the signing of a sublease; and
  - (b) the approval of a management plan for the land;the Governor in Council must, by regulation, dedicate the area as national park (Aboriginal land) or national park (Torres Strait Islander land).
- (6) The regulation may define the extent of the area by reference to—
  - (a) a specified depth below the surface of land; or
  - (b) a specified height above the surface of land.
- (7) Despite any other Act, a regulation under this section takes effect on the registration of the sublease.
- (8) In this section—

***authorised lessee*** means a lessee of land under the *Land Act 1994* who the Governor in Council, by regulation, has declared to be an authorised lessee for the purpose of this section.

## **Division 3A                    Regeneration plans for national parks (recovery)**

### **42A    Obligation to prepare regeneration plan**

- (1) The chief executive must, as soon as practicable after the dedication of a national park (recovery), make a regeneration plan for the park.
- (2) However, subsection (1) applies only if the chief executive considers a regeneration plan is necessary for the manipulation of the park's natural resources to restore its conservation values.
- (3) A regeneration plan must be made under this division.

### **42B    Purpose of regeneration plan**

- (1) The purpose of a regeneration plan for a national park (recovery) is to describe how it is proposed to manage the manipulation of the park's natural resources to restore its conservation values.
- (2) If a management plan has been approved for the park, the management procedures under the regeneration plan must be consistent with the management plan.

### **42C    Publication of draft regeneration plan**

- (1) The chief executive must publish a notice of the preparation of a draft regeneration plan for a national park (recovery) in a newspaper likely to be read by people particularly affected by the draft plan.
- (2) The notice must state the following—
  - (a) the location and area of the park;
  - (b) where copies of the draft plan may be obtained or inspected;
  - (c) that any entity may comment about the draft plan to the chief executive;
  - (d) the period during which comments may be made.

- (3) The stated period must be at least 35 days after the publication of the notice.
- (4) A copy of the draft plan must be available free, or on payment of a reasonable price, at the place, or each of the places, stated in the notice.

#### **42D Comments to be considered before final plan made**

The chief executive must, before making a final regeneration plan, consider all comments received by the chief executive within the period under section 42C(2)(d) for making comments about the draft regeneration plan.

#### **42E Final regeneration plan**

- (1) The chief executive must make a final regeneration plan by gazette notice.
- (2) The chief executive must keep copies of the plan open for public inspection during office hours on business days at—
  - (a) the department's head office; and
  - (b) each regional office and district office of the department in whose area the national park (recovery) to which the plan relates is situated; and
  - (c) other places the chief executive considers appropriate.

#### **42F Implementation of final regeneration plan**

The chief executive must give effect to a final regeneration plan.

### **Division 4 Nature refuges, coordinated conservation areas and wilderness areas**

#### **43 Meaning of *protected area* in division**

In this division—

***protected area*** means—

- (a) a nature refuge; or
- (b) a coordinated conservation area; or
- (c) a wilderness area.

#### **44 Proposal for declaration of protected area**

- (1) If the Minister is satisfied that an area should be declared a protected area, the Minister must prepare a proposal for the declaration.
- (2) The proposal for the declaration must—
  - (a) describe the lands to be included in the area; and
  - (b) specify the proposed class of protected area and the proposed management intent for the area.
- (3) The Minister must give written notice to all land-holders affected by the proposal.
- (4) The notice must specify a day by which the land-holders may make submissions to the Minister relating to the proposal.
- (5) If the Minister considers that it is impracticable to give notice to each land-holder of a particular class, it is sufficient compliance with subsection (3) if the Minister gives notice to the class by publishing a notice in such newspapers as the Minister determines.
- (6) In this section—

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

#### **45 Conservation agreements**

- (1) If the Minister and land-holders concerned agree on—
  - (a) a proposal that an area should be a protected area; and
  - (b) the class of the protected area; and
  - (c) the management intent for the area;
  - (d) the terms of a proposed conservation agreement for the area to be made between the State and the land-holders;

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the Minister must, for the State, enter into the conservation agreement.

- (2) However, if the rights of any of the following persons will be materially affected by the conservation agreement, the Minister must not enter into it without that person's written consent—
  - (a) if land in the area is subject to a lease or mining interest—the lessee or interest holder;
  - (b) if land in the area is subject to an encumbrance—the person entitled to the benefit of the encumbrance.
- (3) The conservation agreement must be consistent with the management principles for the class of area.
- (4) The conservation agreement may contain terms that are binding on—
  - (a) the State; and
  - (b) a land-holder and the land-holder's successors in title.
- (5) Without limiting subsection (4), the conservation agreement may contain terms—
  - (a) requiring the State to provide financial or other assistance; or
  - (b) requiring the State to provide technical advice; or
  - (c) requiring the State to carry out specified activities; or
  - (d) allowing a land-holder to carry out specified activities; or
  - (e) prohibiting a specified use of land in the area; or
  - (f) restricting the use or management of land in the area; or
  - (g) requiring a land-holder to refrain from, or not to permit, specified activities; or
  - (h) requiring a land-holder to carry out specified activities; or
  - (i) requiring a land-holder to permit or restrict access to the area by specified persons; or

- (j) specifying the way in which amounts provided to a land-holder under the agreement are to be applied by the land-holder; or
- (k) requiring a land-holder to repay amounts paid under the agreement if the land-holder contravenes the agreement or the agreement is terminated under section 47(2); or
- (l) providing for any other matter relating to the conservation of the area, including the implementation of the management plan for the protected area.

#### **46 Declaration of protected area**

- (1) The Governor in Council may, by regulation, declare a specified area of State land, or the area the subject of a conservation agreement, as—
  - (a) a nature refuge; or
  - (b) a coordinated conservation area; or
  - (c) a wilderness area.
- (2) The regulation must specify—
  - (a) if the area is—
    - (i) a nature refuge or a wilderness area—the declared management intent for the area; or
    - (ii) a coordinated conservation area—the interim management intent for the area; and
  - (b) the duration of the declaration, which must, if the area is the subject of a conservation agreement, be the duration of the agreement.
- (3) The regulation may define the extent of the area by reference to—
  - (a) a specified depth below the surface of land; or
  - (b) a specified height above the surface of land.
- (4) To allay any doubt, a coordinated conservation area or wilderness area may include an area that is, or is part of, a protected area dedicated or declared under any provision of this Act.



- (5) Subsection (4) does not apply to revoke the dedication or declaration of a protected area, or a part of a protected area, included in a coordinated conservation area or wilderness area.
- (6) In subsection (1)—  
*State land* includes a reserve under the *Land Act 1994*.

#### **47 Duration and termination of conservation agreements**

- (1) A conservation agreement has effect until it expires under its terms unless—
  - (a) it is terminated under subsection (2); or
  - (b) the declaration of the protected area to which it relates is revoked.
- (2) A conservation agreement may be terminated only if—
  - (a) in the case of a nature refuge or wilderness area—
    - (i) the land-holder who entered into the agreement requests its termination under the terms of the agreement; and
    - (ii) the Minister is of the opinion that the area to which the agreement relates is no longer needed for, or is no longer capable of being used to achieve, the declared management intent for the area; or
  - (b) in the case of a coordinated conservation area—the land-holder requests its termination under the terms of the agreement.

#### **48 Variation of conservation agreements**

A conservation agreement may be varied by a later agreement between the State and land-holders concerned, including, for example—

- (a) in the case of a nature refuge or wilderness area—by removing, at the request of the land-holder who entered into the agreement, a part of the area that, in the Minister's opinion, is no longer needed for, or capable

of being used to achieve, the declared management intent for the area; and

- (b) in the case of a coordinated conservation area—by removing a part of the area at the request of one of the land-holders.

#### **49 Compulsory declaration of nature refuge**

(1) If—

- (a) the Minister and land-holders concerned are unable to agree on—
  - (i) a proposal to declare a nature refuge; or
  - (ii) the terms of a conservation agreement for the area concerned; and
- (b) the Minister is of the opinion that the area is, or includes—
  - (i) an area of major interest; or
  - (ii) a critical habitat;
 and should be declared a nature refuge;

the Minister may give written notice to the land-holders, and persons having an interest in the land-holders' land, advising that a recommendation may be made to the Governor in Council that the area be compulsorily declared as a nature refuge.

(2) The notice must specify—

- (a) the proposed management intent for the area; and
- (b) the reasons why the Minister has reached the opinion; and
- (c) a day by which objections relating to the recommendation must be received by the Minister.

(3) After consideration of any objections properly received by the Minister, the Governor in Council may, by regulation, declare the area, or part of the area, as a nature refuge.

(4) The regulation must—

- (a) describe the area for which the declaration is made; and

- (b) specify the declared management intent for the area; and
- (c) specify the covenant applying to the declaration; and
- (d) specify such other particulars as are prescribed.

## **50 Revocation of protected area**

The Governor in Council may, by regulation, revoke the declaration of a protected area in whole or part.

## **51 Conservation agreements and covenants binding**

- (1) A conservation agreement that is recorded by the registrar under section 134 in relation to land is binding on—
  - (a) the successors in title to the land-holder who entered into the agreement; and
  - (b) persons who have an interest in the land.
- (2) A conservation agreement (other than an agreement mentioned in subsection (1)) is binding on the persons mentioned in section 45(2).
- (3) A conservation covenant is binding on—
  - (a) the land-holder and the land-holder's successors in title; and
  - (b) persons who have an interest in the land.

## **52 Liability of State**

- (1) In this section—

*private land* means land other than State 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 45 for private land; or
  - (b) private land has been declared under section 46 or 49 as, or as part of, a protected area.

## **Division 5                      World Heritage management areas**

### **53            Proposal to declare World Heritage management area**

- (1) If an area has been included in the World Heritage List established and kept under the World Heritage Convention, the Minister may, by advertisement published in a newspaper circulating throughout the State, propose that the whole or part of the area be declared a World Heritage management area.
- (2) The advertisement must—
  - (a) describe the lands to be included in the proposed area; and
  - (b) specify the proposed management of the area; and
  - (c) invite submissions from affected land-holders, interested groups and persons and members of the public; and
  - (d) specify a day by which submissions are to be made to the Minister.

### **54            Preparation of management plan**

After consideration of any submissions properly made in relation to the proposal, the Minister may prepare a management plan under part 7 for the area as if it were required under section 111(1), except that the Minister need not give notice of the proposal to prepare a draft management plan.

### **55            Declaration of World Heritage management area**

- (1) On approval of a management plan for an area that is proposed to become a World Heritage management area, the Governor in Council must, by regulation, declare the area to which the plan relates to be a World Heritage management area.
- (2) The regulation must—
  - (a) describe the area for which the declaration is made; and

- (b) specify such other particulars as are prescribed.
- (3) The regulation may define the extent of the area by reference to—
  - (a) a specified depth below the surface of land; or
  - (b) a specified height above the surface of land.
- (4) To allay any doubt, a World Heritage management area may include an area that is, or is part of, a protected area dedicated or declared under any provision of this Act.
- (5) Subsection (4) does not apply to revoke the dedication or declaration of a protected area, or a part of a protected area, included in a World Heritage management area.

## **56 Revocation of World Heritage management area**

- (1) The Governor in Council may, by regulation, revoke the declaration under this Act of a World Heritage management area, in whole or part.
- (2) The regulation may be made only if the Legislative Assembly has, on a motion of which at least 28 days notice has been given, passed a resolution requesting the Governor in Council to make the revocation.

## **Division 6 International agreement areas**

### **57 Proposal to declare international agreement area**

- (1) If the Minister is of the opinion that an area has internationally significant natural values, the Minister may, by advertisement published in a newspaper circulating throughout the State, propose that the area be declared an international agreement area.
- (2) The advertisement must—
  - (a) describe the lands to be included in the proposed area; and
  - (b) specify the proposed management of the area; and

- (c) invite submissions from affected land-holders, interested groups and persons and members of the public; and
- (d) specify a day by which submissions are to be made to the Minister.

## **58 Preparation of management plan**

After consideration of any submissions properly made in relation to the proposal, the Minister may prepare a management plan under part 7 for the area as if it were required under section 111(1), except that the Minister need not give notice of the proposal to prepare a draft management plan.

## **59 Declaration of international agreement area**

- (1) On approval of a management plan for an area that is proposed to become an international agreement area, the Governor in Council must, by regulation, declare the area to which the plan relates to be an international agreement area.
- (2) The regulation must—
  - (a) describe the area for which the declaration is made; and
  - (b) specify such other particulars as are prescribed.
- (3) The regulation may define the extent of the area by reference to—
  - (a) a specified depth below the surface of land; or
  - (b) a specified height above the surface of land.
- (4) To allay any doubt, an international agreement area may include an area that is, or is part of, a protected area dedicated or declared under any provision of this Act.
- (5) Subsection (4) does not apply to revoke the dedication or declaration of a protected area, or a part of a protected area, included in an international agreement area.

**60 Revocation of international agreement area**

The Governor in Council may, by regulation, revoke the declaration under this Act of an international agreement area, in whole or part.

**Division 7 Cultural and natural resources****61 Property in cultural and natural resources**

- (1) All cultural and natural resources of a national park (scientific), national park, national park (recovery), conservation park or resources reserve are the property of the State.
- (2) However, if land in a protected area mentioned in subsection (1) was included in a forest reserve immediately before the dedication of the protected area, subsection (1) does not extinguish or affect native title or native title rights and interests in relation to the land.
- (3) Also, subsection (1) has effect subject to—
  - (a) the *Aboriginal Cultural Heritage Act 2003* to the extent it provides for the ownership of Aboriginal cultural heritage other than by the State; and
  - (b) the *Torres Strait Islander Cultural Heritage Act 2003* to the extent it provides for the ownership of Torres Strait Islander cultural heritage other than by the State.

**62 Restriction on taking etc. of cultural and natural resources of protected areas**

- (1) A person, other than an authorised person, must not take, use, keep or interfere with a cultural or natural resource of a protected area, other than under—
  - (a) the interim or declared management intent for the area; or
  - (b) any conservation agreement or covenant applicable to the area; or

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- (c) a lease, agreement, licence, permit or other authority granted, made, issued or given—
  - (i) by the chief executive under sections 34 to 38; 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.

Maximum penalty—3000 penalty units or 2 years imprisonment.

- (2) It is a defence to a charge of taking or interfering with a cultural or natural resource in contravention of subsection (1) to prove that—
  - (a) the taking or interference happened in the course of a lawful activity that was not directed towards the taking or interference; and
  - (b) the taking or interference could not have been reasonably avoided.
- (3) Subsection (2) does not allow a person to use or keep the resource.
- (4) Despite subsection (1) and section 15,<sup>6</sup> but subject to the conditions prescribed under a regulation, a person may take—
  - (a) a fish in a prescribed place; or
  - (b) an invertebrate animal in a prescribed place for use as bait to take fish under paragraph (a); or
  - (c) a mud crab (*Scylla serrata*) in a prescribed place.
- (5) However, subsection (4) does not authorise a person to take—

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<sup>6</sup> Section 15 (Management of protected areas)



- (a) an animal for a commercial purpose; or
  - (b) an animal prescribed under this Act as threatened, rare or near threatened wildlife; or
  - (c) an animal prescribed under a regulation for this paragraph.
- (6) Also, subsection (4) does not, in itself, authorise a person to enter a prescribed place.
- (7) In this section—

*national park* includes a national park (Aboriginal land) or, national park (Torres Strait Islander land) or national park (recovery).

*prescribed place* means a national park, or part of a national park, prescribed under a regulation for subsection (4)(a), (b) or (c).

## Division 8                      General

### 63            Meaning of *land-holder* in division

In this division—

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

### 64            Naming of protected areas

The Governor in Council may, by regulation, assign a name to, or alter the name of, a protected area or aggregation of protected areas.

### 65            Effect of change in class of protected area

- (1) If a protected area, or part of a protected area, is dedicated or declared under this Act to be a protected area of a different class—
- (a) the later dedication or declaration revokes the earlier dedication or declaration of the area or the part of the area to which the dedication or declaration relates; and

- (b) the management plan for the area ceases to apply to the area, unless the regulation dedicating or declaring the area otherwise declares.
- (2) To allay any doubt—
  - (a) subsection (1) applies subject to sections 32 and 33; and
  - (b) subsection (1) does not apply to the declaration of a protected area that includes another class of protected area.

## **66 Cancellation of licences etc.**

- (1) If a licence, permit or other authority issued or given under any Act permits the holder to do an act that would contravene a regulation giving effect to a management plan for—
  - (a) a World Heritage management area; or
  - (b) an international agreement area;the operation of such an authority is, by force of this section, cancelled to the extent that it permits the doing of the act.
- (2) The Minister must, immediately after the making of the regulation, give written notice of the cancellation to the authority holder.
- (3) If the Minister considers that it is impracticable to give notice to each holder of a particular class of authority holder, it is sufficient compliance with subsection (2) if the Minister gives notice of the cancellation to the authority holders by publishing a notice in such newspapers as the Minister determines.
- (4) The cancellation takes effect from the day the regulation commences.
- (5) Subsection (1) applies despite any other Act.

## **67 Compensation when protected area declared**

- (1) This section applies if—
  - (a) a nature refuge is declared under section 49; or

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- (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 126 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.

**68 No compensation on termination of conservation agreements or revocation of protected areas**

If—

- (a) a conservation agreement is terminated under this Act;  
or

- (b) a declaration of a protected area is revoked, in whole or part;

the land-holders concerned are not entitled to compensation because of the termination or revocation.

## **69 Preservation of land-holders' interests**

The interests of a land-holder of land forming part of a protected area are not affected by the dedication or declaration of the protected area except to the extent of—

- (a) any binding conservation agreement, or conservation covenant, in relation to the land; or
- (b) a regulation giving effect to the management plan for the area.

## **70 Unlawful use of certain words**

- (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.

Maximum penalty—50 penalty units.

- (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.

- (3) However, subsections (1) and (2) do not stop a person using the words 'national park' or 'conservation park' in referring to the name of—

- (a) a zone of a marine park set apart and declared under the *Marine Parks Act 1982*; or
- (b) an area declared to be part of the Great Barrier Reef Marine Park under the *Great Barrier Reef Marine Park Act 1975* (Cwlth).

## Part 4A                      Forest reserves

### Division 1                      Preliminary

#### 70A      Purpose of pt 4A and its achievement

- (1) The purpose of this part is to assist the dedication of areas within State forests, timber reserves or Land Act reserves as protected areas.
- (2) The purpose is achieved primarily by providing for forest reserve dedications as an interim measure to assist the dedication of the areas as protected areas.
- (3) It is Parliament's intention that, subject to any revocation under this part, each area of land dedicated as a forest reserve will become a protected area as soon as practicable after its dedication.

#### 70B      Definitions for pt 4A

In this part—

*authority* means an agreement or a lease, licence, permit or other authority.

*forest reserve* means an area dedicated as a forest reserve under section 70C, the dedication for which has not been revoked under section 70E.

*Land Act reserve* means a reserve under the *Land Act 1994*.

*proposed protected area* means an area designated as a proposed protected area under section 70K(1), the designation for which has not ended under section 70M.

*proposed protected area register* means the register that the chief executive keeps under section 70N.

*protected area* means any of the following—

- (a) a national park (scientific);
- (b) a national park;
- (c) a national park (recovery);

- (d) a conservation park;
- (e) a resources reserve.

*State forest* means a State forest under the *Forestry Act 1959*.

*timber reserve* means a timber reserve under the *Forestry Act 1959*.

## **Division 2                    Dedication and revocation**

### **70C    Dedication of forest reserves**

The Governor in Council may, under a regulation, dedicate a stated area of land as a forest reserve if the area is, or is part of—

- (a) a Land Act reserve; or
- (b) a State forest or timber reserve; or
- (c) unallocated State land.

### **70D    Naming of forest reserves**

A regulation may give a name to, or change the name of, a forest reserve.

### **70E    Revocation of forest reserves**

- (1) The Governor in Council, may under a regulation, revoke the dedication of a forest reserve or a part of a forest reserve.
- (2) The regulation may be made only if the Legislative Assembly has, on a motion of which at least 28 days notice has been given, passed a resolution requesting the Governor in Council to make the revocation.
- (3) However, subsection (2) does not apply if the regulation states the purpose of the revocation is to allow the forest reserve to become a protected area.

## **Division 3                    Management of forest reserves**

### **Subdivision 1            Management principles of forest reserves**

#### **70F    Management principles**

- (1) A forest reserve is to be managed to do the following—
- (a) protect the biological diversity, cultural resources and values and conservation values of land included in the reserve, having regard to the purpose of this part;
  - (b) provide for the continuation of any lawful existing use of the land;

*Examples of existing uses that may be lawful existing uses—*

- 1 apiculture, foliage harvesting, recreation and salvage timber harvesting under the *Forestry Act 1959*
  - 2 grazing under the *Forestry Act 1959* or the *Land Act 1994*
  - 3 maintenance and use of existing roads used for timber extraction and other forest management activities under the *Forestry Act 1959*
  - 4 mining under the *Mineral Resources Act 1989*
- (c) ensure all uses of the land under an authority in relation to the forest reserve made after its dedication are ecologically sustainable;
- (d) ensure all uses of the land under an authority made after any designation of land in the forest reserve as a proposed protected area are consistent with the management principles for the class of protected area that the land is proposed to become.
- (2) However, subsection (1)(b) only applies to the use of the land for commercial logging if the purpose of the logging is to remove plantation trees to restore the land's conservation values.
- (3) To remove any doubt, it is declared that the dedication of the land as a forest reserve or any designation of land in the forest reserve as a proposed protected area does not extinguish or



affect native title or native title rights and interests in relation to the land.

(4) In this section—

**commercial logging** means taking timber for commercial gain, other than—

- (a) to build, maintain or repair public infrastructure or utilities relating to the forest reserve; or
- (b) to enhance or protect a lawful use of the land, or to ensure the use may be carried out safely; or
- (c) to allow native vegetation on the land to be regenerated under a written approval given by the chief executive; or
- (d) for use as firewood; or
- (e) incidentally to a lawful use of the land that does not involve taking timber.

*Example for paragraph (e)—*

If collecting seeds from trees on the land is lawful, collecting the seeds may involve taking branches from trees that have the seeds on them.

**ecologically sustainable**, for use of the land, means use within the capacity of the land to sustain natural processes while—

- (a) maintaining the life support systems of nature; and
- (b) ensuring the benefit of the use to present generations does not diminish the potential to meet the needs and aspirations of future generations.

**make**, for an authority, includes renew the authority.

## Subdivision 2 Management

### 70G State forest or timber reserve dedicated as a forest reserve

- (1) This section applies if land in a State forest or timber reserve is dedicated as a forest reserve.
- (2) The land ceases to be land in a State forest or timber reserve.
- (3) However—

- (a) the *Forestry Act 1959* continues to apply, with necessary changes, in relation to the land and its management as if the land were, and had continued to be, a State forest or timber reserve; but
  - (b) the *Forestry Act 1959*, section 33<sup>7</sup> does not apply to the management of the land.
- (4) This section applies despite the *Forestry Act 1959*.

### **70H Land Act reserve dedicated as a forest reserve**

- (1) This section applies if land in a Land Act reserve is dedicated as a forest reserve.
- (2) The land ceases to be land in a Land Act reserve.
- (3) However, the *Land Act 1994* continues to apply, with necessary changes, in relation to the land and its management as if the land were, and had continued to be, a Land Act reserve.
- (4) Also, if a person was, immediately before the dedication, a trustee of the land under the *Land Act 1994*, the person continues to be a trustee of the land under that Act.
- (5) This section applies despite the *Land Act 1994*.

### **70I Management principles prevail**

- (1) A forest reserve must be managed under the management principles under section 70F.
- (2) If there is an inconsistency between the management principles and a provision of the *Forestry Act 1959* or the *Land Act 1994*, the management principles prevail to the extent of the inconsistency.
- (3) Despite sections 70G and 70H, an action must not be done in relation to the management of a forest reserve if it is inconsistent with the management principles.
- (4) In this section—  
*action* includes any of the following—

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<sup>7</sup> *Forestry Act 1959*, section 33 (Cardinal principle of management of State forests)

- (a) making, amending or renewing an authority in relation to a forest reserve;
- (b) converting an authority to another form of authority;
- (c) changing the purpose of an authority;
- (d) offering or agreeing to carry out an action under paragraphs (a) to (c).

## **Division 4            Progression to protected area**

### **Subdivision 1        Review of forest reserves**

#### **70J    Review**

- (1) The chief executive must review each forest reserve to consider the most appropriate class of protected area for land in the reserve.
- (2) The review must start as soon as practicable after the dedication of the forest reserve.

### **Subdivision 2        Proposed protected areas**

#### **70K    Designation**

- (1) The chief executive may, by an entry in the proposed protected area register, designate the whole or part of a forest reserve as a proposed protected area if—
  - (a) under section 70J the chief executive has reviewed the reserve; and
  - (b) subsections (2) to (5) have been complied with.
- (2) The chief executive must publish a notice of a proposed designation in a newspaper likely to be read by people particularly affected by it.
- (3) The notice must state the following—
  - (a) the location and area of the proposed protected area;

- (b) the class of protected area that the area is proposed to become;
  - (c) that any entity may comment about the proposal to the chief executive;
  - (d) the period during which comments may be made.
- (4) The stated period must be at least 35 days after the publication of the notice.
- (5) The chief executive must consider any comment about the proposal made during the period.

### **70L Effect of designation**

- (1) Subject to the management principle under section 70F(1)(d), a proposed protected area designation acts as a proposal only and the area continues to be a forest reserve.
- (2) A proposed protected area designation does not—
- (a) make, or have the effect of making, the area a protected area or a protected area of the class it is proposed to become; or
  - (b) bind the Governor in Council to dedicate, or the chief executive to take action to dedicate, the area as a protected area or as a protected area of that class.

### **70M When designation ends**

The designation of an area as a proposed protected area ends if—

- (a) the dedication of the area as a forest reserve is revoked; or
- (b) the area is dedicated as a protected area.

### **70N Register of proposed protected areas**

- (1) The chief executive must keep a register of proposed protected areas.
- (2) The register must, for each proposed protected area, state—
- (a) its location and area; and

- (b) the class of protected area that it is proposed to become; and
  - (c) any other information the chief executive considers desirable.
- (3) The chief executive may keep the register in the way the chief executive considers appropriate, including, for example, in electronic form.
- (4) The chief executive must keep the register open for inspection during office hours on business days at—
- (a) the department's head office; and
  - (b) each regional office of the department in whose area the proposed protected area is situated; and
  - (c) other places the chief executive considers appropriate.

## **700 Amendment of designation**

- (1) The chief executive may, by an entry in the proposed protected area register, amend the designation of an area as a proposed protected area if subsections (2) to (5) have been complied with.
- (2) The chief executive must publish a notice of a proposed amendment in a newspaper likely to be read by people particularly affected by it.
- (3) The notice must state the following—
- (a) the location of the area;
  - (b) the proposed amendment;
  - (c) that any entity may comment about the proposal to the chief executive;
  - (d) the period during which comments may be made.
- (4) The stated period must be at least 35 days after the publication of the notice.
- (5) The chief executive must consider any comment about the proposal made during the period.

## **Division 5                      Miscellaneous provisions**

### **70P      References to State forest or timber reserve in other legislation**

- (1) A reference in another Act or in subordinate legislation to a State forest or timber reserve is, if the context permits, taken to include a forest reserve.
- (2) However, subsection (1) does not apply if—
  - (a) the reference is in or under the *Forestry Act 1959*;<sup>8</sup> or
  - (b) the reference is only to the setting apart and dedication of an area as a State forest or timber reserve.

### **70Q      References to Land Act reserves in other legislation**

- (1) A reference in this or another Act or in subordinate legislation to a Land Act reserve is, if the context permits, taken to include a forest reserve.
- (2) However, subsection (1) does not apply if the reference is in or under the *Land Act 1994*.

### **70QA    Prohibition on mining in forest reserves**

A mining interest under section 27<sup>9</sup> can not be granted in relation to land in a forest reserve.

## **Division 6                      Expiry of pt 4A**

### **70R      Expiry**

This part expires on 31 December 2025.

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8 For State forests or timber reserves, see section 70G(3) (State forest or timber reserve dedicated as a forest reserve).

9 Section 27 (Prohibition on mining)

## **Part 5                      Wildlife and habitat    conservation**

### **Division 1                Basic concepts**

#### **71            Classes of wildlife to which Act applies**

The classes of wildlife to which this Act applies are—

- (a) protected wildlife, that is—
  - (i) extinct in the wild wildlife; and
  - (ii) endangered wildlife; and
  - (iii) vulnerable wildlife; and
  - (iv) rare wildlife; and
  - (v) near threatened wildlife; and
  - (vi) least concern wildlife; and
- (b) international wildlife; and
- (c) prohibited wildlife.

#### **72            Management of wildlife—general**

- (1) Wildlife is to be managed in accordance with—
  - (a) the management principles prescribed by this division for the class of the wildlife; and
  - (b) the declared management intent for the wildlife; and
  - (c) any conservation plan for the wildlife.
- (2) The declared management intent for wildlife is the management intent applicable to the wildlife under the regulations.
- (3) The declared management intent for wildlife must contain a statement of—
  - (a) the significance of the wildlife to nature and its value; and
  - (b) the proposed management intent for the wildlife; and

- (c) the principles relating to any proposed taking and use of the wildlife.

### **73 Management principles of protected wildlife**

Protected wildlife is to be managed to—

- (a) conserve the wildlife and its values and, in particular to—
  - (i) ensure the survival and natural development of the wildlife in the wild; and
  - (ii) conserve the biological diversity of the wildlife to the greatest possible extent; and
  - (iii) identify, and reduce or remove, the effects of threatening processes relating to the wildlife; and
  - (iv) identify the wildlife's critical habitat and conserve it to the greatest possible extent; and
- (b) ensure that any use of the wildlife—
  - (i) for scientific study and monitoring; or
  - (ii) for educational, recreational, commercial and authorised purposes; or
  - (iii) by Aboriginal people under Aboriginal tradition or Torres Strait Islanders under Island custom;

is ecologically sustainable.

### **74 Management principles of international wildlife**

International wildlife is to be managed in accordance with the wildlife's international conservation significance and, in particular—

- (a) to ensure the protection of protected wildlife from any threatening process that may be posed by the wildlife; and
- (b) to prevent unlawful introduction of the wildlife into the State; and



- (c) prohibit the release of the wildlife into the wild except under a licence, permit or other authority issued or given under a regulation.

## **75 Management principles of prohibited wildlife**

Prohibited wildlife is to be managed to—

- (a) prohibit the release of the wildlife into the wild except under a licence, permit or other authority issued or given under a regulation; and
- (b) identify and, if practicable, control any threatening process caused by the wildlife; and
- (c) reduce and, if possible, eliminate the population and distribution of the wildlife in the wild; and
- (d) encourage the humane taking and use of the wildlife.

## **Division 2 Classes of wildlife**

### **76 Native wildlife may be prescribed as extinct in the wild wildlife**

A regulation may prescribe native wildlife as extinct in the wild wildlife if—

- (a) there have been thorough searches conducted for the wildlife; and
- (b) the wildlife has not been seen in the wild over a period that is appropriate for the life cycle or form of the wildlife.

### **77 Native wildlife may be prescribed as endangered wildlife**

A regulation may prescribe native wildlife as endangered wildlife if—

- (a) there have not been thorough searches conducted for the wildlife and the wildlife has not been seen in the wild over a period that is appropriate for the life cycle or form of the wildlife; or

- (b) the habitat or distribution of the wildlife has been reduced to an extent that the wildlife may be in danger of extinction; or
- (c) the population size of the wildlife has declined, or is likely to decline, to an extent that the wildlife may be in danger of extinction; or
- (d) the survival of the wildlife in the wild is unlikely if a threatening process continues.

## **78 Native wildlife may be prescribed as vulnerable wildlife**

- (1) A regulation may prescribe native wildlife as vulnerable wildlife if—
  - (a) the population size or distribution of the wildlife has declined, or is likely to decline, to an extent that the wildlife may become endangered because of a threatening process; or
  - (b) the population size of the wildlife has been seriously depleted and the protection of the wildlife is not secured; or
  - (c) the population of the wildlife is—
    - (i) low or localised; and
    - (ii) dependent on habitat that has been, or is likely to be, adversely affected, in terms of quantity or quality, by a threatening process.
- (2) In this section—

*endangered*, in relation to wildlife, means the wildlife falls within a description mentioned in section 77.

## **78A Native wildlife may be prescribed as rare wildlife**

- (1) A regulation may prescribe native wildlife as rare wildlife if the wildlife is not threatened wildlife and—
  - (a) the population of the wildlife is represented by—
    - (i) a relatively large population in a restricted range; or

- (ii) relatively small populations thinly spread over a wide range; or
  - (b) the survival of the wildlife in the wild is affected to an extent that the wildlife is in danger of becoming vulnerable.
- (2) Native wildlife may be prescribed as rare wildlife even if the wildlife is the subject of a threatening process.
- (3) This section expires 5 years after it commences.
- (4) In this section—
- vulnerable*, in relation to wildlife, means the wildlife falls within a description mentioned in section 78(1).

## **79 Native wildlife may be prescribed as near threatened wildlife**

- (1) A regulation may prescribe native wildlife as near threatened wildlife if—
- (a) the population size or distribution of the wildlife is small and may become smaller; or
  - (b) the population size of the wildlife has declined, or is likely to decline, at a rate higher than the usual rate for population changes for the wildlife; or
  - (c) the survival of the wildlife in the wild is affected to an extent that the wildlife is in danger of becoming vulnerable.
- (2) Native wildlife may be prescribed as near threatened wildlife even if the wildlife is the subject of a threatening process.
- (3) In this section—
- vulnerable*, in relation to wildlife, means the wildlife falls within a description mentioned in section 78(1).

## **80 Native wildlife may be prescribed as least concern wildlife**

- (1) A regulation may prescribe native wildlife as least concern wildlife if the wildlife is common or abundant and is likely to survive in the wild.

- (2) Native wildlife may be prescribed as least concern wildlife even if—
- (a) the wildlife is the subject of a threatening process; or
  - (b) the population size or distribution of the wildlife has declined; or
  - (c) there is insufficient information about the wildlife to conclude whether the wildlife is common or abundant or likely to survive in the wild.

**81 Wildlife may be prescribed as international wildlife**

If the Governor in Council is of the opinion that wildlife included in appendix I or II of CITES is not indigenous to Australia, the wildlife may be prescribed as international wildlife.

**82 Wildlife may be prescribed as prohibited wildlife**

If the Governor in Council is of the opinion that wildlife is—

- (a) an unnatural hybrid or not indigenous to Australia; and
- (b) likely to constitute a threatening process to protected wildlife;

the wildlife may be prescribed as prohibited wildlife.

**Division 3 Ownership of protected wildlife**

**83 Property in protected animals**

- (1) Subject to subsections (2) to (5), sections 85 and 86 and the provisions of any captive breeding agreement, all protected animals are the property of the State.
- (2) A protected animal ceases to be the property of the State if—
  - (a) the animal is taken under a licence, permit or other authority issued or given under a regulation; and
  - (b) under a conservation plan property in the animal passes from the State on that taking of the animal.

- (3) A protected animal to which subsection (2) applies becomes the property of the holder of the authority, subject to the rights in the animal of any other person (other than the rights of the State under subsection (1)).
- (4) A protected animal that is the progeny of an animal to which subsection (2) applies is the property of the owner of the progeny's female parent, subject to the rights in the animal of any other person (other than the rights of the State under subsection (1)).
- (5) If—
  - (a) a person is keeping an animal that is not a protected animal; and
  - (b) the animal becomes a protected animal because of the making of a regulation under this Act;the animal and its progeny do not become the property of the State merely because of the making of the regulation.

#### **84 Property in protected plants**

- (1) Subject to subsections (2) to (4), section 86 and the provisions of any captive breeding agreement, all protected plants (other than protected plants on private land) are the property of the State.
- (2) A protected plant ceases to be the property of the State if—
  - (a) the plant is taken under a licence, permit or other authority issued or given under a regulation; and
  - (b) under a conservation plan property in the plant passes from the State on that taking of the plant.
- (3) A protected plant to which subsection (2) applies becomes the property of the holder of the authority, subject to the rights in the plant of any other person (other than the rights of the State under subsection (1)).
- (4) The progeny of a plant to which subsection (2) applies is the property of the owner of the plant from which the progeny is propagated, subject to the rights in the plant of any other person (other than the rights of the State under subsection (1)).
- (5) In this section—

*private land* means—

- (a) freehold land; or
- (b) land the subject of a lease under any Act containing an entitlement to a deed of grant in fee simple.

*protected plant* means a protected plant that is in the wild.

## **85 Property in newly protected animals**

- (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.

## **86 Preservation of existing property rights**

Sections 83 and 84 do not affect property rights a person (other than the State) has in native wildlife immediately before the wildlife becomes protected wildlife.

## **87 Liability of State**

The State is not legally liable for an act or omission merely because protected animals and plants are the property of the State.

## **Division 4                      Restrictions on activities relating to protected wildlife**

### **88            Restrictions on taking protected animal and keeping or use of unlawfully taken protected animal**

- (1) This section—
  - (a) is subject to section 93; and
  - (b) does not apply to the taking of protected animals in a protected area.<sup>10</sup>
- (2) A person must not take a protected animal unless the person is an authorised person or the taking is authorised under this Act.

Maximum penalty—

- (a) for a class 1 offence—3000 penalty units or 2 years imprisonment; or
  - (b) for a class 2 offence—1000 penalty units or 1 year's imprisonment; or
  - (c) for a class 3 offence—225 penalty units; or
  - (d) for a class 4 offence—100 penalty units.
- (3) It is a defence to a charge of taking a protected animal in contravention of subsection (1) to prove that—
    - (a) the taking happened in the course of a lawful activity that was not directed towards the taking; and
    - (b) the taking could not have been reasonably avoided.
  - (4) Subsection (3) does not allow a person to keep or use the animal.
  - (5) A person must not keep or use an animal that is either of the following unless the person is an authorised person or the keeping or use is authorised under this Act—

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10 Section 93 (Aborigines' and Torres Strait Islanders' rights to take etc. protected wildlife)

For the taking of protected animals in protected areas, see section 62 (Restriction on taking etc. of cultural and natural resources of protected areas).

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(a) a protected animal if, at any time, it has been taken and the taking was not authorised under this Act or a law of another State;

(b) a descendant of an animal mentioned in paragraph (a).

Maximum penalty—

(a) for a class 1 offence—3000 penalty units or 2 years imprisonment; or

(b) for a class 2 offence—1000 penalty units or 1 year's imprisonment; or

(c) for a class 3 offence—225 penalty units; or

(d) for a class 4 offence—100 penalty units.

(6) In this section—

***Class 1 offence*** means an offence against this section that involves—

(a) 1 or more animals that are extinct in the wild or endangered wildlife; or

(b) 5 or more animals that are vulnerable or near threatened wildlife; or

(c) 10 or more animals that are rare wildlife; or

(d) 1 or more echidna, koala or platypus.

***Class 2 offence*** means an offence against this section that is not a class 1 offence and involves—

(a) 3 or 4 animals that are vulnerable or near threatened wildlife; or

(b) 4 or more, but no more than 9, animals that are rare wildlife; or

(c) 10 or more animals that are common wildlife.

***Class 3 offence*** means an offence against this section that is not a class 1 or class 2 offence and involves—

(a) 1 or 2 animals that are vulnerable or near threatened wildlife; or

(b) 2 or 3 animals that are rare wildlife; or



- (c) 5 or more, but less than 10, animals that are common wildlife.

**Class 4 offence** means an offence against this section other than a class 1, 2 or 3 offence.

**88A Restriction on keeping or use of lawfully taken protected animal**

- (1) Subject to section 93, a person, other than an authorised person, must not keep or use a protected animal that is either of the following unless the keeping or use is authorised under this Act—
- (a) a protected animal, if the animal has, at any time, been taken and the taking was authorised under this Act or a law of another State;
  - (b) a descendant of an animal mentioned in paragraph (a).

Maximum penalty—

- (a) generally—1000 penalty units; or
  - (b) if a circumstance mentioned in subsection (2) applies—100 penalty units.
- (2) For subsection (1), the circumstances are that—
- (a) in the 12 months before the commission of the offence, the person held a licence, permit or other authority (the **former authority**) under this Act and—
    - (i) the former authority is no longer in force; and
    - (ii) had the former authority still been in force, the offence would not have been committed; and
    - (iii) the former authority ceased to be in force for a reason other than its cancellation or suspension; and
    - (iv) an application to renew the former authority has not been refused; or
  - (b) the offence only relates to moving the animal.

**88B Offence to keep or use native wildlife reasonably suspected to have been unlawfully taken**

- (1) A person must not keep or use native wildlife if a reasonable person in the person's circumstances ought to have suspected that the wildlife may have been unlawfully taken unless—
- (a) the person is an authorised person; or
  - (b) the State has, under this Act, disposed of the native wildlife to the person.<sup>11</sup>

Maximum penalty—

- (a) if the wildlife ought to have been suspected to have been taken in contravention of section 88(2), 89 or 97<sup>12</sup>—the maximum penalty under that section that applies to an unlawful taking of the wildlife; or
- (b) if the wildlife ought to have been suspected to have been taken in contravention of a law of another State—the maximum penalty under that law that applies to the unlawful taking of the wildlife.

*Examples of when an offence is committed under subsection (1)—*

A buys and keeps the native wildlife mentioned in item 1 or 2, under the circumstances mentioned in the item. A is not an authorised person. A did not buy the wildlife from the State. A reasonable person in A's circumstances ought to have suspected that the wildlife may have been unlawfully taken.

- 1 A buys protected wildlife from B at a market stall. Before buying the wildlife A asked B for evidence that it had been lawfully taken. In response, B replied that B did not have that evidence and that B bought the wildlife from someone else whom B did not know.
- 2 A holds a licence under this Act to keep particular protected wildlife. A buys protected wildlife of that type from B. Under this Act, to keep or deal with the wildlife, B must hold a particular type of licence. A regulation requires that B must, before the sale is completed, fill in a movement advice in the approved form for the movement of the wildlife because of the sale. The approved form

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11 See sections 171 (Disposal of cultural or natural resources and protected wildlife owned by State) and 172 (Disposal of wildlife etc. not owned by State).

12 Section 88 (Restrictions on taking protected animal and keeping or use of unlawfully taken protected animal), 89 (Restriction on taking etc. particular protected plants) or 97 (Restriction on taking etc. of native wildlife in areas of major interest and critical habitats)

requires a written acknowledgement by A as the person to whom the wildlife is being moved. B has not shown to A that B holds a licence to keep and deal with the wildlife. A did not give the acknowledgement.

- (2) If a person is charged with an offence against subsection (1), it is a defence to the charge if the person satisfies the court that the person had no reasonable grounds for suspecting the wildlife was unlawfully taken.
- (3) In this section—  
*unlawfully taken* means taken in contravention of section 88(2), 89 or 97 or of a law of another State.

## **89 Restriction on taking etc. particular protected plants**

- (1) Subject to section 93, a person, other than an authorised person, must not take a protected plant, other than under—
- (a) a conservation plan applicable to the plant; or
  - (b) a licence, permit or other authority issued or given under a regulation; or
  - (c) an exemption under a regulation.

Maximum penalty—3000 penalty units or 2 years imprisonment.

- (2) Subsection (1) does not apply to the taking of protected plants in a protected area.<sup>13</sup>
- (3) It is a defence to a charge of taking a protected plant in contravention of subsection (1) to prove that—
- (a) the taking happened in the course of a lawful activity that was not directed towards the taking; and
  - (b) the taking could not have been reasonably avoided.
- (4) A person must not use or keep a protected plant that has been taken in contravention of subsection (1).

Maximum penalty—3000 penalty units or 2 years imprisonment.

- (5) In this section—

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<sup>13</sup> Section 62 deals with the taking of protected animals in a protected area.

***protected plant*** means a protected plant that—

- (a) is prescribed under this Act as threatened, rare or near threatened wildlife; and
- (b) is in the wild.

## **90 Restriction on using particular protected plants**

Subject to section 93, a person, other than an authorised person, must not use a protected plant that is threatened, rare or near threatened wildlife other than under—

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

Maximum penalty—1000 penalty units.

## **91 Restriction on release etc. of international and prohibited wildlife**

- (1) A person, other than an authorised person, must not, unless authorised under this Act—
  - (a) abandon or release international or prohibited wildlife into the wild; or
  - (b) introduce international or prohibited wildlife into the State; or
  - (c) keep or use international or prohibited wildlife that, in contravention of paragraph (b), has been introduced into the State.

Maximum penalty—3000 penalty units or 2 years imprisonment.

- (2) A person, other than an authorised person, must not otherwise keep or use international or prohibited wildlife unless—
  - (a) the wildlife is dead and, if the wildlife is international wildlife, an approved tag is, under a regulation, attached to the animal or the part of the animal that is being kept or used; or

- (b) the keeping or use is the keeping or use of milk obtained from prohibited wildlife; or
- (c) the keeping or use is otherwise authorised under this Act.

Maximum penalty—100 penalty units.

## **92 Restriction on breeding etc. hybrids of protected animals**

- (1) A person must not—
  - (a) knowingly breed a hybrid or mutation of a protected animal; or
  - (b) abandon a hybrid or mutation of a protected animal in the wild;

other than under a regulation or exemption under a regulation.

Maximum penalty—165 penalty units.

- (2) A person must not release a hybrid or mutation of a protected animal into the wild other than under a conservation plan for the protected animal.

Maximum penalty—165 penalty units or 1 year's imprisonment.

## **93 *Aborigines' and Torres Strait Islanders' rights to take etc. protected wildlife***

- (1) *Despite any other Act, an Aborigine or Torres Strait Islander may take, use or keep protected wildlife under Aboriginal tradition or Island custom.*
- (2) *Subsection (1) applies subject to any provision of a conservation plan that expressly applies to the taking, using or keeping of protected wildlife under Aboriginal tradition or Island custom.*
- (3) *An Aborigine or Torres Strait Islander who takes, uses or keeps protected wildlife in contravention of a provision of a conservation plan that expressly prohibits the taking, using or keeping of protected wildlife under Aboriginal tradition or Island custom commits an offence against this Act.*

- (4) *Subsection (1) does not apply to the taking, using or keeping of protected wildlife in a protected area.*<sup>14</sup>

*Maximum penalty—3000 penalty units or imprisonment for 2 years.*<sup>15</sup>

#### **94 Conservation officers prohibited in dealing with protected wildlife**

A conservation officer must not acquire or hold an interest in—

- (a) a licence, permit or other authority issued or given under a regulation for the purpose of conducting the business of dealing in protected wildlife; or
- (b) any business dealing in protected wildlife; or
- (c) any place at or in which the business of dealing in protected wildlife is conducted; or
- (d) any contract or arrangement made for the purpose of dealing in protected wildlife.

Maximum penalty—50 penalty units.

### **Division 5 Conservation value for protected wildlife**

#### **95 Payment of conservation value**

- (1) Subject to subsection (8), there is payable to the State for protected wildlife taken under a licence, permit or other authority issued or given under a regulation, the conservation value (if any) prescribed under this Act for the wildlife.
- (2) The conservation value of protected wildlife is an expression in monetary terms of the State's conservation concern for the wildlife.

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14 Section 62 deals with, among other things, the taking, using or keeping of protected wildlife in a protected area.

15 This provision had not commenced on or before the reprint date.

- (3) Despite any Act or law, payment of the conservation value does not, of itself, transfer property in protected wildlife from the State.
- (4) The person who lawfully takes protected wildlife must pay the conservation value for the wildlife within 30 days after the wildlife is taken.  
Maximum penalty—50 penalty units.
- (5) A person who lawfully takes protected wildlife must not give up or surrender possession of the wildlife unless the conservation value for the wildlife has been paid.  
Maximum penalty—50 penalty units.
- (6) A person must not keep protected wildlife knowing that the conservation value for the wildlife has not been paid.  
Maximum penalty—50 penalty units.
- (7) If a person lawfully takes wildlife, subsection (6) does not apply to the keeping of the wildlife by the person during the period allowed under subsection (4) for the payment of the conservation value for the wildlife.
- (8) The conservation value of wildlife is not payable by a person if the person—
- (a) is exempt from the payment under a regulation; or
  - (b) takes the wildlife for an authorised purpose under a conservation plan applicable to the wildlife; or
  - (c) takes the wildlife under a captive breeding agreement and pays the amount that the agreement provides must be paid for the taking of the wildlife.

## **96 Recovery of unpaid conservation value**

- (1) An amount of conservation value payable under this Act is a debt due to the State and may be recovered in a court having jurisdiction for the recovery of debts up to the amount concerned.
- (2) A proceeding may be instituted against a person for the recovery of an amount of conservation value payable under this Act whether or not—

- (a) a prosecution has been instituted against the person for an offence in relation to the nonpayment; or
- (b) the person has been convicted of an offence in relation to the nonpayment.

## **Division 6                      Specific restriction on activities relating to native wildlife**

### **97            Restriction on taking etc. of native wildlife in areas of major interest and critical habitats**

- (1) This section applies to native wildlife (other than protected wildlife)<sup>16</sup> in an area that is identified under a conservation plan as, or including—
  - (a) a critical habitat; or
  - (b) an area of major interest.
- (2) A person, other than an authorised person, must not take, use, keep or interfere with the wildlife, other than under—
  - (a) the conservation plan; or
  - (b) a licence, permit or other authority issued or given under a regulation.

Maximum penalty—3000 penalty units or 2 years imprisonment.

- (3) It is a defence to a charge of taking or interfering with wildlife in contravention of subsection (2) to prove that—
  - (a) the taking or interference happened in the course of a lawful activity that was not directed towards the taking or interference; and
  - (b) the taking or interference could not have been reasonably avoided.
- (4) Subsection (3) does not allow a person to use or keep the wildlife.

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<sup>16</sup> Sections 62, 88 and 89 deal with the taking, using and keeping of protected wildlife.



## **Division 7                      Provisions for land-holders**

### **98        No right to enter land**

Nothing in this Act gives—

- (a) the holder of a licence, permit or other authority issued or given under a regulation; or
- (b) an Aborigine or Torres Strait Islander;

the right to enter any land for the purpose of taking wildlife without the land-holder's consent.

### **99        Offence to trespass—general**

(1) A person must not—

- (a) take wildlife on any land; or
- (b) enter or be on any land for the purpose of taking wildlife;

without the land-holder's consent.

Maximum penalty—165 penalty units.

(2) Subsection (1) does not apply to a conservation officer who—

- (a) has entered the land under part 9; and
- (b) exercises a power under the part.

### **100      Offence to trespass—land-holders' rights**

(1) This section applies to a person who a land-holder suspects on reasonable grounds—

- (a) is trespassing on the land-holder's land; and
- (b) is committing on the land, has committed on the land or is on the land for the purpose of committing, an offence against this Act.

(2) The land-holder may—

- (a) require the person to state—

- (i) the person's name and address; and
    - (ii) the person's purpose for being on the land; and
  - (b) if the person is on the land without lawful authority—require the person to leave the land immediately.
- (3) If—
- (a) the person fails to give—
    - (i) his or her name and address; or
    - (ii) the person's purpose for being on the land; if required to do so by the land-holder; or
  - (b) the person—
    - (i) is on the land without lawful authority; and
    - (ii) fails to leave the land immediately if required to do so by the land-holder;
- the person commits an offence against this Act.
- Maximum penalty—165 penalty units.
- (4) This section does not affect any other right or remedy that the land-holder may have against the trespasser.

## **Division 8                      Captive breeding agreements and captive breeding for conservation**

### **Subdivision 1              Preliminary**

#### **100A Main purpose of div 8 and its achievement**

- (1) The main purpose of this division is to facilitate the conservation of native wildlife in the wild through captive breeding programs and the introduction of captive-bred wildlife into the wild.
- (2) The purpose is achieved by—
  - (a) providing for agreements between the State and other entities about captive breeding; and

- (b) authorise the taking of protected wildlife in the wild for use in captive breeding programs.

## **Subdivision 2      Captive breeding agreements**

### **100B    Minister's power to enter into captive breeding agreement**

- (1) The Minister may, for the State, enter into an agreement (a *captive breeding agreement*) with someone else about captive breeding of protected wildlife to—
  - (a) reintroduce it into the wild, in the State or elsewhere; or
  - (b) otherwise ensure the survival in the wild of the protected wildlife or another species of wildlife.
- (2) However, the agreement may provide for the reintroduction of the protected wildlife only if the Minister is satisfied—
  - (a) suitable habitat exists, or will exist, for the wildlife at the place where it is to be released; and
  - (b) threatening processes for the wildlife or its habitat will be minimised at the place.
- (3) The agreement may be made even though no conservation plan or recovery plan has been made for the wildlife.
- (4) In this section—

*captive breeding*, of protected wildlife, means doing, in the State or elsewhere, any of the following for a purpose mentioned in subsection (1)—

  - (a) growing or propagating protected plants under controlled conditions;
  - (b) breeding, hand-rearing or incubating protected animals in captivity;
  - (c) removing eggs, sperm or other reproductive material from protected wildlife in captivity or the wild for embryo transfer, fertilisation, artificial insemination or incubation.

**protected wildlife** includes wildlife that, under a law of another State, is an equivalent (however called) of protected wildlife as defined under this Act.

**recovery plan**, for wildlife, is a document stating what research and management is necessary to stop the decline, support the recovery, or enhance the chance of long-term survival in the wild, of the wildlife.

*Example—*

a recovery plan made or adopted under the *Environment Protection and Biodiversity Act 1999* (Cwlth), section 269A<sup>17</sup>

**reproductive material**, of protected wildlife, means any part of the wildlife that is capable of, or contributes to, asexual or sexual reproduction.

*Examples of reproductive material of a plant—*

all or part of a bulb, rhizome, root, seed, stolon or tuber

## **100C Things a captive breeding agreement may provide for**

- (1) A captive breeding agreement may do any of the following in relation to protected wildlife to which the agreement applies—
  - (a) authorise, for this Act, a party to the agreement to—
    - (i) take the wildlife in a protected or other area; or
    - (ii) keep or use the wildlife;
  - (b) provide for the passing of property rights in relation to the wildlife to a party to the agreement.
- (2) However, the authorisation is subject to section 100E.
- (3) A captive breeding agreement may provide that wildlife that is the property of the State is, under the agreement, to pass to another party to the agreement.

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<sup>17</sup> *Environment Protection and Biodiversity Act 1999* (Cwlth), section 269A (Making or adopting a recovery plan)

**100D Required provisions for captive breeding agreement**

- (1) A captive breeding agreement must state or provide for each of the following—
  - (a) the species of wildlife to which the agreement applies;
  - (b) how many of the wildlife are to be taken in the wild, their sex and place of taking;
  - (c) whether the conservation value or a stated different amount must be paid for any of the wildlife that, under the agreement, is to be taken in the wild;
  - (d) arrangements to be made to distinguish the wildlife from others of the same species;
  - (e) the taking of tissue samples of the wildlife for genetic typing;
  - (f) where the wildlife are to be kept;
  - (g) requirements for keeping stud books and other records;
  - (h) arrangements to be made for releasing the wildlife or their descendants or to dispose of any of the wildlife that are no longer suitable for breeding or release;
  - (i) how the agreement may be enforced or terminated;
  - (j) any other matter prescribed under a regulation.
- (2) To remove any doubt, it is declared that subsection (1) does not limit section 100B(1).

**100E Restriction on the taking, under a captive breeding agreement, of wildlife in the wild**

A person who, under a captive breeding agreement, takes wildlife in the wild must carry a copy of the agreement while taking or moving the wildlife.<sup>18</sup>

Maximum penalty—50 penalty units.

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18 See also section 99 (Offence to trespass—general).

**100F Additional provisions for termination of captive breeding agreement**

- (1) The Minister may, by written notice to each other party to a captive breeding agreement, terminate the agreement if a party to the agreement is convicted of an offence against section 88, 88A or 89.<sup>19</sup>
- (2) A regulation may terminate a captive breeding agreement.
- (3) This section—
  - (a) applies despite any provision of a captive breeding agreement; and
  - (b) does not limit the ways in which a captive breeding agreement may be terminated.

**100G Obligation to surrender protected wildlife on termination of captive breeding agreement**

- (1) If a captive breeding agreement is terminated, the chief executive may give a written notice to any person who is, or who appears to be, in charge of protected wildlife that, under the agreement, is the property of the State, to surrender the wildlife to the State.
- (2) The notice may be given even if the wildlife is being kept or used at a place outside the State.
- (3) The person must comply with the notice.  
Maximum penalty—1000 penalty units.
- (4) This section does not limit—
  - (a) section 88, 88A or 89; or
  - (b) the State's property in the wildlife; or
  - (c) a conservation officer's powers in relation to the wildlife.

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<sup>19</sup> Section 88 (Restrictions on taking protected animal and keeping or use of unlawfully taken protected animal), 88A (Restriction on keeping or use of lawfully taken protected animal) or 89 (Restriction on taking etc. particular protected plants)

### **Subdivision 3 Chief executive's power for captive breeding**

#### **100H Powers**

The chief executive may take, keep or use protected wildlife for captive breeding or to give effect to a captive breeding agreement.

## **Part 6 Interim conservation orders**

### **101 Definitions**

In this part—

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

*protected area* includes the Wet Tropics Area within the meaning of the *Wet Tropics World Heritage Protection and Management Act 1993*.

### **102 Issue of order**

If the Minister is of the opinion that—

- (a) threatened, rare or near threatened wildlife; or
- (b) a protected wildlife habitat that is, in the Minister's opinion, a critical habitat; or
- (c) an area of major interest; or
- (d) a protected area;

is subject to a threatening process that is likely to have significant detrimental effect on the wildlife, habitat or area, the Minister may make an interim conservation order for the conservation, protection or management of the wildlife, habitat or area.

**103 Effect of order**

- (1) An interim conservation order may provide for—
  - (a) the prohibition or control of a specified threatening process; or
  - (b) such other matters as are prescribed.
- (2) An order may be made in relation to land even though—
  - (a) the wildlife or habitat is not within the land; or
  - (b) the land is not within an area of major interest or protected area.

**104 Notice of order**

- (1) On the day an interim conservation order is made, the Minister must give or send written notice to—
  - (a) all land-holders of land to which the order relates; and
  - (b) the local government for the area in which the land is situated;

that the order has been made and of the terms of the order.
- (2) It is sufficient compliance with subsection (1)(a) in relation to a land-holder if the Minister gives notice of the order to the land-holder by displaying the notice in a prominent place on the land.

**105 Duration of order**

- (1) An interim conservation order has effect from the time it is made and continues in force for not more than 60 days.
- (2) The Governor in Council may, by gazette notice, extend the order by not more than 90 days.

**106 Orders prevail over planning schemes**

If there is any conflict between an interim conservation order and a planning scheme, the order prevails over the planning scheme.



**107 Suspension of licences etc.**

- (1) If a licence, permit or other authority issued or given under any Act permits the holder to do an act that would contravene an interim conservation order, the Minister may, by order, suspend the operation of the authority to the extent that it permits the doing of the act.
- (2) The Minister must give written notice of the order to the authority holder.
- (3) If the Minister considers that it is impracticable to give notice to each holder of a particular class of authority, it is sufficient compliance with subsection (2) if the Minister gives notice of the order to the authority holders by publishing a notice in such newspapers as the Minister determines.
- (4) The suspension—
  - (a) takes effect from—
    - (i) if notice is given under subsection (2)—the day the notice is received by the holder; or
    - (ii) if notice is given under subsection (3)—the day the notice is first published in a newspaper; or
    - (iii) if a later day is specified in the notice—the later day; and
  - (b) ends—
    - (i) when the interim conservation order ends; or
    - (ii) if an earlier day is specified in the notice—the earlier day.
- (5) This section applies despite any other Act.

**108 Compensation**

- (1) A land-holder of land subject to an interim conservation order is entitled to be paid by the State such reasonable compensation because of the making of the order as is agreed between the State and the land-holder or, failing agreement, as is determined by the Land Court.
- (2) 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 making of the order or the longer period the chief executive or the Land Court in special circumstances allows.

### **109 Compliance with order**

A person must not contravene an interim conservation order.

Maximum penalty—3000 penalty units or 2 years imprisonment.

## **Part 7 Management and conservation plans**

### **110 Meaning of *land-holder* in part**

In this part—

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

### **111 Management plans**

- (1) The Minister must, as soon as practicable after—
  - (a) the dedication of—
    - (i) a national park (scientific); or
    - (ii) a national park; or
    - (iii) a national park (recovery); or
    - (iv) a conservation park; or
    - (v) a resources reserve; or
  - (b) the declaration of—
    - (i) a nature refuge, under section 49;<sup>20</sup> or

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<sup>20</sup> Section 49 (Compulsory declaration of nature refuge)

- (ii) a coordinated conservation area; or
- (iii) a wilderness area;

prepare a management plan for the area.

- (2) Subsection (1) does not apply if—
  - (a) the dedication or declaration is a dedication or declaration of a change in the class of a protected area; and
  - (b) the regulation dedicating or declaring the area declares that the management plan for the area continues to apply.
- (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 64; 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.
- (7) The Minister may after the declaration of a nature refuge, other than under section 49, prepare a management plan for the area of the refuge if the land-holder of the area agrees.

## **112 Conservation plans**

- (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.
- (2) If a person applies for a licence, permit or other authority under a regulation to—
  - (a) take or use protected wildlife; or
  - (b) release international or prohibited wildlife into the wild; or
  - (c) introduce international or prohibited wildlife into the State;

the Minister may, before the authority is given—

- (d) require the person, at the person's cost, to prepare a draft conservation plan; or
  - (e) prepare a draft conservation plan;for the taking, use, release or introduction of the wildlife.
- (3) The procedures applying to the preparation and approval of plans under this part (other than sections 113 and 114) apply to a draft conservation plan prepared under subsection (2).
- (4) The Minister may require the person to pay—
  - (a) if subsection (2)(d) applies—the reasonable costs incurred by the Minister in relation to the preparation and approval of a final conservation plan; or

- (b) if subsection (2)(e) applies—the reasonable costs incurred by the Minister in relation to—
  - (i) the preparation of the draft and final conservation plans; and
  - (ii) the approval of the final conservation plan.
- (5) A conservation plan may make provision about the following matters—
  - (a) 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;
  - (b) the use or development of land, and activities, in an area identified under the plan as, or including, a critical habitat or an area of major interest.

### **113 Notice of proposal to prepare draft plan**

- (1) The Minister must give public notice that the Minister proposes to prepare a draft management or conservation plan (other than a plan for a nature refuge that is subject to a conservation agreement).
- (2) The notice must—
  - (a) be published in such newspapers as the Minister determines; and
  - (b) specify the protected area, area of major interest, wildlife or native wildlife habitat concerned; and
  - (c) invite submissions from land-holders, local governments, interested groups and persons, including Aborigines and Torres Strait Islanders and members of the public; and
  - (d) specify a day by which submissions may be made to the Minister.

**114 Preparation of draft plan**

When preparing a draft management or conservation plan, the Minister must consider all submissions properly made to the Minister.

**115 Notice of preparation of draft plan**

- (1) The Minister must give public notice when a draft management or conservation plan has been prepared (other than a plan for a nature refuge that is subject to a conservation agreement).
- (2) The notice must—
  - (a) be published in such newspapers as the Minister determines; and
  - (b) specify the protected area, area of major interest, wildlife or native wildlife habitat concerned; and
  - (c) specify the addresses at which copies of the draft plan may be inspected and, on payment of the appropriate fee, purchased; and
  - (d) invite submissions from land-holders, local governments, interested groups and persons, including Aborigines and Torres Strait Islanders and members of the public; and
  - (e) specify a day by which submissions may be made to the Minister.
- (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.

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

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

**117 Final management plans**

- (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.
- (1A) A final management plan for a protected area may be inconsistent with a wild river declaration that applies to a part or all of the protected area only to the extent the management plan provides for a greater level of protection for the area than is provided for in the declaration.
- (2) A final management plan for a protected area may divide the area into management zones.

**118 Final conservation plans**

- (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.

**119 Approval of final plan**

- (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.
- (3) The chief executive must keep the approved plan open for inspection by members of the public during office hours on business days at—
  - (a) the department's head office; and
  - (b) each regional office of the department; and
  - (c) such other places as the chief executive considers appropriate.

**120 Implementation of approved plan**

- (1) On approval of a management plan for a protected area—
  - (a) if the area is a national park (Aboriginal land) or national park (Torres Strait Islander land)—the board of management for the area; or
  - (b) if the area is under the control of trustees—the trustees; or
  - (c) if paragraphs (a) and (b) do not apply—the chief executive;must give effect to the plan.
- (2) On approval of a conservation plan for wildlife, native wildlife habitat or area of major interest, the chief executive must give effect to the plan.

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

- (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.

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

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.

**123 Local governments' decisions to be consistent with plans**

- (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 use of, or a development on, the land that is inconsistent with the regulation or plan.

## **124 Amendment of plans**

- (1) The Governor in Council may amend a management or conservation plan by a subsequent management or conservation plan only if the procedures applying to the preparation and approval of plans under this part (other than sections 113 and 114) are followed.
- (2) However, subsection (1) does not apply to the amendment of a management or conservation plan to—
  - (a) correct an error in the plan; or
  - (b) make a change (other than a change of substance) in the plan; or
  - (c) if the plan or a regulation provides that an amendment of a stated type may be made to the plan by amendment under this subsection—make an amendment of that type.

## **125 Review of plans**

- (1) The Minister must review the operation of each management and conservation plan not later than 10 years after its approval.
- (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.

## **126 Compensation**

- (1) This section applies if—

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- (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.

## **Part 8 Administration**

### **127 Appointment of conservation officers**

(1) The Minister may—

- (a) appoint an employee of the department; or
- (b) appoint an officer of the public service; or
- (c) appoint a police officer;<sup>21</sup> or
- (d) with the person's consent, appoint another person; to be a conservation officer.

(2) The Minister may appoint a conservation officer, who has satisfactorily completed a course of training approved by the Minister, to be a special conservation officer.

(3) An appointment under subsection (1) or (2) must be in, or evidenced by, writing signed by the Minister.

(4) A conservation officer appointed under subsection (1)(a) or (b) holds office subject to the conditions specified in the instrument of appointment.

(5) A conservation officer appointed under subsection (1)(d)—

- (a) holds office for the term, and subject to the conditions, specified in the instrument of appointment; and
- (b) may resign office by writing signed and given to the Minister.

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<sup>21</sup> A proposed appointment must have the approval of the commissioner of the police service under the *Police Powers and Responsibilities Act 2000*, section 12.

**128 Appointment of honorary protectors**

- (1) The Minister may, by signed writing, appoint a qualified person, with the person's consent, to be an honorary protector.
- (2) An honorary protector—
  - (a) holds office for the term, and subject to the conditions, specified in the instrument of appointment; and
  - (b) has the powers of a conservation officer under section 151 and such other powers as may be prescribed; and
  - (c) may resign by writing signed and given to the Minister.
- (3) In this section—

***qualified person*** means a person who—

  - (a) in the Minister's opinion, has the necessary expertise or experience to be an honorary protector; or
  - (b) has satisfactorily completed a course of training approved by the Minister.

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

- (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 the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6.

**130 Identity cards**

- (1) The Minister must issue an identity card to—
  - (a) each conservation officer, other than a police officer or an officer of a prescribed class; and
  - (b) each honorary protector.
- (2) The identity card must—

- (a) contain a recent photograph of the conservation officer or honorary protector; and
  - (b) be in a form approved, in writing, by the Minister; and
  - (c) in the case of a conservation officer who is a special conservation officer—state that the officer is a special conservation officer; and
  - (d) be signed by the conservation officer or honorary protector.
- (3) A person who ceases to be a conservation officer or honorary protector must, as soon as practicable, return his or her card to the Minister.

Maximum penalty for subsection (3)—50 penalty units.

### **131 Proof of authority**

A conservation officer (other than an officer who is in uniform) or an honorary protector must not exercise any power under this Act in relation to a person unless the conservation officer or honorary protector first produces his or her identity card for inspection by the person.

### **132 Advisory committees**

- (1) The Minister may establish as many advisory committees as the Minister considers appropriate for the purposes of the administration of this Act, including, for example—
- (a) scientific advisory committees; and
  - (b) wilderness area advisory committees; and
  - (c) protected area management advisory committees; and
  - (d) wildlife management advisory committees.
- (2) An advisory committee is to have the functions that the Minister specifies, including, for example, the function of advising the Minister on—
- (a) the management intent of, and the identification of areas that are suitable for declaration as, wilderness areas; and

- (b) the identification, classification and management of protected areas; and
  - (c) the classification of wildlife; and
  - (d) the suitability of management and conservation plans.
- (3) A member of an advisory committee may be paid such fees and allowances as are approved by the Governor in Council.

### **133 Chief executive to keep register**

- (1) The chief executive must keep a register of—
- (a) leases granted under sections 34 to 37; and
  - (b) conservation agreements; and
  - (c) management and conservation plans; and
  - (d) critical habitats; and
  - (e) areas of major interest; and
  - (f) captive breeding agreements that are in force; and
  - (g) interim conservation orders; and
  - (h) conservation officers; and
  - (i) honorary protectors.
- (2) Subject to subsection (3), the chief executive must—
- (a) keep the registers open for inspection by members of the public during office hours on business days at—
    - (i) the department's head office; and
    - (ii) such other places as the chief executive considers appropriate; and
  - (b) on payment of the prescribed fee by a person—
    - (i) permit the person to take extracts from a register; or
    - (ii) give the person a copy of a part of a register.
- (3) A person must not be given information that is declared under section 136 to be confidential information.

**134 Records to be maintained by registrar**

- (1) The chief executive must, within 14 days after—
- (a) a registrable conservation agreement is entered into; or
  - (b) a nature refuge is declared under section 49; or
  - (c) a regulation giving effect to a management plan for a World Heritage management area or international agreement area commences; or
  - (d) an area is identified under a conservation plan as, or including—
    - (i) a critical habitat; or
    - (ii) an area of major interest;

give written notice to the registrar that the agreement has been entered into, the declaration made, the regulation has commenced or the plan approved, in relation to specified private land.

- (2) The registrar must maintain records that—
- (a) show that the land specified in the notice is—
    - (i) the subject of a registrable conservation agreement; or
    - (ii) subject to a conservation covenant; or
    - (iii) the subject of a management plan and the regulation giving effect to it; or
    - (iv) the subject of a conservation plan; and
  - (b) state the places where—
    - (i) particulars of the agreement; or
    - (ii) particulars of the conservation covenant applying to the declaration; or
    - (iii) the management plan for the area and regulation;  
or
    - (iv) the conservation plan for the area;

may be inspected.

- (3) The registrar must maintain the records in such a way that a search of the register maintained by the registrar under any Act relating to the land will show the existence of—
- (a) the registrable conservation agreement; or
  - (b) the conservation covenant; or
  - (c) the management plan and regulation; or
  - (d) the conservation plan.
- (4) The chief executive must, within 14 days after—
- (a) a registrable conservation agreement is terminated; or
  - (b) the declaration of a protected area is revoked; or
  - (c) a regulation giving effect to a management plan is repealed; or
  - (d) a conservation plan is revoked; or
  - (e) an area is removed from the operation of the conservation plan;
- give written notice to the registrar of the termination, revocation, repeal or removal.
- (5) The registrar must, on receipt of a notice under subsection (4), remove the particulars of the land from the registrar's records.
- (6) In this section—

*private land* means land other than State land.

*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.

### **135 Chief executive may inquire into applications**

- (1) The chief executive may, in relation to—
- (a) an application for, or for the renewal of, a lease, agreement, licence, permit or other authority; or



- (b) an application for the consent of the Minister to, or to the renewal of, a lease, agreement, licence, permit or other authority;

inquire into—

- (c) if the applicant is an individual—the fame, character and suitability of the applicant; or
  - (d) if the applicant is a corporation—the fame, character and suitability of each executive officer of the corporation.
- (2) The chief executive may obtain—
    - (a) a report from the commissioner of the police service in respect of the criminal history of the applicant and, if the applicant is a corporation, in respect of each executive officer of the corporation; and
    - (b) if the applicant, or an executive officer of a corporation that is an applicant, holds or previously held in another State a relevant lease, licence, permit or other authority—a report from the appropriate authority in the State.
  - (3) A report under subsection (2)(a) must include reference to or disclosure of convictions mentioned in of the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6.
  - (4) In this section—

***applicant***, in relation to an expression of interest, means the person who has submitted to the chief executive the expression of interest.

***application***, for a lease, agreement, licence permit or other authority, includes an expression of interest for the lease, agreement, licence, permit or other authority.

## 136 Confidentiality of information

- (1) The chief executive may declare information acquired in the administration of this Act to be confidential information if the chief executive is of the opinion that disclosure of the information may result in an unreasonable level of risk to the wellbeing of a cultural or natural resource or critical habitat.

- (2) If, while performing duties under, or in relation to, this Act, a person gets—
- (a) confidential information; or
  - (b) information obtained under section 129 or 135;
- the person must not, whether directly or indirectly, disclose or make use of the information except to the extent necessary to perform the person's duties under or in relation to this Act.
- Maximum penalty—165 penalty units.
- (3) In this section—
- this Act* includes the Acts repealed by this Act.

**137 Licences to be consistent with management principles, and management intent or plan**

- (1) A licence, permit or other authority issued or given under a regulation or another Act to take, use, keep or interfere with a cultural or natural resource of a protected area must be consistent with—
- (a) the management principles for the area; and
  - (b) the interim or declared management intent, or management plan, for the area.
- (2) A licence, permit or other authority issued or given under a regulation to—
- (a) take, use or keep protected wildlife; or
  - (b) abandon, release, keep, use or introduce international or prohibited wildlife;
- must be consistent with—
- (c) the management principles for the wildlife; and
  - (d) the declared management intent, or conservation plan, applicable to the wildlife.

**138 Compensation not payable**

- (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.

### **139 Annual report**

- (1) The chief executive must, within 4 months after the end of each financial year, give to the Minister a report on the administration of this Act during the year.
- (2) The Minister must lay a copy of the report before the Legislative Assembly within 14 sitting days after its receipt by the Minister.

### **140 Delegation by Minister**

The Minister may delegate to an officer of the public service powers under this Act (other than sections 102 and 107).

### **141 Delegation by chief executive**

- (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

- section 35
- section 36
- section 37
- section 38
- section 136.

## **142 Protection from liability**

- (1) This section applies to—
  - (a) the Minister or chief executive; and
  - (b) a conservation officer; and
  - (c) a person acting under the direction of a person mentioned in paragraph (a) or (b).
- (2) A person to whom this section applies does not incur civil liability for an act or omission done or omitted to be done honestly and without negligence under, or for the purposes of, this Act.
- (3) A liability that would, but for this section, attach to a person to whom this section applies attaches instead to the State.

## **143 Immunity from prosecution**

- (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.

## **Part 9 Investigation and enforcement**

### **144 Power to stop and search vehicles etc.**

- (1) This section applies if a conservation officer suspects on reasonable grounds that—
  - (a) a vehicle, boat or aircraft is being, or has been, used in the commission of an offence against this Act; or
  - (b) a vehicle, boat or aircraft, or anything on or in, a vehicle, boat or aircraft may afford evidence of the commission of an offence against this Act.
- (2) The conservation officer may, with such assistance and by such force as is necessary and reasonable—
  - (a) enter or board the vehicle, boat or aircraft; and
  - (b) exercise the powers set out in section 147.
- (3) If—
  - (a) the vehicle or boat is moving or about to move; or
  - (b) the aircraft is moving, or about to move, on the ground;the conservation officer may signal the driver or the person in command or control, or who appears to be in command or control, of the vehicle, boat or aircraft, to stop or not to move the vehicle, boat or aircraft.
- (4) A person must not, without reasonable excuse, disobey a signal under subsection (3).

Maximum penalty—165 penalty units or 1 year's imprisonment.
- (5) It is a reasonable excuse for the person to fail to stop or to move the vehicle, boat or aircraft if—
  - (a) to immediately obey the signal would have endangered the person or another person; and
  - (b) the person obeys the signal as soon as it is practicable to obey the signal.
- (6) The conservation officer may require the driver or the person in command or control, or who appears to be in command or control, of the vehicle, boat or aircraft—

- (a) to provide such reasonable assistance as the officer requires to enable the vehicle, boat or aircraft to be entered or boarded under subsection (2); or
  - (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.
- (7) A person must not, without reasonable excuse, contravene a requirement under subsection (6).
- Maximum penalty—165 penalty units or 1 year's imprisonment.
- (8) If, while searching the vehicle, boat or aircraft, the conservation officer finds a thing that the officer believes, on reasonable grounds, will afford evidence of the commission of an offence against this Act, section 146(2)(a) to (c) apply to the thing.
- (9) If, after searching the vehicle, boat or aircraft, the conservation officer believes on reasonable grounds that the vehicle, boat or aircraft will afford evidence of the commission of an offence against this Act, section 146(2)(a) and (b) apply to the vehicle, boat or aircraft.

#### **145 Entry and search—monitoring compliance**

- (1) Subject to subsection (2), a conservation officer may, for the purpose of finding out whether this Act is being complied with—
- (a) enter any place at any reasonable time of the day or night; and
  - (b) exercise the powers set out in section 147.
- (2) The conservation officer must not enter a place, or exercise a power under subsection (1), unless—
- (a) the occupier of the place consents to the entry or exercise of the power; or
  - (b) a warrant under section 148 authorises the entry or exercise of the power; or

- (c) the place is a place to which the public are admitted (whether or not for consideration) and the entry is made when members of the public attend or the premises are open for admission by the public; or
  - (d) the place is premises, or the part of premises, that—
    - (i) are licensed under a regulation and the entry is made when the premises are open for conduct of business or otherwise open for entry; and
    - (ii) are not used exclusively for residential purposes.
- (3) In this section—  
*place* does not include a vehicle, boat or aircraft.

#### **146 Entry and search—evidence of offences**

- (1) Subject to subsection (3), if a conservation officer has reasonable grounds for suspecting that there is in a place a particular thing (*the evidence*) that may afford evidence of the commission of an offence against this Act, the officer may—
  - (a) enter the place; and
  - (b) exercise the powers set out in section 147.
- (2) If the conservation officer enters the place and finds the evidence, the following provisions have effect—
  - (a) the officer may seize the evidence;
  - (b) the officer may keep the evidence for 6 months or, if a prosecution for an offence against this Act in the commission of which the evidence may have been used or otherwise involved is instituted within that period, until the completion of the proceeding for the offence and any appeal in relation to the proceeding;
  - (c) if the evidence is a document—while the officer has possession of the document, the officer may take extracts from and make copies of the document, but must allow the document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the officer's possession.

- (3) A conservation officer must not enter the place or exercise a power under subsection (1) unless—
- (a) the occupier of the place consents to the entry or exercise of the power; or
  - (b) a warrant under section 149 that was issued in relation to the evidence authorises the entry or exercise of the power.
- (4) If, while searching the place under subsection (1) under a warrant under section 149—
- (a) a conservation officer finds a thing that the officer believes, on reasonable grounds, to be—
    - (i) a thing (other than the evidence) that will afford evidence of the commission of the offence mentioned in subsection (1); or
    - (ii) a thing that will afford evidence of the commission of another offence against this Act; and
  - (b) the officer believes, on reasonable grounds, that it is necessary to seize the thing to prevent—
    - (i) its concealment, loss or destruction; or
    - (ii) its use in committing, continuing or repeating the offence mentioned in subsection (1) or the other offence, as the case may be;
- subsection (2) applies to the thing as if it were the evidence.
- (5) In this section—
- place* does not include a vehicle, boat or aircraft.

### **147 General powers of conservation officer in relation to places**

- (1) A conservation officer who enters or boards a place under this part may exercise any of the following powers—
- (a) search any part of the place;
  - (b) inspect, examine, photograph or film anything in or on the place;



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- (c) take extracts from, and make copies of, any documents in or on the place;
  - (d) take into or onto the place such persons, equipment and materials as the conservation officer reasonably requires for the purpose of exercising any powers in relation to the place;
  - (e) require the occupier or any person in or on the place to give to the conservation officer reasonable assistance in relation to the exercise of the powers mentioned in paragraphs (a) to (d);
  - (f) the powers mentioned in the following provisions—
    - (i) section 151;
    - (ii) section 152;
    - (iii) section 154(1)(b) to (e).
- (2) A person must not, without reasonable excuse, fail to comply with a requirement made under subsection (1)(e).  
Maximum penalty—50 penalty units.
- (3) It is a reasonable excuse for a person to fail to answer a question or produce a document (other than a document required to be kept by the person under a regulation) if answering the question, or producing the document, might tend to incriminate the person.
- (4) A conservation officer who seizes or damages anything under this part must, as soon as it is reasonably practicable after seizing or damaging the thing, give written notice of particulars of the thing or damage.
- (5) The notice must be given to—
- (a) if anything is seized—the person from whom the thing was seized; or
  - (b) if damage was caused to anything—the person who appears to the conservation officer to be the owner of the thing.
- (6) This section does not limit any power that a conservation officer has apart from this section.

**148 Monitoring warrants**

- (1) A conservation officer may apply to a magistrate for a warrant under this section in relation to a particular place (other than premises, or the part of premises, used exclusively for residential purposes).
- (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that it is reasonably necessary that the conservation officer should have access to the place for the purpose of finding out whether this Act is being complied with.
- (3) If the magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the magistrate must not issue the warrant unless the conservation officer or some other person has given the information to the magistrate in the form (either orally or by affidavit) that the magistrate requires.
- (4) The warrant must—
  - (a) authorise the conservation officer, with such assistance and by such force as is necessary and reasonable—
    - (i) to enter the place; and
    - (ii) to exercise the powers set out in section 147(1)(a) to (e); and
  - (b) state whether the entry is authorised to be made at any reasonable time of the day or night or only during specified reasonable hours of the day or night; and
  - (c) specify the day (not more than 14 days after the issue of the warrant) on which the warrant ceases to have effect; and
  - (d) state the purpose for which the warrant is issued.

**149 Offence related warrants**

- (1) A conservation officer may apply to a magistrate for a warrant under this section in relation to a particular place.
- (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is,

or there may be within the next 7 days, in or on the place a particular thing (*the evidence*) that may afford evidence of the commission of an offence against this Act.

- (3) If the magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the magistrate must not issue the warrant unless the conservation officer or another person has given the information to the magistrate in the form (either orally or by affidavit) that the magistrate requires.
- (4) The warrant must—
  - (a) authorise the conservation officer, with such assistance and by such force as is necessary and reasonable—
    - (i) to enter the place; and
    - (ii) to exercise the powers set out in section 147(1)(a) to (e); and
    - (iii) to seize the evidence; and
  - (b) state whether the entry is authorised to be made at any time of the day or night or only during specified hours of the day or night; and
  - (c) specify the day (not more than 14 days after the issue of the warrant) on which the warrant ceases to have effect; and
  - (d) state the purpose for which the warrant is issued.

**150 Warrants may be granted by telephone, facsimile, radio etc.**

- (1) If a conservation officer considers it necessary to do so because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the officer's remote location;

the officer may, under this section, apply by telephone, facsimile, radio or another form of communication for a warrant under section 148 or 149.

- (2) Before applying for the warrant, the conservation officer must prepare an information of the kind mentioned in section 148(2) or 149(2) that sets out the grounds on which the issue of the warrant is sought.
- (3) If it is necessary to do so, a conservation officer may apply for the warrant before the information has been sworn.
- (4) If the magistrate is satisfied—
  - (a) after having considered the terms of the information; and
  - (b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;

that there are reasonable grounds for issuing the warrant, the magistrate may, under section 148 or 149, complete and sign the warrant that the magistrate would issue under the section if the application had been made under the section.

- (5) If the magistrate completes and signs the warrant, the magistrate must immediately send a copy of the warrant to the conservation officer by facsimile or, if it is not reasonably practicable to do so—
  - (a) the magistrate must—
    - (i) tell the officer what the terms of the warrant are; and
    - (ii) tell the officer the day and time when the warrant was signed; and
    - (iii) record on the warrant the reasons for granting the warrant; and
  - (b) the officer must—
    - (i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and
    - (ii) write on the form of warrant the name of the magistrate and the day and time when the magistrate signed the warrant.

- (6) The conservation officer must also—

- (a) not later than the day after the day of expiry or execution of the warrant (whichever is the earlier); or
  - (b) if it is not practicable to comply with paragraph (a)—as soon as practicable after the day mentioned in the paragraph;
- send to the magistrate—
- (c) the information mentioned in subsection (2), which must have been properly sworn; and
  - (d) if a form of warrant was completed by the conservation officer under subsection (5)(b)—the completed form of warrant.
- (7) When the magistrate receives the documents mentioned in subsection (6), the magistrate must—
- (a) attach them to the warrant that the magistrate completed and signed; and
  - (b) deal with them in the way in which the magistrate would have dealt with the information if the application for the warrant had been made under section 148 or 149.
- (8) A facsimile copy of a warrant, or a form of warrant properly completed by the conservation officer under subsection (5)(b), is authority for any entry, search, seizure or other exercise of a power that the warrant signed by the magistrate authorises.
- (9) If—
- (a) it is material for a court to be satisfied that an entry, search, seizure or other exercise of power was authorised by this section; and
  - (b) the warrant completed and signed by the magistrate authorising the exercise of power is not produced in evidence;

the court must assume, unless the contrary is proved, that the exercise of power was not authorised by such a warrant.

## **151 Conservation officer may require name and address**

- (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.

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

- (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.

### **152A General powers for seized things**

- (1) Having, under this part, seized a thing, a conservation officer may do 1 or more of the following—
  - (a) move it from the place where it was seized (the *place of seizure*);
  - (b) leave it at the place of seizure, but take reasonable action to restrict access to it;

*Examples of restricting access to a thing—*

- 1 brand, mark, seal, tag or otherwise identify it to show access to it is restricted
  - 2 sealing the entrance to a room where the thing is situated and marking it to show access to it is restricted
- (c) for equipment—make it inoperable;

*Example of making equipment inoperable—*

- dismantling equipment or removing a component of equipment without which the equipment is not capable of being used
- (d) for wildlife, 1 or more of the following as is appropriate to ensure its survival—
    - (i) take it to a place the conservation officer considers appropriate;

- (ii) give it accommodation, food, rest, water or other appropriate living conditions;
  - (iii) if the conservation officer reasonably believes it requires veterinary or other treatment—arrange for the treatment;
  - (iv) leave it at the place of seizure and take any action mentioned in subparagraphs (i) to (iii);
  - (v) if it is left at the place of seizure—give the person from whom it was seized a direction to look after, or continue to look after, the wildlife;
  - (vi) if the wildlife is left at the place of seizure and the person from whom it was seized does not comply with a direction under subparagraph (v)—take any action mentioned in subparagraphs (i) to (iii);
- (2) If—
- (a) the seized thing is an animal left at the place of seizure; and
  - (b) the person from whom it was seized is given a direction under subsection (1)(d)(v);

for the *Animal Care and Protection Act 2001*, the person is taken to be, or continue to be, the person in charge of the animal.

### **152B Offence to tamper with seized thing**

- (1) This section applies in relation to a thing seized under this part.
- (2) However, this section does not apply to a person from whom an animal was seized if the person—
  - (a) is complying with a direction under section 152A(1)(d)(v); and
  - (b) does not, without the written authority of a conservation officer, take the animal from the place where it was seized.
- (3) A person, other than a conservation officer or a person authorised by a conservation officer for the purpose, must not



do, or attempt to do, any of the following unless the person has a reasonable excuse—

- (a) tamper with the thing or something done under section 152A(1)(b) to restrict access to it;
- (b) enter, or be at, the place where the thing is being kept;
- (c) move the thing from the place where it is being kept;
- (d) have the thing in the person's possession.

Maximum penalty—500 penalty units.

### **153 Power to keep protected wildlife until conservation value is paid**

- (1) If a conservation officer, under this Act, seizes protected wildlife for which an amount of conservation value remains unpaid, the officer may keep the wildlife until the conservation value for the wildlife is paid.
- (2) If the amount is not paid within 30 days after the seizure, the wildlife may be disposed of in such way as the chief executive directs.
- (3) The seizure and keeping of wildlife does not affect any proceeding under this Act for the recovery of an amount of conservation value for the wildlife or an offence in relation to the nonpayment of the amount.

### **154 Other powers of conservation officers**

- (1) Subject to subsections (2) to (5), a conservation officer may, for the purposes of this Act, exercise any of the following powers—
  - (a) enter any land at any reasonable time for the purpose of—
    - (i) inspecting, researching or reporting on protected, international or prohibited wildlife, critical habitats or areas of major interest; or
    - (ii) inspecting an area to ascertain—
      - (A) its suitability for dedication or declaration as a protected area; or

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- (B) whether a conservation agreement should be entered into in relation to the area;
  - (b) require a person to produce to the officer—
    - (i) any licence, permit or other authority held by the person under a regulation; or
    - (ii) any document required to be kept by the person under a regulation;
  - (c) inspect, take extracts from, make copies of or keep a document produced to the officer under paragraph (b);
  - (d) if the officer is a special conservation officer—
    - (i) arrest a person found by the officer committing an offence against this Act; or
    - (ii) arrest a person whom the officer suspects on reasonable grounds of having committed an offence against this Act;

if the officer believes on reasonable grounds that proceedings by way of complaint and summons against the person would be ineffective;
  - (e) such other powers as are prescribed.
- (2) Before exercising the power mentioned in subsection (1)(a), a conservation officer must—
- (a) obtain or, in urgent circumstances, take all reasonable steps to obtain, the consent of the land-holder concerned; or
  - (b) give at least 14 days written notice to the land-holder concerned of—
    - (i) the officer's intention to enter the land; and
    - (ii) the proposed purpose in entering the land; and
    - (iii) the day and time when the officer proposes to enter the land.
- (3) In exercising the power mentioned in subsection (1)(a), a conservation officer must take all reasonable steps to ensure that the officer causes as little inconvenience, and does as little damage, as is practicable.

- (4) A conservation officer may keep a document under subsection (1)(c) only for the purpose of taking copies of the document and must, as soon as practicable after taking the copies, return the document to the person who produced it.
- (5) If a special conservation officer arrests a person under subsection (1)(d), the officer must, as soon as it is reasonably practicable to do so, deliver the person into the custody of a police officer at the nearest accessible police station or watch-house to be dealt with according to law.

### **155 Obstruction of conservation officers**

- (1) A person must not obstruct a conservation officer in the exercise of a power under this Act.
- (2) A person is taken to obstruct a conservation officer in the exercise of a power under this Act if the person—
  - (a) assaults, abuses, hinders, resists or intimidates the officer or a person assisting the officer in the exercise of the officer's powers under this Act; or
  - (b) deliberately prevents or attempts to prevent (whether directly or indirectly) a person from—
    - (i) being questioned by a conservation officer; or
    - (ii) giving, under this Act, any information or document to a conservation officer; or
  - (c) in any other way obstructs, or attempts to obstruct, a conservation officer in the exercise of the officer's powers under this Act.

Maximum penalty—165 penalty units or 1 year's imprisonment.

### **156 Court may order compensation**

- (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.

### **157 False or misleading information**

- (1) A person must not—
  - (a) make a statement to a conservation officer that the person knows is false or misleading in a material particular; or
  - (b) omit from a statement made to a conservation officer anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) A complaint against a person for an offence against subsection (1)(a) or (b) is sufficient if it states that the information given was false or misleading to the person's knowledge.

### **158 False or misleading documents**

A person must not give to a conservation officer a document containing information that the person knows is false, misleading or incomplete in a material particular without—

- (a) indicating to the officer that the document is false, misleading or incomplete and the respect in which the document is false, misleading or incomplete; and
- (b) giving the correct information to the officer if the person has, or can reasonably obtain, the correct information.

Maximum penalty—100 penalty units.

**159 Impersonation of conservation officer**

A person must not pretend to be a conservation officer.

Maximum penalty—50 penalty units.

**Part 10 Legal proceedings****Division 1 Proceedings and offences generally****160 Evidentiary provisions**

- (1) This section applies to any proceeding under or in relation to this Act.
- (2) It is not necessary to prove the appointment of a conservation officer or the authority of a conservation officer to do any act under this Act.
- (3) A signature purporting to be that of the chief executive or a conservation officer is evidence of the signature it purports to be.
- (4) A certificate purporting to be signed by the chief executive stating that—
  - (a) a stated document is a copy of a notice, order, licence, permit or other authority issued or given under this Act; or
  - (b) on a stated day, or during a stated period, a stated person was or was not the holder of a licence, permit or other authority issued or given under this or another Act; or
  - (c) a licence, permit or other authority was or was not issued or given for a stated term, or was or was not subject to stated conditions; or
  - (d) on a day mentioned in the certificate, a stated person was given a notice under this Act; or
  - (e) a stated document is a copy of a part of a register kept under this Act; or

- (f) an amount payable under this Act has not been paid by a stated person;

is evidence of the matter stated in the certificate.

- (5) A statement in a complaint starting the proceeding of any of the following matters is evidence of the matters—

- (a) that the matter of the complaint came to the knowledge of the complainant on a stated day;
- (b) that stated wildlife is a stated class of wildlife under this Act;
- (c) that the whole or any part of—
- (i) the progeny, larvae, pupae, eggs or genetic or reproductive material of an animal; or
- (ii) the carcass or another part of an animal; or
- (iii) the flowers, seeds or genetic or reproductive material of a plant;

is, or is from, a stated taxon, species or class of wildlife;

- (d) that wildlife is or is not indigenous to Australia or indigenous to the State;
- (e) that the place where the offence was committed was in a stated protected area or in a stated zone in a stated protected area.
- (6) In a proceeding for an offence that an act or omission was committed in a protected area, it is not necessary to prove the particular protected area in which the offence was committed.
- (7) In this section—

*indigenous to the State* in relation to wildlife, means—

- (a) wildlife that was not originally introduced to the State by human intervention (other than wildlife introduced before the year 1600); or
- (b) a migratory animal that periodically or occasionally migrates to, or visits, the State;

but does not include wildlife that was introduced to another part of Australia by human intervention after the year 1600 and later spread naturally to the State.

**161 Conduct of executive officers, servants and agents**

- (1) If, in a proceeding for an offence against this Act, it is necessary to establish the state of mind of a corporation in relation to particular conduct, it is sufficient to show—
  - (a) that the conduct was engaged in by an executive officer, servant or agent of the corporation within the scope of his or her actual or apparent authority; and
  - (b) that the executive officer, servant or agent had the state of mind.
- (2) Any conduct engaged in on behalf of a corporation by an executive officer, servant or agent of the corporation within the scope of his or her actual or apparent authority is to be taken, in a proceeding for an offence against this Act, to have been engaged in also by the corporation unless the corporation establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.
- (3) If, in a proceeding for an offence against this Act, it is necessary to establish the state of mind of a person other than a corporation in relation to particular conduct, it is sufficient to show—
  - (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
  - (b) that the servant or agent had the state of mind.
- (4) Any conduct engaged in on behalf of a person other than a corporation by a servant or agent of the person within the scope of his or her actual or apparent authority is to be taken, in a proceeding for an offence against this Act, to have been engaged in also by the first person unless the first person establishes that the person took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) If—
  - (a) a person other than a corporation is convicted of an offence; and
  - (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for the offence.

(6) In this section—

*engaging* in conduct includes failing to engage in conduct.

*state of mind* of a person includes a reference to—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

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

- (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.

## **163 Offence committed over a period**

- (1) This section applies to the offence of taking—



- (a) a cultural or natural resource in contravention of section 62; or
  - (b) protected wildlife in contravention of section 88 or 89; or
  - (c) native wildlife in contravention of section 97.
- (2) If the day or days on which a person is alleged to have committed the offence can not be established, the person may—
- (a) be charged with 1 offence of taking the resource or wildlife over, or at some unknown time during, a specified period; and
  - (b) be convicted and punished accordingly.

#### **164 Indictable and summary offences**

- (1) An offence against this Act for which the maximum penalty of imprisonment is 2 years or more is an indictable offence, and is a misdemeanour.
- (2) Any other offence against this Act is a summary offence.
- (3) To remove any doubt, it is declared that a class 2, 3 or 4 offence under section 88 is a summary offence.

#### **165 Proceedings for indictable offences**

- (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 of imprisonment that may be summarily imposed for an indictable offence is 1 year's imprisonment.

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

- (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*.

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

- (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 163 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.

### **168 Court may order costs of rehabilitation or restoration**

On a conviction of a person for an offence against this Act, the court may order the person to pay to the State such amount as it considers appropriate for, or towards, the cost of rehabilitation or restoration of a critical habitat, cultural or natural resource or protected area.

### **169 Additional penalty—conservation value of protected wildlife**

A person who is convicted of an offence of taking—

- (a) a natural resource that is protected wildlife in contravention of section 62; or
- (b) protected wildlife in contravention of section 88 or 89;

is liable to an additional penalty of not more than twice the conservation value of the protected wildlife in relation to which the offence is committed.

### **171 Disposal of cultural or natural resources and protected wildlife owned by State**

- (1) This section applies to a cultural or natural resource or protected wildlife that—
  - (a) is the property of the State; and

- (b) has been seized under this Act in relation to an offence against this Act.
- (2) Despite any other provision of this Act, if the chief executive is satisfied that it is necessary to do so—
  - (a) in the interests of the welfare of the resource or wildlife; or
  - (b) for the protection of the resource or wildlife;
 the chief executive may direct that the resource or wildlife be disposed of in such a way as the chief executive considers appropriate.
- (3) Subsection (2) applies even though a proceeding has not been taken for, or a person convicted of, the offence.

## **172 Disposal of wildlife etc. not owned by State**

- (1) If a person is convicted of an offence against this Act, any wildlife in relation to which the offence was committed that is not already the property of the State—
  - (a) is forfeited to the State; and
  - (b) must be disposed of in such a way as the chief executive directs.
- (2) If—
  - (a) a person is convicted of an offence against this Act; and
  - (b) a direction is not given under section 171 for the disposal of any cultural or natural resource in relation to which the offence was committed;
 the court may make such order, as it considers appropriate, for the disposal of the cultural or natural resource.
- (3) Forfeiture of wildlife under subsection (1)(a) does not confer a right to compensation on any person.
- (4) Subject to subsection (5), if a person is convicted of an offence against this Act, the court may order that anything in relation to which the offence was committed that has been seized be forfeited to the State.
- (5) If the court is satisfied that—

- (a) the thing is another person's property and the other person has exercised due diligence to prevent a contravention of this Act; and
- (b) the offence has been committed without the person's knowledge, consent or help;

the court may order that the thing be given to the person on such conditions as the court considers appropriate.

- (6) A person who contravenes a condition of a court order made under subsection (5) commits an offence against this Act.

Maximum penalty for subsection (6)—50 penalty units.

### 173 Penalties payable to consolidated fund

All penalties ordered to be paid in relation to offences against this Act must be paid into the consolidated fund.

## Division 2 Proceedings for declarations and enforcement orders

### Subdivision 1 Preliminary

#### 173A Definitions for div 2

In this division—

*court* means the Planning and Environment Court.

*nominated offence* means an offence against section 62, 88, 88A, 89, 90, 91, 92, 94, 97 or 109.<sup>22</sup>

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22 Section 62 (Restriction on taking etc. of cultural and natural resources of protected areas), 88 (Restrictions on taking protected animal and keeping or use of unlawfully taken protected animal), 88A (Restriction on keeping or use of lawfully taken protected animal), 89 (Restriction on taking etc. particular protected plants), 90 (Restriction on using particular protected plants), 91 (Restriction on release etc. of international and prohibited wildlife), 92 (Restriction on breeding etc. hybrids of protected animals), 94 (Conservation officers prohibited in dealing with protected wildlife), 97 (Restriction on taking etc. of native wildlife in areas of major interest and critical habitats) or 109 (Compliance with order)

*person* includes a body of persons, whether incorporated or unincorporated.

## **Subdivision 2      Declarations**

### **173B    Court may make declarations**

- (1) A person may bring a proceeding in the court for a declaration about a following matter, other than an excluded matter—
  - (a) a matter that has been, is to be or should have been done for this Act;
  - (b) the construction of—
    - (i) this Act, including, for example, a conservation plan or a management plan; or
    - (ii) an authority granted, made, issued or given under the Act over, or in relation to, land in a protected area; or
    - (iii) a licence, permit or other authority issued or given under a regulation;
  - (c) the lawfulness under this Act of an activity.
- (2) The court has jurisdiction to hear and decide a proceeding for a declaration under this section.
- (3) A person who starts a proceeding under this section must, within 7 days after the person starts the proceeding, give the chief executive written notice of the proceeding.  
Maximum penalty—20 penalty units.
- (4) The Minister or the chief executive may choose to be a party to the proceeding by filing in the court a notice of election in the form approved by the chief executive.
- (5) In this section—

*excluded matter* means a matter relating to—

- (a) a licence, permit or other authority issued or given under a regulation authorising—
  - (i) the recreational keeping of wildlife; or

- (ii) the care and rehabilitation of sick, injured or orphaned protected animals or animals whose habitats have been destroyed by human activity or natural disaster; or
- (b) camping in protected areas.

### **173C Court may make orders about declarations**

The court may also make an order about a declaration made under section 173B.

## **Subdivision 3 Enforcement orders**

### **173D Proceeding for enforcement orders**

- (1) A person may bring a proceeding in the court—
  - (a) for an order to remedy or restrain the commission of a nominated offence (an *enforcement order*); or
  - (b) if the person has brought a proceeding under this section for an enforcement order and the court has not decided the proceeding—for an order under section 173E (an *interim enforcement order*); or
  - (c) for an order to cancel or change an enforcement order or interim enforcement order.
- (2) The person may bring a proceeding for an enforcement order whether or not any right of the person has been, or may be, infringed by, or because of, the commission of the offence.
- (3) If the chief executive is not a party to a proceeding for an enforcement order, the person must, within 7 days after the person starts the proceeding, give the chief executive written notice of the proceeding.

Maximum penalty—20 penalty units.

- (4) The Minister or the chief executive may choose to be a party to the proceeding by filing in the court a notice of election in the form approved by the chief executive.

**173E Making interim enforcement order**

- (1) The court may make an order pending a decision of a proceeding for an enforcement order if the court is satisfied it would be appropriate to make the order.
- (2) The court may make the order subject to conditions.
- (3) However, the court may not require as a condition of the order that the applicant for the order give an undertaking about damages.

**173F Making enforcement order**

- (1) The court may make an enforcement order if the court is satisfied the nominated offence—
  - (a) is being or has been committed; or
  - (b) will be committed unless the enforcement order is made.
- (2) If the court is satisfied the offence is being or has been committed, the court may make an enforcement order whether or not there has been a prosecution for the offence under this Act.

**173G Effect of orders**

- (1) An enforcement order or an interim enforcement order may direct a party to the proceeding for the order—
  - (a) to stop an activity that constitutes, or will constitute, a nominated offence; or
  - (b) not to start an activity that will constitute a nominated offence; or
  - (c) to do anything required to stop committing a nominated offence; or
  - (d) to return anything to a condition as close as practicable to the condition it was in immediately before a nominated offence was committed; or
  - (e) to do anything to comply with this Act.
- (2) Without limiting the court's powers, an enforcement order or an interim enforcement order may require—



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- (a) the repair, demolition or removal of a building; or
  - (b) for a relevant nominated offence—
    - (i) the rehabilitation or restoration of a protected area, the habitat of protected wildlife, a critical habitat or an area of major interest (an *affected area*); or
    - (ii) if an affected area is not capable of being rehabilitated or restored—the planting and nurturing of cultural or natural resources, wildlife or the habitat of protected wildlife in a stated area of equivalent size to the affected area.
  - (3) An enforcement order or an interim enforcement order—
    - (a) may be in terms the court considers appropriate to secure compliance with this Act; and
    - (b) must state the time by which the order is to be complied with.
  - (4) A person must not contravene an enforcement order or an interim enforcement order.

Maximum penalty—3000 penalty units or 2 years imprisonment.

- (5) In this section—

*relevant nominated offence* means a nominated offence relating to any of the following—

- (a) taking or interfering with natural or cultural resources of a protected area;<sup>23</sup>
- (b) taking protected wildlife, other than in a protected area;<sup>24</sup>

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23 See section 62 (Restriction on taking etc. of cultural and natural resources of protected areas).

24 See sections 88 (Restrictions on taking protected animal and keeping or use of unlawfully taken protected animal) and 89 (Restriction on taking etc. particular protected plants).

- (c) taking or interfering with native wildlife, other than protected wildlife, in a critical habitat or area of major interest.<sup>25</sup>

### **173H Court's powers about orders**

- (1) The court's power to make an enforcement order or interim enforcement order to stop, or not to start, an activity may be exercised—
  - (a) whether or not it appears to the court that the person against whom the order is made intends to engage, or to continue to engage, in the activity; and
  - (b) whether or not the person against whom the order is made has previously engaged in an activity of the kind; and
  - (c) whether or not there is danger of substantial damage to nature or injury to another person if the person against whom the order is made engages, or continues to engage, in the activity.
- (2) The court's power to make an enforcement order or interim enforcement order to do anything may be exercised—
  - (a) whether or not it appears to the court that the person against whom the order is made intends to fail, or to continue to fail, to do the thing; and
  - (b) whether or not the person against whom the order is made has previously failed to do a thing of the kind; and
  - (c) whether or not there is danger of substantial damage to nature or injury to another person if the person against whom the order is made fails, or continues to fail, to do the thing.
- (3) The court may make an order to cancel or change an enforcement order or interim enforcement order.
- (4) The court's power under this section is in addition to its other powers.

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<sup>25</sup> See section 97 (Restriction on taking etc. of native wildlife in areas of major interest and critical habitats).

**173I Effect of enforcement order requiring restoration or rehabilitation of land**

- (1) This section applies if—
  - (a) the court makes an enforcement order directing a person (the *declared person*) to restore or rehabilitate land; and
  - (b) the declared person has an interest in the land; and
  - (c) the order states that this section applies to the land.
- (2) The person who started the proceeding for the enforcement order must, as soon as practicable after the enforcement order is made, give the chief executive—
  - (a) written notice stating that the order has been made; and
  - (b) a copy of the order.

Maximum penalty—20 penalty units.

- (3) Subsection (4) applies if the declared person transfers to another person (the *transferee*), in any way, all or part of the declared person's interest in the land.
- (4) To the extent the land is the subject of the enforcement order, on the transfer—
  - (a) a reference in the enforcement order to the declared person is taken to be a reference to the transferee; and
  - (b) the enforcement order is taken to have been made against the transferee on the transfer of the interest; and
  - (c) any outstanding liability, other than criminal liability, of the declared person becomes a liability of the transferee.
- (5) If it is not reasonably practical for the transferee to comply with the enforcement order within the time stated in the order, the transferee may apply to the court, under section 173D(1)(c), for an order to change the enforcement order by extending the time for compliance with the enforcement order.
- (6) To remove any doubt, it is declared that on the transfer of the interest, the declared person is not criminally liable for any contravention of the enforcement order that happens on or after the transfer of the interest.

- (7) Subsections (4) to (6) have effect in relation to each successor in title to the transferee's interest in the same way the subsections had effect in relation to the transferee.

**173J Record in land registry of enforcement order requiring restoration or rehabilitation of land**

- (1) As soon as practicable after receiving a notice under section 173I(2) that the enforcement order has been made, the chief executive must give the registrar written notice of the making of the order.
- (2) The registrar must keep records showing the enforcement order has been made.
- (3) The registrar must keep the records in a way that a search of the register kept by the registrar under any Act relating to title to the land the subject of the enforcement order will show the enforcement order has been made.

**173K Application for removal of particulars of enforcement order from registrar's records**

- (1) This section applies to a person who—
- (a) has an interest in land that is the subject of an enforcement order to which section 173I applies; and
- (b) wishes to have the particulars of the enforcement order removed from the registrar's records because—
- (i) the enforcement order has been cancelled by the court; or
- (ii) the enforcement order has been substantially complied with; or
- (iii) the person proposes alternative measures for ensuring the land is restored or rehabilitated.

*Example of alternative measures—*

a covenant registered under the *Land Title Act 1994*

- (2) The person may apply to the chief executive for the particulars of the enforcement order to be removed from the registrar's records.

- (3) The application must be—
  - (a) in writing; and
  - (b) accompanied by, according to the circumstances—
    - (i) a copy of the order made by the court cancelling the enforcement order; or
    - (ii) the information or documents the person relies on to establish the enforcement order has been substantially complied with; or
    - (iii) details of the alternative measures proposed by the person to ensure the land will be restored or rehabilitated.

### **173L How chief executive must deal with application**

- (1) If the chief executive receives an application under section 173K, the chief executive must, within 6 weeks after receiving the application—
  - (a) decide whether the chief executive is reasonably satisfied, according to the circumstances—
    - (i) the enforcement order has been cancelled by the court; or
    - (ii) the enforcement order has been substantially complied with; or
    - (iii) the alternative measures proposed by the applicant will ensure the land will be restored or rehabilitated; and
  - (b) either—
    - (i) approve the application, with or without conditions to be complied with before particulars of the enforcement order may be removed from the registrar's records; or
    - (ii) refuse to approve the application.
- (2) As soon as practicable after acting under subsection (1), the chief executive must—
  - (a) give the applicant written notice stating—

- (i) the decision and the reasons for it; and
    - (ii) if the chief executive refuses to approve the application or approves the application with conditions—
      - (A) that the applicant may appeal against the decision to the court within 28 days after the person receives the notice; and
      - (B) how to appeal; and
  - (b) if the chief executive approves the application without conditions—give written notice of the fact to the registrar.
- (3) If the chief executive approves the application with conditions and the chief executive is reasonably satisfied the conditions have been complied with, the chief executive must, as soon as practicable, give written notice of the fact to the registrar.
- (4) As soon as practicable after receiving a notice under subsection (2)(b) or (3), the registrar must remove the particulars of the enforcement order from the registrar's records.
- (5) As soon as the particulars of the enforcement order have been removed from the registrar's records, the enforcement order is taken to have been complied with.

**173M Appeal against refusal to approve application or approval of application with conditions**

- (1) This section applies if—
- (a) a person who has an interest in land that is the subject of an enforcement order applies, as required under section 173K, for the enforcement order to be removed from the registrar's records; and
  - (b) the chief executive refuses to approve the application or approves the application with conditions.
- (2) The applicant may appeal against the chief executive's decision to the court within 28 days after the applicant receives notice of the decision under section 173L.

- (3) If the applicant appeals against the decision, the court may make any order it considers appropriate, including, for example, an order directing the registrar to remove the particulars of the enforcement order from the registrar's records.

## **Subdivision 4      General procedural provision**

### **173N    Proceeding brought in representative capacity**

- (1) A proceeding under this division may be brought by a person on behalf of an entity with the entity's consent.
- (2) The person who brings the proceeding is a party to the proceeding, despite the proceeding being brought on behalf of another entity.
- (3) The entity on whose behalf the proceeding is brought is not a party to the proceeding.
- (4) If the entity on whose behalf the proceeding is brought is an unincorporated body, the body's committee or other controlling or governing body must give the consent.
- (5) The entity on whose behalf the proceeding is brought may contribute to, or pay, the legal costs incurred by the person bringing the proceeding.

## **Division 3                      Judicial review of administrative decisions**

### **173O    Extended standing for judicial review**

- (1) This section applies, for the *Judicial Review Act 1991*, to any of the following—
  - (a) a decision made under this Act;
  - (b) a failure to make a decision under this Act;
  - (c) conduct engaged in for the purpose of making a decision under this Act.

- (2) An individual is taken to be a person aggrieved by a decision, failure or conduct mentioned in subsection (1) if—
- (a) the individual is—
    - (i) an Australian citizen; or
    - (ii) ordinarily resident in Australia; and
  - (b) at any time in the 2 years immediately before the decision, failure or conduct, the individual engaged in a series of activities in Australia for the protection or conservation of, or research into, the environment.
- (3) A corporation or association, whether or not incorporated, and a person acting for an unincorporated association, is taken to be a person aggrieved by a decision, failure or conduct mentioned in subsection (1) if—
- (a) the corporation or association is incorporated, or was otherwise established, in Australia; and
  - (b) at any time in the 2 years immediately before the decision, failure or conduct, the corporation or association engaged in a series of activities in Australia for the protection or conservation of, or research into, the environment; and
  - (c) at the time of the decision, failure or conduct, the objects or purposes of the corporation or association include protection or conservation of, or research into, the environment.
- (4) A term used in this section that is defined in the *Judicial Review Act 1991*<sup>26</sup> has the meaning given to it by that Act.

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<sup>26</sup> See, for example, the *Judicial Review Act 1991*, sections 5 (Meaning of *making of a decision* and *failure to make a decision*) and 8 (Conduct engaged in for making decision—preparatory acts).



## **Part 11**                      **Miscellaneous**

### **173P Chief executive's general powers**

- (1) The chief executive may do any thing the chief executive reasonably considers is necessary to administer, or achieve the object of, this Act,<sup>27</sup> including, for example—
  - (a) take, keep, use, or interfere with, any wildlife in a protected or other area; or
  - (b) interfere with the cultural or natural resources of a protected area or forest reserve.
- (2) To remove any doubt, it is declared that the chief executive does not require a licence, permit or authority under this Act to carry out an activity authorised under subsection (1).

### **173Q Publication of notice for revocation under s 30, 32, 56 or 70E or particular amalgamations under s 33**

- (1) This section applies for—
  - (a) a revocation under section 30, 32, 56 or 70E; or
  - (b) an amalgamation under section 33 that involves a change in the class, or the boundaries, of a protected area.
- (2) Within 10 days after the notice of motion for the revocation or amalgamation is given, the chief executive must publish notice of the proposed revocation or amalgamation in—
  - (a) a newspaper circulating in the locality of the relevant area; and
  - (b) a newspaper circulating generally throughout the State.
- (3) The notice must state—
  - (a) the name of the relevant area; and
  - (b) for a revocation—

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<sup>27</sup> See section 5 (How object is to be achieved).

- (i) whether all or part of the relevant area is proposed to be revoked; and
  - (ii) if only part of the relevant area is proposed to be revoked—a description, by map or otherwise, of the part of the relevant area proposed to be revoked; and
  - (c) for an amalgamation—the proposed change in the class, or the boundaries, of a protected area.
- (4) In this section—
- relevant area* means the State forest, timber reserve, protected area, World Heritage management area or forest reserve the subject of the motion.

#### **174 Application of Statutory Instruments Act**

- (1) The *Statutory Instruments Act 1992*, sections 49 and 50 do not apply to a regulation mentioned in the following provisions of this Act—
- section 30
  - section 32(2)
  - section 33(2)
  - section 56
  - section 70E(2).
- (2) Subsection (1) has effect despite the *Statutory Instruments Act 1992*, section 52.<sup>28</sup>

#### **174A Chief executive may make codes of practice**

- (1) The chief executive may, by gazette notice, approve or make codes of practice for—
- (a) protected areas; or
  - (b) forest reserves under part 4A; or

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<sup>28</sup> *Statutory Instruments Act 1992*, section 52 (Other notification, gazettal, tabling or disallowance provisions of no effect)

- (c) protected wildlife.
- (2) The *Statutory Instruments Act 1992*, sections 49, 50 and 51<sup>29</sup> apply to a code of practice as if it were subordinate legislation.
- (3) The chief executive must keep copies of each code of practice open for public inspection during office hours on business days at—
  - (a) the department's head office; and
  - (b) each regional office of the department; and
  - (c) other places the chief executive considers appropriate.

### **175 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made with respect to any of the following matters—
  - (a) access to protected areas by persons or animals;
  - (b) the use of land, and activities, in protected areas;
  - (c) providing for the safety of persons in protected areas, including the regulation of access to, and activities in, protected areas by persons or classes of persons;

*Example for paragraph (c)—*

A regulation might regulate camping in a protected area by children, or adults accompanying children, to protect children from injury by animals.

- (d) the removal from protected areas of—
  - (i) trespassers; or
  - (ii) persons who are believed on reasonable grounds to have contravened this Act;

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<sup>29</sup> *Statutory Instruments Act 1992*, sections 49 (Subordinate legislation must be tabled), 50 (Disallowance) and 51 (Limited saving of operation of subordinate legislation that ceases to have effect)

- (e) the presence and use of vehicles and boats in, and the flight of aircraft over, protected areas;
- (f) the seizure of vehicles, boats, aircraft or property—
  - (i) found in a protected area in contravention of a regulation; or
  - (ii) found abandoned in a protected area;
- (g) 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;
- (h) the removal and disposal of seized vehicles, boats, aircraft property and appliances;
- (i) the taking of animals or plants into, or out of, protected areas, and the impounding, removal, destruction or disposal of animals found straying in protected areas;
- (j) giving effect to, and enforcing compliance with, management and conservation plans or codes of practice approved or made under section 174A;
- (k) the taking, keeping or use of wildlife, the moving of wildlife into, in and out of the State, the release of wildlife into the wild and other dealing with wildlife;
- (l) the records to be kept and returns to be lodged by the holders of licences, permits and other authorities and requirements as to the inspection of the records;
- (m) the disqualification of persons from holding a licence, permit or other authority;
- (n) the matters in respect of which fees, costs and charges are payable under this Act, the amounts of the fees, costs and charges, the persons who are liable to pay the fees, costs and charges, when the fees, costs and charges are payable, and the recovery of any amount of the fees, costs and charges not paid;
- (o) the institution and conduct of appeals against decisions under a regulation;

- (p) authorising the taking, keeping or use of a protected animal;
- (q) exemption from compliance with provisions of a regulation or a conservation plan;
- (r) prescribing offences for contraventions of a regulation, and fixing a maximum penalty of a fine of not more than 165 penalty units for such a contravention.

## **Part 12 Savings and transitional**

### **Division 1 Savings and transitional provisions for Act No. 20 of 1992**

#### **181 References to repealed Acts**

In an Act or document, a reference to any of the following Acts may, if the context permits, be taken to be a reference to this Act—

- *Fauna Conservation Act 1952*
- *Fauna Conservation Act 1974*
- *National Parks and Wildlife Act 1975*
- *Native Plants Protection Act 1930.*

#### **182 References to Crown land under Act**

In an Act or document, a reference to Crown land under this Act may, if the context permits, be taken to be a reference to State land under this Act.

#### **183 Authorities under former Act about national parks**

- (1) An authority given or made under section 33 or 35 of the former Act and in force immediately before 19 December

1994 is taken to have continued in force until it expires, or is earlier terminated, under its terms.<sup>30</sup>

- (2) The former Act, other than the power to extend or renew the authority, continues to apply to the authority as if this Act had not been enacted.
- (3) For applying subsections (1) and (2), the chief executive is taken to be the director of national parks and wildlife under the former Act.
- (4) A reference in the authority to the director is taken to be a reference to the chief executive.
- (5) In this section—

*authority* means an agreement or a lease or permit or other authority.

*former Act* means the repealed *National Parks and Wildlife Act 1975*.

## **Division 2                      Savings and transitional provisions for Nature Conservation and Other Legislation Amendment Act 2000**

### **184      Provision to allow beekeeping in particular former forest reserves until 2025**

- (1) This section applies if a forest reserve prescribed under a regulation is dedicated as a national park or national park (recovery).
- (2) Despite sections 15 and 34,<sup>31</sup> a regulation may, until 31 December 2024, authorise a person to take, use, keep or interfere with cultural or natural resources for an apiary in the national park or national park (recovery).
- (3) This section expires at the beginning of 1 January 2025.

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30 Most of the provisions of this Act commenced on 19 December 1994. Former Act, sections 33 (Power to grant special leases and permits) and 35 (Permits, etc.)

31 Sections 15 (Management of protected areas) and 34 (Leases etc. over protected areas)

**184A Provision to allow horse riding in particular former forest reserves until 24 November 2013**

- (1) This section applies if a forest reserve prescribed under a regulation is dedicated as a national park (recovery).
- (2) Despite sections 15, 19A and 34,<sup>32</sup> a regulation may, until 23 November 2013, authorise a person to carry out horse riding in the national park (recovery).
- (3) This section expires on 23 November 2013.

**184B Provision for stock grazing permits for former SEQFA forest reserves**

- (1) This section applies if—
  - (a) land in an SEQFA forest reserve is, after the commencement of this section, dedicated as a national park or national park (recovery); and
  - (b) immediately before the dedication, a stock grazing permit (the *former permit*) under the *Forestry Act 1959*, section 35,<sup>33</sup> was in force for the land.
- (2) On the dedication—
  - (a) the former permit ends; and
  - (b) the chief executive is taken to have granted the holder of the former permit a previous use authority under section 36.<sup>34</sup>
- (3) The previous use authority is taken to—
  - (a) allow the use of the land, as provided for under the former permit, to continue only for the rest of the term stated in the permit; and
  - (b) require its grantee to continue to comply with all conditions of the former permit and requirements under the *Forestry Act 1959*, or of the chief executive of the

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32 Sections 15 (Management of protected areas), 19A (Management principles of national parks (recovery)) and 34 (Leases etc. over protected areas)

33 *Forestry Act 1959*, section 35 (Granting of permit for land within State forest)

34 Section 36 (Authorities for new national park or national park (recovery))

department in which that Act is administered, that relate to stock grazing permits or the use as if—

- (i) the former permit had continued in force; and
- (ii) the land were land in an SEQFA forest reserve.

(4) In this section—

*SEQFA forest reserve* means a forest reserve the dedication of which was in force immediately before the commencement of this definition.

## **185 Provision for commercial activity permits for former forest reserves**

(1) This section applies if—

- (a) land in a forest reserve is dedicated as a protected area; and
- (b) immediately before the dedication, a person was, under a commercial activity permit (the *former permit*) granted under the *Forestry Act 1959*, carrying out commercial activities on the land.

(2) On the dedication—

- (a) the former permit ceases to be a permit under the *Forestry Act 1959* and becomes a commercial activity permit under this Act to carry out the activities in the protected area; and
- (b) the holder of the former permit becomes the holder of the commercial activity permit; and
- (c) the commercial activity permit continues, subject to this Act, for the balance of the term of the former permit.

(3) To remove any doubt, it is declared that subsection (2) applies even if the carrying out of the commercial activities under the former permit is not consistent with the management principles for the protected area.

(4) However, the grounds on which the chief executive may refuse an application to renew the commercial activity permit include the ground that the carrying out of the commercial activities under the permit is not consistent with the



management principles or a management plan for the protected area.

### **Division 3                      Transitional provision for the Nature Conservation Amendment Act 2004**

#### **186      Abolition of class of rare wildlife**

After section 78A expires—

- (a) the class of rare wildlife is abolished; and
- (b) a reference in an Act or document to rare wildlife is, if the context permits, redundant.

## Schedule                      Dictionary

### section 7

**Aboriginal land** has the meaning given by the *Aboriginal Land Act 1991*, section 10.

**animal** means any member of the animal kingdom (other than human), (whether alive or dead), and includes—

- (a) any—
  - (i) amphibian; or
  - (ii) bird; or
  - (iii) coral; or
  - (iv) fish; or
  - (v) invertebrate; or
  - (vi) mammal; or
  - (vii) reptile; and
- (b) the whole or any part of—
  - (i) the progeny, larvae, pupae, eggs or genetic or reproductive material of an animal; and
  - (ii) the carcass or another part of an animal.

**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 1999*; and
- (c) a trap, snare, net or birdlime; and
- (d) a decoy; and
- (e) poison; and
- (f) a torch or other artificial light; and

## Schedule (continued)

- (g) a shovel, hoe, pick, mattock, saw, axe, knife or other implement.

**area of major interest** means an area that contains natural resources of significant nature conservation value.

**Australia** includes the external Territories.

**authorised person** means any of the following—

- (a) the chief executive, performing functions under this Act;
- (b) a public service employee of the department performing functions under this Act for the chief executive;
- (c) a conservation officer who is not an employee of the department and who is performing functions under this Act for the chief executive.

**authorised purpose**, in relation to the use of protected wildlife, means a purpose that—

- (a) will provide some significant benefit to wildlife or humans, including, for example, the development of drugs for the treatment of disease; and
- (b) is authorised under a conservation plan for the wildlife.

**biological diversity** has the meaning given by section 10.

**boat** means a boat, ship or other vessel of any size or kind, and includes a hovercraft.

**buy** includes—

- (a) agree or offer to buy; and
- (b) receive or accept under an agreement; and
- (c) agree to receive or accept under an agreement; and
- (d) offer or attempt to receive or accept under an agreement; and
- (e) cause or permit to be received or accepted under an agreement; and
- (f) acquire by exchange; and
- (g) accept on hire or lease.

## Schedule (continued)

***captive breeding agreement*** see section 100B(1).

***carcass*** of an animal includes—

- (a) its flesh, organs or body fluids; and
- (b) its feathers, hair, fur, skin, scales, shell or exoskeleton; and
- (c) its bones, horns, antlers, teeth or tusks.

***CITES*** means the Convention on International Trade in Endangered Species of Wild Fauna and Flora done at Washington in the United States of America on 3 March 1973.<sup>35</sup>

***conservation*** has the meaning given by section 9.

***conservation agreement*** means a conservation agreement under section 45, and includes an agreement varying an earlier agreement.

***conservation covenant*** means a covenant applying to the declaration of a nature refuge under section 49.

***conservation officer*** means a conservation officer appointed under this Act.

***conservation park*** means an area declared under this Act as a conservation park.

***conservation plan*** means a conservation plan approved under part 7.

***conservation value*** of protected wildlife means the conservation value prescribed under this Act in relation to the wildlife.

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

***coordinated conservation area*** means an area declared under this Act as a coordinated conservation area.

***court***, for part 10, division 2, see section 173A.

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35 The English text of the convention is set out in Australian Treaty Series 1976 No. 29.

## Schedule (continued)

***critical habitat*** has the meaning given by section 13.

***cultural resources*** of a protected area means places or objects that have anthropological, archaeological, historical, scientific, spiritual or sociological significance or value, including such significance or value under Aboriginal tradition or Island custom.

***ecologically sustainable use*** has the meaning given by section 11.

***EIS*** means an environmental impact statement.

***endangered wildlife*** means native wildlife that is prescribed under this Act as endangered wildlife.

***enforcement order*** see section 173D(1)(a).

***executive officer*** of a corporation means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the management of the corporation.

***extinct in the wild wildlife*** means native wildlife prescribed under this Act as extinct in the wild wildlife.

***fee*** includes tax.

***habitat*** of wildlife includes an area that is not presently occupied by the wildlife.

***honorary protector*** means an honorary protector appointed under this Act.

***hovercraft*** means a vehicle designed to be supported on a cushion of air.

***indigenous to Australia***, in relation to wildlife, means—

- (a) wildlife that was not originally introduced to Australia by human intervention (other than wildlife introduced before the year 1600); or
- (b) a migratory animal that periodically or occasionally migrates to, or visits, Australia.

***interest***, in relation to land, includes a mining interest.

## Schedule (continued)

***interfere with***, in relation to a cultural or natural resource, includes destroy, damage, mark, move and dig up.

***interim conservation order*** means an order made under part 6.

***interim enforcement order*** see section 173D(1)(b).

***international agreement area*** means an area declared under this or another Act as an international agreement area.

***international wildlife*** means wildlife that is prescribed under this Act as international wildlife.

***in the wild***, in relation to wildlife, means in an independent state of natural liberty.

***keep***, in relation to a cultural or natural resource or wildlife, includes have in possession, or under control, in any place (whether for the use or benefit of the person in relation to whom the term is used or another person), even though another person has the actual possession or custody.

***land*** includes—

- (a) the airspace above land; and
- (b) land that is, or is at any time, covered by waters; and
- (c) waters.

***land-holder*** includes—

- (a) for a reserve under the *Land Act 1994*—the trustees of the reserve; and
- (b) for land leased under the *Land Act 1994*—the lessee of the land; and
- (c) for a conservation agreement under section 45 in relation to transferred land as defined under the *Aboriginal Land Act 1991*—includes the grantees of the transferred land under that Act.

***least concern wildlife*** means native wildlife prescribed under this Act as least concern wildlife.

***management plan*** means a management plan approved under part 7.

## Schedule (continued)

**mining interest** means—

- (a) a mining claim, mineral development licence or mining lease granted under the *Mineral Resources Act 1989*; or
- (b) a petroleum lease granted under the *Petroleum Act 1923*.

**national park** means an area dedicated under this Act as a national park.

**national park (Aboriginal land)** means an area dedicated under this Act as a national park (Aboriginal land).

**national park (scientific)** means an area dedicated under this Act as a national park (scientific).

**national park (Torres Strait Islander land)** means an area dedicated under this Act as a national park (Torres Strait Islander land).

**native wildlife** means any taxon or species of wildlife indigenous to Australia.

**natural resources**, in relation to—

- (a) a protected area; or
- (b) an area identified under a conservation plan as, or including—
  - (i) a critical habitat; or
  - (ii) an area of major interest;

means the natural and physical features of the area, including wildlife, soil, water, minerals and air.

**nature** has the meaning given by section 8.

**nature-based**, in relation to the use of a protected area, includes scientific, educational, spiritual, intellectual, cultural, recreational and biodiscovery under the *Biodiscovery Act 2004*.

**nature refuge** means an area declared under this Act as a nature refuge.

**near threatened wildlife** means native wildlife prescribed under this Act as near threatened wildlife.

## Schedule (continued)

**nominated offence**, for part 10, division 2, see section 173A.

**official name** of trustees of a protected area means trustees of (*name of the area*).

**person**, for part 10, division 2, see section 173A.

**place** includes—

- (a) vacant land or premises; and
- (b) a vehicle, boat or aircraft.

**planning scheme** has the meaning given by the *Integrated Planning Act 1997*, section 2.1.1.

**plant** means any member of the plant or fungus kingdom (whether alive or dead and standing or fallen), and includes—

- (a) any—
  - (i) flowering plant; or
  - (ii) cycad; or
  - (iii) conifer; or
  - (iv) fern or fern ally; or
  - (v) moss; or
  - (vi) liverwort; or
  - (vii) alga; or
  - (viii) fungus; or
  - (ix) lichen; and
- (b) the whole or any part of the flowers, seeds or genetic or reproductive material of a plant.

**premises** includes—

- (a) a building or structure, or a part of a building or structure, of any kind; and
- (b) the land on which a building or structure is situated; and
- (c) a vehicle, boat or aircraft.

**procaryote** means a unicellular organism lacking a true nucleus, and includes bacteria and cyanobacteria.



## Schedule (continued)

***prohibited wildlife*** means wildlife that is prescribed under this Act as prohibited wildlife.

***protect*** includes rehabilitate.

***protected animal*** means an animal that is prescribed under this Act as threatened, rare, near threatened or least concern wildlife, but does not include a processed product that—

- (a) is made or derived from a protected animal; and
- (b) is declared under a regulation or conservation plan for the protected animal to be a processed product that is not included in this definition.

***protected area*** means a protected area of a class mentioned in section 14.

***protected plant*** means a plant that is prescribed under this Act as threatened, rare, near threatened or least concern wildlife, but does not include a processed product that—

- (a) is made or derived from a protected plant; and
- (b) is declared under a regulation or conservation plan for the protected plant to be a processed product that is not included in this definition.

***protected wildlife*** means native wildlife prescribed under this Act as—

- (a) extinct in the wild wildlife; or
- (b) endangered wildlife; or
- (c) vulnerable wildlife; or
- (d) rare wildlife; or
- (e) near threatened wildlife; or
- (f) least concern wildlife.

***protista*** means a unicellular organism other than a procaryote.

***rare wildlife*** means native wildlife that is prescribed under this Act as rare wildlife.

***regeneration plan*** means a regeneration plan made under part 4, division 3A.

## Schedule (continued)

**registrar** means the registrar of titles under the *Land Title Act 1994*.

**resources reserve** means an area dedicated under this Act as resources reserve.

**sell** includes—

- (a) auction, exchange or supply; and
- (b) keep, expose, supply or receive for sale; and
- (c) send or deliver for sale; and
- (d) dispose of by hire or lease; and
- (e) cause or permit the doing of an act mentioned in paragraph (a), (b), (c) or (d); and
- (f) offer or attempt to do an act mentioned in paragraph (a), (b), (c) or (d); and
- (g) offer or attempt to sell; and
- (h) cause or permit to be sold.

**service facility** means any of the following—

- (a) a communications facility, including for example, a communications tower or cable;
- (b) a device designed to be used for navigation or the guidance of aircraft or vessels;
- (c) a transmission grid or supply network under the *Electricity Act 1994*;
- (d) a pipeline for oil or gas;
- (e) a water supply or sewerage facility, including, for example, a pipeline or pumping station.

**special conservation officer** means a special conservation officer appointed under this Act.

**species** means a species, subspecies, hybrid, variant, race, mutation or geographically separate population of any animal or plant.

**State** includes Territory.

## Schedule (continued)

**State land** means all land in the State that is not—

- (a) freehold land, or land contracted to be granted in fee-simple by the State; or
- (b) a reserve under the *Land Act 1994*; or
- (c) subject to a lease or licence under the *Land Act 1994*, unless the land is in a forest reserve; or
- (d) subject to a mining interest.

**take** includes—

- (a) in relation to an animal—
  - (i) hunt, shoot, wound, kill, skin, poison, net, snare, spear, trap, catch, dredge for, bring ashore or aboard a boat, pursue, lure, injure or harm the animal; or
  - (ii) attempt to do an act mentioned in subparagraph (i); and
- (b) in relation to a plant—
  - (i) gather, pluck, cut, pull up, destroy, dig up, fell, remove or injure the plant or any part of the plant; or
  - (ii) attempt to do an act mentioned in subparagraph (i).

**threatened wildlife** means native wildlife that is prescribed under this Act as—

- (a) extinct in the wild wildlife; or
- (b) endangered wildlife; or
- (c) vulnerable wildlife.

**threatening process** has the meaning given by section 12.

**Torres Strait Islander land** has the meaning given by of the *Torres Strait Islander Land Act 1991*, section 9.

**unnatural hybrid** of wildlife means a hybrid, variant, race or mutation of the wildlife that has been derived because of manipulation by humans.

## Schedule (continued)

**use**, in relation to a cultural or natural resource or wildlife, includes buy, sell, give away, process, move or gain any benefit from the resource or wildlife.

**vulnerable wildlife** means native wildlife that is prescribed under this Act as vulnerable wildlife.

**waters** means Queensland waters.

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

**wilderness** means an area that is, or can be restored to be—

- (a) of sufficient size to enable the long-term protection of its natural systems and biological diversity; and
- (b) substantially undisturbed by modern society; and
- (c) remote at its core from points of mechanised access and other evidence of society.

**wilderness area** means an area declared under this Act as a wilderness area.

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

**wild river declaration** see the *Wild Rivers Act 2005*, schedule 2.

**World Heritage Convention** means the Convention for the Protection of the World Cultural and Natural Heritage that has been adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization, a copy of which is set out in the schedule to the *World Heritage Properties Conservation Act 1983* (Cwlth).

**World Heritage management area** means an area declared under this or another Act as a World Heritage management area.

## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 April 2006. Future amendments of the Nature Conservation Act 1992 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

| Key    | Explanation                    | Key     | Explanation                             |
|--------|--------------------------------|---------|---|
| AIA    | = Acts Interpretation Act 1954 | (prev)  | = previously                            |
| amd    | = amended                      | proc    | = proclamation                          |
| amdt   | = amendment                    | prov    | = provision                             |
| ch     | = chapter                      | pt      | = part                                  |
| def    | = definition                   | pubd    | = published                             |
| div    | = division                     | R[X]    | = Reprint No.[X]                        |
| exp    | = expires/expired              | RA      | = Reprints Act 1992                     |
| gaz    | = gazette                      | reloc   | = relocated                             |
| hdg    | = heading                      | renum   | = renumbered                            |
| ins    | = inserted                     | rep     | = repealed                              |
| lap    | = lapsed                       | (retro) | = retrospectively                       |
| notfd  | = notified                     | rv      | = revised edition                       |
| o in c | = order in council             | s       | = section                               |
| om     | = omitted                      | sch     | = schedule                              |
| orig   | = original                     | sdiv    | = subdivision                           |
| p      | = page                         | SIA     | = Statutory Instruments Act 1992        |
| para   | = paragraph                    | SIR     | = Statutory Instruments Regulation 2002 |
| prec   | = preceding                    | SL      | = subordinate legislation               |
| pres   | = present                      | sub     | = substituted                           |
| prev   | = previous                     | unnum   | = unnumbered                            |

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

| Reprint No. | Amendments to   | Effective        | Reprint date     |
|-------------|-----------------|------------------|------------------|
| 1           | 1994 Act No. 42 | 19 December 1994 | 23 December 1994 |
| 2           | 1995 Act No. 57 | 28 November 1995 | 21 December 1995 |
| 2A          | 1997 Act No. 80 | 12 December 1997 | 17 December 1997 |
| 2B          | 1998 Act No. 13 | 30 March 1998    | 9 July 1998      |
| 2C          | 1999 Act No. 15 | 11 June 1999     | 19 August 1999   |
| 2D          | 2000 Act No. 5  | 1 July 2000      | 4 July 2000      |
| 3           | 2000 Act No. 64 | 1 January 2001   | 9 February 2001  |
| 3A rv       | 2000 Act No. 44 | 26 October 2001  | 26 October 2001  |

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| Reprint No. | Amendments included | Effective        | Notes |
|-------------|---------------------|------------------|-------|
| 3B          | 2002 Act No. 72     | 13 December 2002 |       |
| 3C          | 2003 Act No. 96     | 19 December 2003 |       |
| 3D          | 2003 Act No. 79     | 16 April 2004    |       |
| 3E          | 2003 Act No. 96     | 3 October 2004   |       |
| 3F          | 2004 Act No. 19     | 12 November 2004 |       |
| 3G          | 2004 Act No. 53     | 29 November 2004 |       |

| Reprint No. | Amendments included                      | Effective        | Notes                  |
|-------------|--|------------------|------------------------|
| 3H rv       | 2003 Act No. 96                          | 4 December 2004  |                        |
| 3I          | 2004 Act No. 48                          | 17 December 2004 |                        |
| 3J          | 2004 Act No. 26                          | 31 December 2004 |                        |
| 3K          | 2005 Act No. 8                           | 18 March 2005    |                        |
| 3L          | 2004 Act No. 14 (amd<br>2004 Act No. 48) | 25 June 2005     | R3L withdrawn, see R4  |
| 4           | —  | 25 June 2005     |                        |
| 4A          | 2005 Act No. 53                          | 18 November 2005 |                        |
| 4B          | 2005 Act No. 42                          | 2 December 2005  |                        |
| 4C          | 2006 Act No. 11                          | 30 March 2006    |                        |
| 4D          | —  | 1 April 2006     | prov exp 31 March 2006 |

## 5 Tables in earlier reprints

| Name of table                     | Reprint No. |
|-----------------------------------|-------------|
| Changed citations and remade laws | 2           |
| Changed names and titles          | 1           |
| Corrected minor errors            | 1, 3        |
| Obsolete and redundant provisions | 1           |
| Renumbered provisions             | 1           |

## 6 List of legislation

### **Nature Conservation Act 1992 No. 20**

date of assent 22 May 1992

pts 1–3, pt 4 div 1, pt 5 div 1, ss 111, 113–119 and 132 commenced on date of assent  
pt 4 divs 4, 7–8 and s 134 commenced 12 February 1993 (1993 SL No. 26)

pt 5 div 2 commenced 2 September 1994 (1994 SL No. 326)

prev s 159 sch 2 (amendments of the Acts Interpretation Act 1954) commenced 1  
July 1992 (1992 SL No. 159)

pts 6, 9 and 11, ss 127, 130–131, 133, 136, 140–142, 160–168, prev s 159 sch 2  
(amendments 24 of the Land Act 1962) commenced 14 May 1994 (1994 SL No.  
151)

s 164A commenced 14 October 1994 (1994 SL No. 362)

s 93 not yet proclaimed into force

remaining provisions commenced 19 December 1994 (1994 SL No. 472)

amending legislation—

### **Wet Tropics World Heritage Protection and Management Act 1993 No. 50 ss 1–2, 86 sch 3**

date of assent 30 September 1993

ss 1–2 commenced on date of assent

remaining provisions commenced 1 November 1993 (1993 SL No. 396)

**Fisheries Act 1994 No. 37 s 244 sch 2**

date of assent 8 September 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 27 January 1995 (1994 SL No. 9)

**Nature Conservation Amendment Act 1994 No. 42**

date of assent 14 September 1994

commenced on date of assent

**Land Act 1994 No. 81 ss 1–2, 527 sch 5**

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1995 (1995 SL No. 185)

**Environmental Legislation Amendment Act 1995 No. 40 pts 1, 4**

date of assent 27 October 1995

commenced on date of assent

**Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**Nature Conservation Amendment Act 1997 No. 8**

date of assent 15 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 12 December 1997 (1997 SL No. 433)

**Environmental and Other Legislation Amendment Act 1997 No. 80 pts 1, 4**

date of assent 5 December 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 12 December 1997 (1997 SL No. 432)

**Building and Integrated Planning Amendment Act 1998 No. 13 ss 1, 2(3), 191 sch**

date of assent 23 March 1998

ss 1–2 commenced on date of assent

remaining amdts commenced 30 March 1998 (1998 SL No. 55)

**Explosives Act 1999 No. 15 ss 1–2 137 sch 1**

date of assent 22 April 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 11 June 1999 (1999 SL No. 108)

**Police Powers and Responsibilities Act 2000 No. 5 ss 1–2, 373 sch 3**

date of assent 23 March 2000

ss 1–2, 373 commenced on date of assent (see s 2(2))

remaining provisions commenced 1 July 2000 (see s 2(1), (3) and 2000 SL No. 174)

**Nature Conservation and Other Legislation Amendment Act 2000 No. 44 pts 1–2 ss 3(2), 42 sch**

date of assent 25 October 2000

ss 1–2 commenced on date of assent

s 25 (to the extent it inserts pt 4A div 6) commenced 26 October 2001 (automatic commencement under AIA s 15DA(2))

remaining provisions commenced on date of assent



**Environmental Protection and Other Legislation Amendment Act 2000 No. 64 ss 1, 2(2), pt 5**

date of assent 24 November 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2001 (2000 SL No. 350)

**Environmental Legislation Amendment Act 2002 No. 72 s 1, pt 5**

date of assent 13 December 2002

commenced on date of assent

**Aboriginal Cultural Heritage Act 2003 No. 79 ss 1–2, 170 sch 1**

date of assent 6 November 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 16 April 2004 (2004 SL No. 36)

**Environmental Legislation Amendment Act 2003 No. 96 pts 1, 3, s 28 sch**

date of assent 3 December 2003

ss 1–2 commenced on date of assent

pt 3 hdg, ss 16–17, 21, 23, 25 (other than s 25(2) to the extent it ins the def “service facility” and s 25(3)), 28 commenced 19 December 2003 (2003 SL No. 363)

sch (other than item 5) commenced 3 October 2004 (2004 SL No. 206)

remaining provisions commenced 4 December 2004 (automatic commencement under AIA s 15DA(2))

**Nature Conservation Amendment Act 2004 No. 14 (this Act is amended, see amending legislation below)**

date of assent 24 June 2004

ss 1, 3 commenced on date of assent

remaining provisions commenced 25 June 2005 (automatic commencement under AIA s 15DA(2))

amending legislation—

**Environmental Protection and Other Legislation Amendment Act 2004 No. 48 pts 1, 10 (amends 2004 No. 14 above)**

date of assent 18 November 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 17 December 2004 (2004 SL No. 315)

**Biodiscovery Act 2004 No. 19 ss 1–2, 134–135**

date of assent 24 August 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 12 November 2004 (2004 SL No. 244)

**Petroleum and Other Legislation Amendment Act 2004 No. 26 ss 1, 2(2), pt 6**

date of assent 12 October 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 31 December 2004 (see s 2(2) and 2004 SL No. 308)

**Environmental Protection and Other Legislation Amendment Act 2004 No. 48 pts 1, 9**

date of assent 18 November 2004  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 17 December 2004 (2004 SL No. 315)

**Statute Law (Miscellaneous Provisions) Act 2004 No. 53**

date of assent 29 November 2004  
 commenced on date of assent

**Mineral Resources and Other Legislation Amendment Act 2005 No. 8 pts 1, 8**

date of assent 18 March 2005  
 commenced on date of assent

**Wild Rivers Act 2005 No. 42 ss 1–2, 52 sch 1**

date of assent 14 October 2005  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 2 December 2005 (2005 SL No. 287)

**Environmental Protection and Other Legislation Amendment Act 2005 No. 53 s 1, pt 9, s 159 sch**

date of assent 18 November 2005  
 commenced on date of assent

**Integrated Planning and Other Legislation Amendment Act 2006 No. 11 s 1, pt 9**

date of assent 30 March 2006  
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## **7 List of annotations**

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s 3 sub 2004 No. 48 s 158

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s 3A ins 2003 No. 96 s 17  
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s 5 amd 1994 No. 42 ss 3, 2 sch; 2004 No. 48 s 160

**Community participation in administration of Act**

s 6 amd 1994 No. 42 s 2 sch

**PART 3—INTERPRETATION****Division 1—Dictionary**

div hdg ins 2000 No. 44 s 4

**Definitions**

**s 7** Note—s 7 prev contained definitions for this Act. Definitions are now located in the schedule—Dictionary.  
amd 2000 No. 44 s 5(1)

**Division 2—Key definitions**

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**PART 4—PROTECTED AREAS****Division 1—Basic concepts****Classes of protected areas to which Act applies**

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**s 15** amd 1994 No. 42 s 2 sch; 2000 No. 44 s 42 sch

**Management principles of national parks (scientific)**

**s 16** sub 1994 No. 42 s 5

**Management principles of national parks**

**s 17** sub 1994 No. 42 s 5

**Management principles of national parks (recovery)**

**s 19A** ins 2000 No. 44 s 8

**Management principles of conservation parks**

**s 20** amd 1994 No. 42 s 2 sch

**Management principles of resources reserves**

**s 21** amd 2000 No. 44 s 9

**Management principles of nature refuges**

**s 22** amd 2002 No. 72 s 26

**Prohibition on mining**

**s 27** amd 2000 No. 44 s 10; 2004 No. 26 s 274; 2005 No. 53 s 159 sch

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**Subdivision 2—Dedication, revocation and amalgamation**

**sdiv hdg** ins 2000 No. 44 s 13

**Dedication of protected areas**

**s 29** amd 1994 No. 42 s 2 sch; 2000 No. 44 s 14; 2004 No. 48 s 161

**Revocation of State forests and timber reserves**

**s 30** amd 1994 No. 42 s 2 sch; 2000 No. 44 s 42 sch; 2004 No. 48 s 162

**Trustees of protected areas**

**s 31** amd 1994 No. 42 ss 6, 2 sch; 1995 No. 57 s 4 sch 1

**Revocation of protected areas**

**s 32** amd 1994 No. 42 s 2 sch; 2000 No. 44 s 15; 2004 No. 48 s 163

**Amalgamation etc. of protected areas**

s 33            amd 1994 No. 42 s 2 sch; 2000 No. 44 s 16; 2004 No. 48 s 164

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sdiv hdg    ins 2000 No. 44 s 17

**Leases etc. over protected areas**

s 34            sub 1994 No. 42 s 7  
                  amd 2000 No. 44 s 18; 2005 No. 53 s 131

**Chief executive's powers about permitted uses in national parks or national parks (recovery)**

prov hdg    amd 2000 No. 44 s 19(1)

s 35            ins 1994 No. 42 s 7  
                  amd 1995 No. 40 s 13; 2000 No. 44 ss 19(2)–(5), 39; 2003 No. 96 s 18

**Authorities for new national park or national park (recovery)**

s 36            ins 1994 No. 42 s 7  
                  amd 1994 No. 81 s 527 sch 5  
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**Chief executive's powers to renew existing authorities for national parks**

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                  amd 1995 No. 40 s 14; 2000 No. 44 s 39

**Leases may be granted under Land Act 1994**

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s 38            amd 1994 No. 42 s 8; 1994 No. 81 s 527 sch 5

**Creation of interests in protected areas**

s 39            ins 1994 No. 42 s 9

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s 39A        ins 2000 No. 44 s 21

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s 39B        ins 2000 No. 44 s 21  
                  amd 1994 No. 62 s 616(2) (as ins 2000 No. 64 s 52)

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s 39C        ins 2000 No. 44 s 21

**Dedication of national park as national park (Aboriginal land) or national park (Torres Strait Islander land)**

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s 41            amd 1994 No. 42 s 2 sch

**Dedication of leasehold land as national park (Aboriginal land) or national park (Torres Strait Islander land)**

s 42            amd 1994 No. 42 s 2 sch

**Division 3A—Regeneration plans for national parks (recovery)**

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s 45            amd 1994 No. 42 s 2 sch; 2005 No. 53 s 132

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s 46            amd 1994 No. 42 s 2 sch; 1995 No. 57 s 4 sch 1

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s 49            amd 1994 No. 42 s 2 sch

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s 50            amd 1994 No. 42 s 2 sch

**Conservation agreements and covenants binding**

s 51            amd 1994 No. 42 s 10; 2000 No. 44 s 39

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s 52            ins 1994 No. 42 s 11; 2000 No. 44 s 39

**Proposal to declare World Heritage management area**

s 53            amd 1994 No. 42 s 2 sch; 2004 No. 48 s 165

**Preparation of management plan**

prov hdg    amd 1994 No. 42 s 2 sch

s 54            amd 1994 No. 42 s 2 sch

**Declaration of World Heritage management area**

s 55            amd 1994 No. 42 s 2 sch

**Revocation of World Heritage management area**

s 56            amd 1994 No. 42 s 2 sch; 2004 No. 48 s 166

**Proposal to declare international agreement area**

s 57            amd 1994 No. 42 s 2 sch; 2004 No. 48 s 167

**Preparation of management plan**

prov hdg    amd 1994 No. 42 s 2 sch

s 58            amd 1994 No. 42 s 2 sch

**Declaration of international agreement area**

s 59            amd 1994 No. 42 s 2 sch

**Revocation of international agreement area**

s 60            amd 1995 No. 42 s 2 sch

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s 61            amd 2000 No. 44 s 23; 2003 No. 79 s 170 sch 1

**Restriction on taking etc. of cultural and natural resources of protected areas**s 62            amd 1994 No. 42 s 12; 1997 No. 8 s 4; 2000 No. 44 s 24; 2004 No. 14 s 4;  
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s 64            amd 1994 No. 42 s 2 sch

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s 65            amd 1994 No. 42 s 2 sch

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s 66            amd 1994 No. 42 s 13

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                  amd 2000 No. 44 s 39**Preservation of land-holders' interests**

s 69            amd 1994 No. 42 s 2 sch

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                  amd 2003 No. 96 s 20**PART 4A—FOREST RESERVES**pt hdg        ins 2000 No. 44 s 25  
                  exp 31 December 2025 (see s 70R)**Division 1—Preliminary**div 1 (ss 70A–70B) ins 2000 No. 44 s 25  
                  exp 31 December 2025 (see s 70R)**Division 2—Dedication and revocation**div hdg        ins 2000 No. 44 s 25  
                  exp 31 December 2025 (see s 70R)**Dedication of forest reserves**s 70C         ins 2000 No. 44 s 25  
                  amd 2002 No. 72 s 27  
                  exp 31 December 2025 (see s 70R)**Naming of forest reserves**s 70D         ins 2000 No. 44 s 25  
                  exp 31 December 2025 (see s 70R)**Revocation of forest reserves**s 70E         ins 2000 No. 44 s 25  
                  amd 2004 No. 48 s 168  
                  exp 31 December 2025 (see s 70R)**Division 3—Management of forest reserves**div 3 (ss 70F–70I) ins 2000 No. 44 s 25  
                  exp 31 December 2025 (see s 70R)**Division 4—Progression to protected area**div 4 (ss 70J–70O) ins 2000 No. 44 s 25  
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**Division 5—Miscellaneous provisions**

**div 5 (ss 70P–70Q)** ins 2000 No. 44 s 25  
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**s 70QA** ins 2004 No. 26 s 275  
exp 31 December 2025 (see s 70R)

**Division 6—Expiry of pt 4A**

**div 6 (s 70R)** ins 2000 No. 44 s 25  
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**Classes of wildlife to which Act applies**

**s 71** amd 2004 No. 14 s 5

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**s 74** amd 2004 No. 48 s 169

**Native wildlife may be prescribed as extinct in the wild wildlife**

**s 76** sub 2004 No. 14 s 6

**Native wildlife may be prescribed as endangered wildlife**

**s 77** sub 2004 No. 14 s 6

**Native wildlife may be prescribed as vulnerable wildlife**

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**Native wildlife may be prescribed as rare wildlife**

**s 78A** ins 2004 No. 14 s 6  
exp 25 June 2010 (see s 78A(3))

**Native wildlife may be prescribed as near threatened wildlife**

**s 79** sub 2004 No. 14 s 6

**Native wildlife may be prescribed as least concern wildlife**

**s 80** sub 2004 No. 14 s 6

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**s 83** amd 1994 No. 42 s 2 sch; 2000 No. 44 s 39; 2004 No. 48 s 170

**Property in protected plants**

**s 84** amd 1994 No. 42 s 2 sch; 2000 No. 44 s 39; 2004 No. 48 s 171; 2004 No. 14 s  
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**Property in newly protected animals**

**s 85** ins 1994 No. 42 s 16

**Preservation of existing property rights**

**s 86** ins 1994 No. 42 s 16  
 amd 2000 No. 44 s 39

**Restrictions on taking protected animal and keeping or use of unlawfully taken protected animal**

**s 88** amd 1994 No. 42 s 17; 2000 No. 44 s 26  
 sub 2004 No. 48 s 172  
 amd 2004 No. 14 s 7A (amd 2004 No. 48 s 191); 2005 No. 53 s 135

**Restriction on keeping or use of lawfully taken protected animal**

s 88A ins 2004 No. 48 s 172  
amd 2005 No. 53 s 136

**Offence to keep or use native wildlife reasonably suspected to have been unlawfully taken**

s 88B ins 2004 No. 48 s 172  
amd 2005 No. 53 s 137

**Restriction on taking etc. particular protected plants**

prov hdg amd 2004 No. 14 s 8(1)  
s 89 amd 1994 No. 42 s 18; 2000 No. 44 s 27; 2003 No. 96 s 28 sch; 2004 No. 14 s 8(2); 2005 No. 53 s 138

**Restriction on using particular protected plants**

prov hdg amd 2004 No. 14 s 9(1)  
s 90 ins 1994 No. 42 s 19  
amd 2000 No. 44 ss 28, 39; 2004 No. 14 s 9(2)–(3); 2005 No. 53 s 139

**Restriction on release etc. of international and prohibited wildlife**

prov hdg amd 2004 No. 53 s 2 sch  
s 91 amd 2000 No. 44 s 29; 2004 No. 48 s 173; 2005 No. 53 s 140

**Restriction on breeding etc. hybrids of protected animals**

prov hdg amd 2004 No. 53 s 2 sch  
s 92 amd 1994 No. 42 s 2 sch

**Aborigines' and Torres Strait Islanders' rights to take etc. protected wildlife**

s 93 amd 1994 No. 42 s 20

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s 95 amd 2004 No. 48 s 174

**Restriction on taking etc. of native wildlife in areas of major interest and critical habitats**

s 97 amd 2000 No. 44 s 30; 2005 No. 53 s 141

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s 99 amd 2000 No. 44 s 31

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s 102 amd 2004 No. 14 s 10

**Notice of order**

s 104 amd 1994 No. 42 s 2 sch

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s 105 amd 1994 No. 42 s 2 sch



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s 107 amd 1994 No. 42 s 2 sch

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s 110 prev s 110 om 1994 No. 42 s 28  
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**Management plans**

prov hdg sub 1994 No. 42 s 23(1)

s 111 amd 1994 No. 42 ss 23(2)–(3), 2 sch; 2000 No. 44 ss 32, 39; 2005 No. 53 s 142

**Conservation plans**

prov hdg sub 1994 No. 42 24(1)

s 112 amd 1994 No. 42 s 24(2)–(6); 1995 No. 40 s 15; 2004 No. 48 s 177

**Notice of proposal to prepare draft plan**

s 113 amd 1994 No. 42 s 2 sch

**Preparation of draft plan**

s 114 amd 1994 No. 42 s 2 sch

**Notice of preparation of draft plan**

s 115 amd 1994 No. 42 ss 25, 2 sch

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s 116 sub 1994 No. 42 s 26

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s 117 ins 1994 No. 42 s 26  
amd 2005 No. 42 s 52 sch 1

**Final conservation plans**

s 118 ins 1994 No. 42 s 26

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s 119 amd 1994 No. 42 s 27

**Implementation of approved plan**

s 120 amd 1994 No. 42 s 2 sch

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s 121 sub 1994 No. 42 s 29

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

s 122 sub 1994 No. 42 s 30

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

s 123 ins 1994 No. 42 s 30  
amd 1995 No. 40 s 16

**Amendment of plans**

s 124 amd 1994 No. 42 s 2 sch; 1995 No. 40 s 17

**Review of plans**

s 125 amd 1994 No. 42 s 31

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s 126 sub 1994 No. 42 s 32

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s 127 amd 1994 No. 42 s 33; 2000 No. 5 s 373 sch 3

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

s 129 ins 1994 No. 42 s 34  
amd 2003 No. 96 s 28 sch

**Identity cards**

s 130 amd 2000 No. 5 s 373 sch 3

**Advisory committees**

s 132 amd 1994 No. 42 s 2 sch

**Chief executive to keep register**

s 133 amd 1994 No. 42 s 2 sch; 2000 No. 44 s 33; 2002 No. 72 s 28; 2004 No. 48 s 178

**Records to be maintained by registrar**

s 134 amd 1994 No. 42 s 35

**Chief executive may inquire into applications**

s 135 amd 2003 No. 96 s 28 sch; 2004 No. 48 s 179; 2005 No. 53 s 143

**Confidentiality of information**

s 136 amd 1994 No. 42 s 36; 2000 No. 44 s 39

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

prov hdg sub 1994 No. 42 s 2 sch  
s 137 amd 1994 No. 42 s 2 sch

**Compensation not payable**

s 138 ins 1994 No. 42 s 37

**Annual report**

s 139 amd 2002 No. 72 s 29

**Delegation by chief executive**

s 141 sub 1994 No. 42 s 38  
amd 2000 No. 44 s 39

**Protection from liability**

s 142 amd 1994 No. 42 s 2 sch

**Immunity from prosecution**

s 143 ins 1994 No. 42 s 39

**Power to stop and search vehicles etc.**

s 144 amd 1994 No. 42 s 40

**Entry and search—evidence of offences**

s 146 amd 1994 No. 42 s 2 sch

**General powers of conservation officer in relation to places**

s 147 amd 1994 No. 42 s 2 sch; 2000 No. 44 s 39

**Offence related warrants**

s 149 prev s 149 om 1994 No. 42 s 2 sch

**Conservation officer may require name and address**

s 151 sub 1994 No. 42 s 41

**Power to require information from certain persons**

s 152 sub 1994 No. 42 s 42

**General powers for seized things**

s 152A ins 2004 No. 48 s 180

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s 152B ins 2004 No. 48 s 180

**Other powers of conservation officers**

s 154 amd 2000 No. 5 s 373 sch 3

**Court may order compensation**

s 156 ins 1994 No. 42 s 43

**Acts repealed**

s 158 prev s 158 om R1 (see RA s 40)

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s 159 prev s 159 om R1 (see RA s 40)

**Division 1—Proceedings and offences generally**

div hdg ins 2003 No. 96 s 21

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s 160 amd 1994 No. 42 s 2 sch; 2004 No. 53 s 2 sch; 2004 No. 48 s 181

**Meaning of “repealed Act” in Division**

s 161 prev s 161 exp 19 December 1994 (see s 180(1))

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s 162 prev s 162 exp 19 December 1994 (see s 180(1))  
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s 163 prev s 163 exp 19 December 1994 (see s 180(1))

**Indictable and summary offences**

s 164 prev s 164 exp 19 December 1994 (see s 180(1))  
pres s 164 sub 1994 No. 42 s 45  
amd 2003 No. 96 s 22; 2004 No. 48 s 182

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

s 164A ins 1994 No. 42 s 48  
exp 19 December 1994 (see s 180(1))

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- s 165** prev s 165 sub 1994 No. 42 s 49  
exp 19 December 1994 (see s 180(1))  
pres s 165 ins 1994 No. 42 s 45  
amd 2004 No. 48 s 183

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- div hdg** om R2 (see RA s 37)

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

- s 166** prev s 166 exp 19 December 1994 (see s 180(1))  
pres s 166 ins 1994 No. 42 s 45

**Limitation on time for starting summary proceedings**

- s 167** prev s 167 om 1994 No. 42 s 2 sch  
pres s 167 ins 1994 No. 42 s 45  
amd 2000 No. 44 s 39

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- s 168** prev s 168 exp 19 December 1994 (see s 180(1))

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- s 169** prev s 169 exp 19 December 1994 (see s 180(1))

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- s 169A** ins 1994 No. 42 s 51  
exp 19 December 1994 (see s 180(1))

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- div hdg** exp 19 December 1995 (see s 180(1))

**Photographs and fingerprints of offenders**

- prov hdg** sub 1994 No. 42 s 2 sch  
**s 170** om 2000 No. 5 s 373 sch 3

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- s 172** ins 1994 No. 42 s 52  
om R1 (see RA s 37)

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- div hdg** ins 2003 No. 96 s 23

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- div hdg** ins 2003 No. 96 s 23

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- s 173A** ins 2003 No. 96 s 23  
def “**nominated offence**” amd 2004 No. 48 s 184

**Subdivision 2—Declarations**

- sdiv 2 (ss 173B–173C)** ins 2003 No. 96 s 23

**Subdivision 3—Enforcement orders**

- sdiv 3 (ss 173D–173M)** ins 2003 No. 96 s 23

**Subdivision 4—General procedural provision**

- sdiv 4 (s 173N)** ins 2003 No. 96 s 23

**Division 3—Judicial review of administrative decisions****div 3 (s 173O)** ins 2003 No. 96 s 23**Chief executive's general powers****s 173P** ins 2004 No. 48 s 185**Publication of notice for revocation under s 30, 32, 56 or 70E or particular amalgamations under s 33****s 173Q** ins 2004 No. 48 s 185**Application of Statutory Instruments Act****s 174** sub 1994 No. 42 s 46; 1995 No. 57 s 4 sch 1  
amd 2000 No. 44 ss 34, 39**Chief executive may make codes of practice****s 174A** ins 2000 No. 44 s 35**Operation of 2005 SL No. 138****s 174AA** ins 2006 No. 11 s 99  
AIA s 20A applies (see s 174AA(4))  
exp 31 March 2006 (see s 174AA(3))**Regulation-making power****prov hdg** sub 2000 No. 44 s 36(1)**s 175** amd 1994 No. 42 s 47; 1995 No. 57 s 4 sch 1; 2000 No. 44 s 36(2); 2003 No.  
96 ss 24, 28 sch; 2004 No. 48 s 186; 2005 No. 53 s 159 sch**PART 12—SAVINGS AND TRANSITIONAL****pt hdg** prev pt 12 hdg om R1 (see RA s 39)**Meaning of “commencing day” in Part****s 176** exp 19 December 1995 (see s 180(2))**Fauna refuges****s 177** ins 1994 No. 42 s 50  
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exp 19 December 1995 (see s 180(2))**Expiry of Part****s 180** ins 1994 No. 42 s 52  
exp 19 December 1995 (see s 180(2))**Division 1—Savings and transitional provisions for Act No. 20 of 1992****div hdg** prev div hdg exp 19 December 1995 (see s 180(2))  
pres div hdg ins 2004 No. 48 s 187**References to repealed Acts****s 181** amd 1995 No. 57 s 4 sch 1**References to Crown land under Act****s 182** ins 1995 No. 57 s 4 sch 1

**Authorities under former Act about national parks**

s 183 ins 2000 No. 44 s 37

**Division 2—Savings and transitional provisions for Nature Conservation and Other Legislation Amendments Act 2000**

div hdg prev div hdg exp 19 December 1994 (see s 180(1))

pres div hdg ins 2004 No. 48 s 188

**Provision to allow beekeeping in particular former forest reserves until 2025**

s 184 ins 2004 No. 48 s 188

exp beginning 1 January 2025**Provision to allow horse riding in particular former forest reserves until 24 November 2013**

s 184A ins 2005 No. 53 s 144

exp 23 November 2013**Provision for stock grazing permits for former SEQFA forest reserves**

s 184B ins 2005 No. 53 s 144

**Provision for commercial activity permits for former forest reserves**

s 185 ins 2004 No. 48 s 188

**Division 3—Transitional provision for the Nature Conservation Amendment Act 2004**

div hdg ins 2004 No. 14 s 12 (amd 2004 No. 48 s 193(2))

**Abolition of class of rare wildlife**

s 186 ins 2004 No. 14 s 12 (amd 2004 No. 48 s 193(3))

**Division 4—Updating of references**

div hdg ins 1995 No. 57 s 4 sch 1

om 2000 No. 44 s 42 sch

**SCHEDULE—DICTIONARY**

Note— definitions for this Act were originally located in s 7

prev sch 1 om R1 (see RA s 40)

pres sch ins 2000 No. 44 s 38

def “**Aboriginal land**” reloc from s 7 2000 No. 44 s 5(3)def “**Aboriginal people**” om 1994 No. 42 s 4(1)def “**Aboriginal tradition**” om 1994 No. 42 s 4(1)def “**Aborigine**” om 1994 No. 42 s 4(1)def “**animal**” reloc from s 7 2000 No. 44 s 5(3)def “**appliance**” ins 1994 No. 42 s 4(2)

amd 1999 No. 15 s 137 sch 1

reloc from s 7 2000 No. 44 s 5(3)

def “**area of major interest**” reloc from s 7 2000 No. 44 s 5(3)def “**Australia**” reloc from s 7 2000 No. 44 s 5(3)def “**authorised person**” ins 2005 No. 53 s 145(1)def “**authorised purpose**” reloc from s 7 2000 No. 44 s 5(3)def “**biological diversity**” reloc from s 7 2000 No. 44 s 5(3)def “**boat**” reloc from s 7 2000 No. 44 s 5(3)def “**buy**” reloc from s 7 2000 No. 44 s 5(3)def “**captive breeding agreement**” ins 2004 No. 48 s 189(2)

- def “**carcass**” reloc from s 7 2000 No. 44 s 5(3)
- def “**chief executive**” om 1994 No. 42 s 4(1)
- def “**CITES**” reloc from s 7 2000 No. 44 s 5(3)  
amd 2003 No. 96 s 25(3)
- def “**common wildlife**” reloc from s 7 2000 No. 44 s 5(3)  
om 2004 No. 14 s 13(1)
- def “**conservation**” reloc from s 7 2000 No. 44 s 5(3)
- def “**conservation agreement**” reloc from s 7 2000 No. 44 s 5(3)
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- def “**conservation plan**” sub 1994 No. 42 s 4(1)–(2)  
reloc from s 7 2000 No. 44 s 5(3)
- def “**conservation value**” reloc from s 7 2000 No. 44 s 5(3)
- def “**conviction**” ins 1994 No. 42 s 4(2)  
reloc from s 7 2000 No. 44 s 5(3)
- def “**coordinated conservation area**” reloc from s 7 2000 No. 44 s 5(3)
- def “**court**” ins 2003 No. 96 s 25(2)
- def “**critical habitat**” reloc from s 7 2000 No. 44 s 5(3)
- def “**Crown land**” om 1995 No. 57 s 4 sch 1
- def “**cultural resources**” reloc from s 7 2000 No. 44 s 5(3)
- def “**ecologically sustainable use**” reloc from s 7 2000 No. 44 s 5(3)
- def “**EIS**” ins 2000 No. 44 s 5(2)  
reloc from s 7 2000 No. 44 s 5(3)
- def “**endangered wildlife**” reloc from s 7 2000 No. 44 s 5(3)
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- def “**extinct in the wild wildlife**” ins 2004 No. 14 s 13(2)
- def “**fee**” ins 1994 No. 42 s 4(2)  
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- def “**habitat**” reloc from s 7 2000 No. 44 s 5(3)
- def “**honorary protector**” reloc from s 7 2000 No. 44 s 5(3)
- def “**hovercraft**” reloc from s 7 2000 No. 44 s 5(3)
- def “**indigenous to Australia**” amd 1994 No. 42 s 4(3)  
reloc from s 7 2000 No. 44 s 5(3)
- def “**indigenous to Queensland**” amd 1994 No. 42 s 4(4)  
reloc from s 7 2000 No. 44 s 5(3)  
om 2004 No. 48 s 189(1)
- def “**interest**” reloc from s 7 2000 No. 44 s 5(3)
- def “**interfere with**” reloc from s 7 2000 No. 44 s 5(3)
- def “**interim conservation order**” reloc from s 7 2000 No. 44 s 5(3)
- def “**interim enforcement order**” ins 2003 No. 96 s 25(2)
- def “**international agreement area**” reloc from s 7 2000 No. 44 s 5(3)
- def “**international wildlife**” reloc from s 7 2000 No. 44 s 5(3)
- def “**in the wild**” amd 1997 No. 80 s 44  
reloc from s 7 2000 No. 44 s 5(3)
- def “**keep**” reloc from s 7 2000 No. 44 s 5(3)
- def “**Island custom**” om 1994 No. 42 s 4(1)
- def “**land**” reloc from s 7 2000 No. 44 s 5(3)

- def **“land-holder”** sub 1995 No. 57 s 4 sch 1  
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- def **“least concern wildlife”** ins 2004 No. 14 s 13(2)
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- def **“mining interest”** reloc from s 7 2000 No. 44 s 5(3)
- def **“national park”** reloc from s 7 2000 No. 44 s 5(3)
- def **“national park (Aboriginal land)”** reloc from s 7 2000 No. 44 s 5(3)
- def **“national park (scientific)”** reloc from s 7 2000 No. 44 s 5(3)
- def **“national park (Torres Strait Islander land)”** reloc from s 7 2000 No. 44 s 5(3)
- def **“native wildlife”** sub 1994 No. 42 s 4(1)–(2)  
 reloc from s 7 2000 No. 44 s 5(3)
- def **“natural resources”** amd 1994 No. 42 s 2 sch  
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- def **“nature”** reloc from s 7 2000 No. 44 s 5(3)
- def **“nature-based”** reloc from s 7 2000 No. 44 s 5(3)  
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- def **“nature refuge”** reloc from s 7 2000 No. 44 s 5(3)
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- def **“person”** ins 2003 No. 96 s 25(2)
- def **“place”** reloc from s 7 2000 No. 44 s 5(3)
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- def **“protected area”** reloc from s 7 2000 No. 44 s 5(3)
- def **“protected plant”** amd 1994 No. 42 s 2 sch  
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- def **“protected wildlife”** reloc from s 7 2000 No. 44 s 5(3)  
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- def **“protista”** ins 1994 No. 42 s 4(2)  
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- def **“rare wildlife”** reloc from s 7 2000 No. 44 s 5(3)
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- def “**registrar**” reloc from s 7 2000 No. 44 s 5(3)  
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- def “**service facility**” ins 2003 No. 96 s 25(2)
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- def “**vulnerable wildlife**” reloc from s 7 2000 No. 44 s 5(3)
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- def “**wildlife**” sub 1994 No. 42 s 4(1)–(2)  
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- def “**wild river declaration**” ins 2005 No. 42 s 52 sch 1
- def “**World Heritage Convention**” reloc from s 7 2000 No. 44 s 5(3)
- def “**World Heritage management area**” reloc from s 7 2000 No. 44 s 5(3)

**SCHEDULE 2—ACTS AMENDED**

- amd 1994 No. 37 s 244 sch 2  
om R1 (see RA s 40)

**8 List of forms notified or published in the gazette**

(The following information about forms is taken from the gazette. Because failure to notify or publish a form in the gazette does not invalidate the form, it may be necessary to check with the relevant government department for the latest information about forms (see SIA s 58(8)).)

**Form FM497 Version 2 February 1995—Licence Application**

pubd gaz 24 March 1995 p 1307

**Form FM498 Version 2 February 1995—Licence/Permit/Authority Renewal**

pubd gaz 24 March 1995 p 1307

**Form FM499 Version 2 February 1995—Macropod Commercial Wildlife and Commercial Macropod Harvesting Licence Application**

pubd gaz 24 March 1995 p 1307

**Form FM500 Version 2 February 1995—Permit/Authority Application**

pubd gaz 24 March 1995 p 1307

**Form FM534 Version November 1994—Stock permit application**

pubd gaz 24 March 1995 p 1307

**Form FM535 Version November 1994—Permit application for activities on Protected Areas**

pubd gaz 24 March 1995 p 1307

**Form FM536 Version November 1994—Commercial activity permit application**

pubd gaz 24 March 1995 p 1307

**9 Table of renumbered provisions**

under the Reprints Act 1992 s 43 as required by the Nature Conservation Act 1992 s 172  
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