



# Nature Conservation Act 1992

Current as at 1 December 2019

## Reprint note

Warning—Some provisions of this legislation are not in operation. These provisions are italicised. For details, see the List of legislation.

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Queensland

# Nature Conservation Act 1992

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title . . . . .	15
3	Act binds all persons . . . . .	15
3A	Territorial application of Act . . . . .	15
<b>Part 2</b>	<b>Object of Act</b>	
4	Object of Act . . . . .	15
5	How object is to be achieved . . . . .	16
6	Community participation in administration of Act . . . . .	18
<b>Part 3</b>	<b>Interpretation</b>	
<b>Division 1</b>	<b>Dictionary</b>	
7	Definitions . . . . .	18
<b>Division 2</b>	<b>Key definitions</b>	
8	Meaning of nature . . . . .	18
9	Meaning of conservation . . . . .	19
10	Meaning of biological diversity . . . . .	19
11	Meaning of ecologically sustainable use . . . . .	19
12	Meaning of threatening process . . . . .	20
13	Meaning of critical habitat . . . . .	20
<b>Part 4</b>	<b>Protected areas</b>	
<b>Division 1</b>	<b>Basic concepts</b>	
14	Classes of protected areas to which Act applies . . . . .	21
15	Management of protected areas . . . . .	21
16	Management principles of national parks (scientific) . . . . .	22
17	Management principles of national parks . . . . .	23
18	Management principles of national parks (Aboriginal land) . . . . .	24
19	Management principles of national parks (Torres Strait Islander land)	

Contents

---

20	Management principles of national parks (Cape York Peninsula Aboriginal land) . . . . .	25
21	Management principles of conservation parks . . . . .	25
21A	Management principles of resources reserves . . . . .	26
21B	Management principles of special wildlife reserves . . . . .	26
22	Management principles of nature refuges . . . . .	27
23	Management principles of coordinated conservation areas . . . .	27
27	Prohibition on mining, geothermal activities and GHG storage activities 28	
<b>Division 2</b>	<b>Protected areas (State land)</b>	
<b>Subdivision 1</b>	<b>Preliminary</b>	
28	Meaning of protected area in division . . . . .	29
<b>Subdivision 2</b>	<b>Dedication, revocation and amalgamation of protected areas</b>	
29	Dedication of protected areas . . . . .	29
30	Revocation of State forests and timber reserves . . . . .	30
31	Trustees of protected areas . . . . .	30
32	Revocation of protected areas . . . . .	31
33	Amalgamation etc. of protected areas . . . . .	31
33A	Chief executive to lodge document for dedication, revocation and amalgamation etc. . . . .	32
<b>Subdivision 3</b>	<b>Interests in protected areas</b>	
34	Leases etc. over protected areas . . . . .	33
35	Chief executive's powers about permitted uses in national parks	34
35A	Chief executive's powers about permitted uses for existing service facilities in national parks . . . . .	35
36	Authorities for new national park . . . . .	36
37	Chief executive's powers to renew existing authorities for national parks 37	
37A	Leases must be registered . . . . .	38
38	Leases may be granted under Land Act 1994 . . . . .	38
39	Creation of interests in protected areas . . . . .	39
<b>Subdivision 4A</b>	<b>Carbon abatement products</b>	
39D	Definition for sdiv 4A . . . . .	39
39E	Chief executive may keep guidelines . . . . .	39
39F	Application for right to deal with carbon abatement products . . .	39
39G	Deciding application . . . . .	39
39H	Notice of decision . . . . .	40

39I	Internal review of chief executive's decision . . . . .	40
39J	Decision on reconsideration . . . . .	41
<b>Division 3</b>	<b>Protected areas (Aboriginal land and Torres Strait Islander land) and indigenous joint management areas</b>	
<b>Subdivision 1</b>	<b>National parks (Aboriginal land) and national parks (Torres Strait Islander land)</b>	
40	Dedication of national park as national park (Aboriginal land) or national park (Torres Strait Islander land) . . . . .	42
41	Dedication of Aboriginal land as national park (Aboriginal land) or Torres Strait Islander land as national park (Torres Strait Islander land) . . . . .	42
42	Dedication of leasehold land as national park (Aboriginal land) or national park (Torres Strait Islander land) . . . . .	43
<b>Subdivision 2</b>	<b>National parks (Cape York Peninsula Aboriginal land)</b>	
42AA	Dedication of national park as national park (Cape York Peninsula Aboriginal land) . . . . .	44
42AB	Dedication of Aboriginal land as national park (Cape York Peninsula Aboriginal land) . . . . .	45
42AC	Dedication of other land as national park (Cape York Peninsula Aboriginal land) . . . . .	45
42AD	Leases etc. over national park (Cape York Peninsula Aboriginal land) 46	
42AE	Particular powers about permitted uses in national park (Cape York Peninsula Aboriginal land) . . . . .	47
42AEA	Particular powers about permitted uses for existing service facilities in national park (Cape York Peninsula Aboriginal land) . . . . .	48
42AF	Revocation of national park (Cape York Peninsula Aboriginal land) . . . . .	48
<b>Subdivision 3</b>	<b>Indigenous joint management areas</b>	
42AG	Purpose of sdiv 3 . . . . .	49
42AH	Declaration of a prescribed protected area as indigenous joint management area . . . . .	49
42AI	Declaration of Aboriginal land as indigenous joint management area . . . . .	50
42AJ	Declaration of other land as an indigenous joint management area . . . . .	50
42AK	Revocation of dedication of protected area or declaration of indigenous joint management areas . . . . .	51
42AL	Amalgamation etc. of protected areas that are indigenous joint management areas . . . . .	51
42AM	Effect of revocation of prescribed protected area on indigenous joint management area . . . . .	52
42AN	Leases etc. over land in indigenous joint management area . . . . .	53
42AO	Particular powers about permitted uses on land in particular indigenous joint management areas . . . . .	53

Contents

---

42AOA	Particular powers about permitted uses for existing service facilities on land in particular indigenous joint management areas . . . . .	55
42AP	Authorities for new national park that is an indigenous joint management area . . . . .	55
<b>Subdivision 4</b>	<b>Registration</b>	
42AQ	Chief executive to lodge document for dedication, declaration or change	57
<b>Division 3A</b>	<b>Special management areas (controlled action)</b>	
42A	Declaration of special management area (controlled action) . . .	58
42B	When declaration of special management area (controlled action) ends	59
<b>Division 3B</b>	<b>Special wildlife reserves</b>	
43	Application of division . . . . .	59
43A	Proposal for declaration of special wildlife reserve . . . . .	60
43B	Making conservation agreement for special wildlife reserve . . . .	61
43C	Terms of conservation agreement for special wildlife reserve . .	62
43D	Declaration of special wildlife reserve . . . . .	64
43E	Agreeing to amend conservation agreement . . . . .	64
43F	Leases etc. over land in special wildlife reserve . . . . .	64
43G	Service facilities over land in special wildlife reserve . . . . .	65
43H	Previous use authorities in special wildlife reserve . . . . .	66
43I	Amalgamation of special wildlife reserves . . . . .	67
43J	Revocation of special wildlife reserves . . . . .	67
43K	Conservation agreements for special wildlife reserves binding . .	68
43L	Consent for transfer or surrender of land or expiry of lease . . . .	69
<b>Division 4</b>	<b>Nature refuges and coordinated conservation areas</b>	
44	Proposal for declaration of nature refuge . . . . .	69
45	Conservation agreements for nature refuges . . . . .	70
46	Declaration of nature refuges . . . . .	71
47	Duration and termination of conservation agreements . . . . .	72
48	Variation or replacement of conservation agreements . . . . .	73
49	Compulsory declaration of nature refuge . . . . .	73
50	Revocation of nature refuge or coordinated conservation area .	75
51	Conservation agreements and conservation covenants for nature refuges binding . . . . .	75
<b>Division 4A</b>	<b>Environmental impact statements</b>	
53	Application of division . . . . .	76

54	Chief executive may require EIS .....	76
55	EIS must be considered .....	76
<b>Division 5</b>	<b>Cultural and natural resources</b>	
61	Property in cultural and natural resources .....	76
62	Restriction on taking etc. of cultural and natural resources of protected areas .....	77
<b>Division 6</b>	<b>General</b>	
63	Meaning of landholder in division .....	79
64	Naming of protected areas .....	79
65	Effect of change in class of protected area .....	79
66	Offset condition for protected area authority .....	80
66A	Conditions of protected area authority .....	80
67	Compensation when nature refuge declared .....	81
68	No compensation on termination of conservation agreements or revocation of protected areas .....	83
68A	Liability of State .....	83
69	Preservation of landholders' interests .....	83
70	Unlawful use of certain words .....	84
70AA	Regulations may define extent of area .....	84
<b>Part 4A</b>	<b>Forest reserves</b>	
<b>Division 1</b>	<b>Preliminary</b>	
70A	Purpose of pt 4A and its achievement .....	85
70B	Definitions for pt 4A .....	85
70BA	SEQ horse riding trail network .....	86
<b>Division 2</b>	<b>Revocation of forest reserves</b>	
70E	Revocation of forest reserves .....	86
70EA	Chief executive to lodge document for revocation .....	87
<b>Division 3</b>	<b>Management of forest reserves</b>	
<b>Subdivision 1</b>	<b>Management principles of forest reserves</b>	
70F	Management principles .....	87
<b>Subdivision 2</b>	<b>Management</b>	
70G	State forest or timber reserve dedicated as a forest reserve ...	89
70H	Land Act reserve dedicated as a forest reserve .....	90
70I	Management principles prevail .....	90
<b>Division 4</b>	<b>Progression to protected area</b>	
<b>Subdivision 1</b>	<b>Review of forest reserves</b>	

Contents

---

70J	Review . . . . .	91
70JA	Review of impact of horse riding trails . . . . .	91
70JB	Assessment by independent scientific advisory committee . . . .	91
<b>Subdivision 2</b>	<b>Proposed protected areas</b>	
70K	Designation . . . . .	93
70L	Effect of designation . . . . .	94
70M	When designation ends . . . . .	94
70N	Register of proposed protected areas . . . . .	94
70O	Amendment of designation . . . . .	95
<b>Division 5</b>	<b>Miscellaneous provisions</b>	
70P	References to State forest or timber reserve in other legislation	96
70Q	References to Land Act reserves in other legislation . . . . .	96
70QA	Prohibition on mining, geothermal activities and GHG storage activities in forest reserves . . . . .	96
<b>Division 6</b>	<b>Expiry of pt 4A</b>	
70R	Expiry . . . . .	96
<b>Part 5</b>	<b>Wildlife and habitat conservation</b>	
<b>Division 1</b>	<b>Basic concepts</b>	
71	Classes of wildlife to which Act applies . . . . .	97
72	Management of wildlife—general . . . . .	97
73	Management principles of protected wildlife . . . . .	98
74	Management principles of international wildlife . . . . .	98
75	Management principles of prohibited wildlife . . . . .	99
<b>Division 2</b>	<b>Classes of wildlife</b>	
76	Native wildlife may be prescribed as extinct wildlife . . . . .	99
77	Native wildlife may be prescribed as extinct in the wild wildlife . .	99
78	Native wildlife may be prescribed as critically endangered wildlife	100
78A	Native wildlife may be prescribed as endangered wildlife . . . . .	100
78B	Native wildlife may be prescribed as vulnerable wildlife . . . . .	101
79	Native wildlife may be prescribed as near threatened wildlife . . .	102
80	Native wildlife may be prescribed as least concern wildlife . . . . .	103
81	Wildlife may be prescribed as international wildlife . . . . .	103
82	Wildlife may be prescribed as prohibited wildlife . . . . .	103
<b>Division 3</b>	<b>Ownership of protected wildlife</b>	
83	Property in protected animals . . . . .	104
84	Property in protected plants . . . . .	104



85	Property in newly protected animals . . . . .	105
86	Preservation of existing property rights . . . . .	106
87	Liability of State . . . . .	106
<b>Division 4</b>	<b>Restrictions on activities relating to protected wildlife</b>	
<b>Subdivision 1</b>	<b>Particular restrictions relating to protected animals</b>	
88	Restrictions on taking protected animal and keeping or use of unlawfully taken protected animal . . . . .	106
88A	Restriction on keeping or use of lawfully taken protected animal	108
88BA	Restrictions relating to dugongs and marine turtles . . . . .	109
88C	Restrictions relating to flying-foxes and flying-fox roosts . . . . .	110
<b>Subdivision 2</b>	<b>Particular restrictions relating to protected plants</b>	
88D	Regulation may prescribe special least concern plants . . . . .	111
89	Restriction on taking etc. particular protected plants . . . . .	112
90	Restriction on using particular protected plants . . . . .	113
<b>Subdivision 3</b>	<b>Other restrictions</b>	
90A	Offence to keep or use native wildlife reasonably suspected to have been unlawfully taken . . . . .	114
91	Restriction on release etc. of international and prohibited wildlife	115
92	Restriction on breeding etc. hybrids of protected animals . . . . .	116
93	Aborigines' and Torres Strait Islanders' rights to take etc. protected wildlife . . . . .	116
94	Conservation officers prohibited in dealing with protected wildlife	117
<b>Division 5</b>	<b>Conservation value for protected wildlife</b>	
95	Payment of conservation value . . . . .	117
96	Recovery of unpaid conservation value . . . . .	119
<b>Division 6</b>	<b>Specific restriction on activities relating to native wildlife</b>	
97	Restriction on taking etc. of native wildlife in areas of major interest and critical habitats . . . . .	119
97A	Additional restriction on hunting native ducks or native quails . . . . .	120
<b>Division 7</b>	<b>Provisions for landholders</b>	
98	No right to enter land . . . . .	121
99	Offence to trespass—general . . . . .	121
100	Offence to trespass—landholders' rights . . . . .	122
<b>Division 8</b>	<b>Captive breeding agreements and captive breeding for conservation</b>	
<b>Subdivision 1</b>	<b>Preliminary</b>	
100A	Main purpose of div 8 and its achievement . . . . .	123

Contents

---

<b>Subdivision 2</b>	<b>Captive breeding agreements</b>	
100B	Minister’s power to enter into captive breeding agreement . . . . .	123
100C	Things a captive breeding agreement may provide for . . . . .	125
100D	Required provisions for captive breeding agreement . . . . .	125
100E	Restriction on the taking, under a captive breeding agreement, of wildlife in the wild . . . . .	126
100F	Additional provisions for termination of captive breeding agreement	126
100G	Obligation to surrender protected wildlife on termination of captive breeding agreement . . . . .	127
<b>Subdivision 3</b>	<b>Chief executive’s power for captive breeding</b>	
100H	Powers . . . . .	127
<b>Division 9</b>	<b>Offset conditions</b>	
100I	Offset condition for wildlife authority . . . . .	127
100J	Conditions of wildlife authority . . . . .	128
<b>Division 10</b>	<b>Statements of management intent</b>	
100K	Local government’s statement of management intent . . . . .	129
<b>Part 6</b>	<b>Interim conservation orders</b>	
101	Definitions . . . . .	130
102	Issue of order . . . . .	130
103	Effect of order . . . . .	130
104	Notice of order . . . . .	131
105	Duration of order . . . . .	131
107	Suspension of licences etc. . . . .	131
108	Compensation . . . . .	132
109	Compliance with order . . . . .	132
<b>Part 7</b>	<b>Management statements, management plans, management programs and conservation plans</b>	
<b>Division 1</b>	<b>Preparing management statement or management plan</b>	
111	Chief executive to prepare management statement . . . . .	133
112	Minister may prepare management plan . . . . .	135
<b>Division 2</b>	<b>Making and implementing management statements</b>	
113	Management statements to be consistent with management principles etc. . . . .	136
113A	Notice of making of management statement . . . . .	137
113B	When management statement has effect . . . . .	137
113C	Implementation of management statement . . . . .	137
<b>Division 3</b>	<b>Preparing, approving and implementing management plans</b>	

114	Application of division .....	138
115	Preparation of draft plan .....	138
115A	Notice of draft plan .....	138
115B	Obtaining copy of draft plan .....	139
116	Submissions to be considered when preparing final management plan 140	
117	Final management plans .....	140
118	Approval of final management plan .....	140
119	Management plan may be combined with another plan .....	141
119A	When management plan has effect .....	141
119B	Management statement ceases to have effect if management plan takes effect .....	141
120	Implementation of management plan .....	142
<b>Division 4</b>	<b>Amendment of management plans</b>	
120A	Procedures for amending management plan .....	142
120AB	Amendment of management plans for particular land .....	143
120B	Approval of amendment .....	143
120C	When amendment has effect .....	144
<b>Division 5</b>	<b>Publication of management statements and management plans</b>	
120D	Publication and availability of management statements and management plans .....	144
120E	Obtaining copies of management statements or management plans 145	
<b>Division 6</b>	<b>Management programs</b>	
120EA	Preparation of management program .....	145
120EB	Content of management program .....	145
120EC	Approval of management program .....	146
120ED	When management program has effect .....	146
120EE	Implementation of management program .....	146
120EF	Amendment of management program .....	146
<b>Division 7</b>	<b>Reviewing management statements, management plans and management programs</b>	
120F	Review of management statements .....	147
120G	Review of management plans .....	147
120GA	Review of management program .....	148
<b>Division 8</b>	<b>Conservation plans</b>	
120H	Preparation of conservation plans .....	149

Contents

---

120I	Conservation plans to be consistent with management principles etc. 150	
120J	Approval of conservation plan . . . . .	150
120K	Implementation of conservation plan . . . . .	151
<b>Division 9</b>	<b>Miscellaneous provisions</b>	
121	Plan replaces interim or declared management intent . . . . .	151
123	Local governments' decisions to be consistent with plans . . . . .	151
<b>Part 7A</b>	<b>Regulations identifying critical habitats or areas of major interest</b>	
126A	Local governments' decisions to be consistent with regulations . . . . .	152
<b>Part 8</b>	<b>Administration</b>	
127	Appointment of conservation officers . . . . .	152
128	Appointment of honorary protectors . . . . .	153
129	Minister may inquire into suitability of proposed appointees . . . . .	154
130	Identity cards . . . . .	154
131	Proof of authority . . . . .	155
132	Advisory committees . . . . .	155
132A	Committees for protected areas in Cape York Peninsula Region . . . . .	156
133	Chief executive to keep register . . . . .	156
134	Records to be kept by registrar . . . . .	157
135	Chief executive may inquire into applications . . . . .	159
136	Confidentiality of information . . . . .	160
137	Licences to be consistent with management principles, and management intent, management plan or conservation agreement . . . . .	160
137A	Compensation if landholder's interest in land injuriously affected . . . . .	161
138	Compensation not payable if authority not renewed etc. . . . .	162
139	Annual report . . . . .	163
140	Delegation by Minister . . . . .	163
141	Delegation by chief executive . . . . .	163
142	Protection from liability . . . . .	164
143	Immunity from prosecution . . . . .	167
143A	False or misleading documents . . . . .	167
143B	Chief executive may approve use of information system . . . . .	168
<b>Part 9</b>	<b>Investigation and enforcement</b>	
144	Power to stop and search vehicles etc. . . . .	168
145	Entry and search—monitoring compliance . . . . .	170
146	Entry and search—evidence of offences . . . . .	170

147	General powers of conservation officer in relation to places . . . .	172
148	Monitoring warrants . . . . .	173
149	Offence related warrants . . . . .	174
150	Warrants may be granted by telephone, facsimile, radio etc. . . .	175
151	Conservation officer may require name and address . . . . .	177
152	Power to require information from certain persons . . . . .	178
152A	General powers for seized things . . . . .	179
152B	Offence to tamper with seized thing . . . . .	180
153	Power to keep protected wildlife until conservation value is paid	181
154	Other powers of conservation officers . . . . .	181
155	Obstruction of conservation officers . . . . .	183
156	Court may order compensation . . . . .	184
157	False or misleading information . . . . .	184
159	Impersonation of conservation officer . . . . .	185
<b>Part 10</b>	<b>Legal proceedings</b>	
<b>Division 1</b>	<b>Proceedings and offences generally</b>	
160	Evidentiary provisions . . . . .	185
161	Conduct of executive officers, servants and agents . . . . .	187
162	Executive officers must ensure corporation complies with Act . .	188
163	Offence committed over a period . . . . .	189
164	Indictable and summary offences . . . . .	189
165	Proceedings for indictable offences . . . . .	190
166	Limitation on who may summarily hear indictable offence proceedings 191	
167	Limitation on time for starting summary proceedings . . . . .	191
168	Court may order costs of rehabilitation or restoration . . . . .	192
169	Additional penalty—conservation value of protected wildlife . . . .	192
171	Disposal of cultural or natural resources and protected wildlife owned by State . . . . .	192
172	Disposal of wildlife etc. not owned by State . . . . .	193
173	Penalties payable to consolidated fund . . . . .	194
<b>Division 2</b>	<b>Proceedings for declarations and enforcement orders</b>	
<b>Subdivision 1</b>	<b>Preliminary</b>	
173A	Definitions for div 2 . . . . .	194
<b>Subdivision 2</b>	<b>Declarations</b>	
173B	Court may make declarations . . . . .	194

Contents

---

173C	Court may make orders about declarations . . . . .	195
<b>Subdivision 3</b>	<b>Enforcement orders</b>	
173D	Proceeding for enforcement orders . . . . .	196
173E	Making interim enforcement order . . . . .	196
173F	Making enforcement order . . . . .	197
173G	Effect of orders . . . . .	197
173H	Court’s powers about orders . . . . .	199
173I	Effect of enforcement order requiring restoration or rehabilitation of land 199	
173J	Record in land registry of enforcement order requiring restoration or rehabilitation of land . . . . .	201
173K	Application for removal of particulars of enforcement order from registrar’s records . . . . .	201
173L	How chief executive must deal with application . . . . .	202
173M	Appeal against refusal to approve application or approval of application with conditions . . . . .	203
<b>Subdivision 4</b>	<b>General procedural provision</b>	
173N	Proceeding brought in representative capacity . . . . .	204
<b>Division 3</b>	<b>Judicial review of administrative decisions</b>	
173O	Extended standing for judicial review . . . . .	205
<b>Division 4</b>	<b>Stay of decisions by QCAT</b>	
173OA	Limitation on stays granted by QCAT for particular decisions . . .	206
<b>Part 11</b>	<b>Miscellaneous</b>	
173P	Chief executive’s general powers . . . . .	206
173Q	Publication of notice for revocation under s 30, 32 or 70E or particular amalgamations under s 33 . . . . .	207
174	Application of Statutory Instruments Act . . . . .	207
174A	Chief executive may make codes of practice . . . . .	208
174B	Chief executive may make assessment guidelines . . . . .	208
174C	No fee for instrument, information or notice . . . . .	209
175	Regulation-making power . . . . .	209
<b>Part 12</b>	<b>Savings and transitional</b>	
<b>Division 1</b>	<b>Savings and transitional provisions for Act No. 20 of 1992</b>	
181	References to repealed Acts . . . . .	212
182	References to Crown land under Act . . . . .	212
183	Authorities under former Act about national parks . . . . .	212
<b>Division 2</b>	<b>Savings and transitional provisions for Nature Conservation and Other Legislation Amendment Act 2000</b>	

184	Provision to allow beekeeping in particular former forest reserves until 2025 .....	213
184B	Provision for stock grazing permits for former SEQFA forest reserves 213	
185	Provision for commercial activity permits for former forest reserves	214
<b>Division 3</b>	<b>Transitional provision for the Nature Conservation Amendment Act 2004</b>	
186	Abolition of class of rare wildlife .....	215
<b>Division 4</b>	<b>Transitional provisions for amendments under Waste Reduction and Recycling Act 2011</b>	
187	Existing protected areas and indigenous joint management areas	216
188	Existing leases and conservation agreements must still be registered 216	
<b>Division 5</b>	<b>Transitional provisions for Nature Conservation and Other Legislation Amendment Act (No. 2) 2013</b>	
<b>Subdivision 1</b>	<b>Provisions about management of protected areas and conservation plans</b>	
189	Definitions for sdiv 1 .....	217
190	Application of amended part 7 to existing dedications or declarations 218	
191	Existing management statements .....	219
192	Preparation of other plans not completed at commencement ...	219
193	References to particular protected areas .....	220
194	Existing leases must still be registered .....	220
<b>Subdivision 2</b>	<b>Provisions about classes of protected areas</b>	
195	Definitions for sdiv 2 .....	221
196	National parks (scientific) taken to be national parks and special management areas (scientific) .....	221
197	National parks (recovery) taken to be national parks and special management areas (controlled action) .....	222
198	Conservation parks taken to be regional parks .....	222
199	Resources reserves taken to be regional parks and regional park (resource use area) .....	223
200	References to particular protected areas .....	223
201	Trustees of conservation parks and resources reserves continue	224
202	Change in class does not affect instruments applying to an area	224
203	Particular previous use authorities continue .....	225
204	Deciding application for lease etc. for a protected area of an old class 225	
<b>Division 6</b>	<b>Transitional provisions for Nature Conservation and Other</b>	

Contents

---

	<b>Legislation Amendment Act 2016</b>	
205	Definitions for division . . . . .	226
206	Application of division . . . . .	226
207	Special management area (scientific) taken to be national park (scientific) . . . . .	226
208	Regional park (general) taken to be conservation park . . . . .	226
209	Regional park (resource use area) taken to be resources reserve	227
210	References to particular protected areas . . . . .	227
211	Trustees of regional park (general) . . . . .	227
212	Trustees of regional park (resource use area) . . . . .	228
213	Change in class does not affect instruments applying to an area	228
214	Deciding application for relevant authorities . . . . .	229
<b>Schedule</b>	<b>Dictionary</b> . . . . .	<b>230</b>



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# Nature Conservation Act 1992

## 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 while allowing for the involvement of indigenous people in the management of protected areas in which they have an interest under Aboriginal tradition or Island custom.

## **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 landholders;
- (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) management plans; and
    - (iv) conservation agreements; and
    - (v) management programs;for the areas;
  - the management of protected areas having regard to any management statement 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;
  - providing for the ecologically sustainable use of protected areas by the preparation of management statements for use in managing the areas;
- (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 landholders
  - the cooperative involvement of landholders 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, landholders 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.

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## **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 (Cape York Peninsula Aboriginal land); and
- (f) conservation parks; and
- (g) resources reserves; and
- (h) special wildlife reserves; and
- (i) nature refuges; and
- (j) coordinated conservation 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 national park (Cape York Peninsula Aboriginal land) or an indigenous joint management area—any indigenous land use agreement for the area and

- the indigenous management agreement for the area; or
  - (iii) a special wildlife reserve—the conservation agreement and management program for the area; or
  - (iv) a nature refuge—the declared management intent, and the conservation agreement or covenant, for the area; or
  - (v) a coordinated conservation area—
    - (A) the interim management intent for the area until a management statement or management plan is approved for the area; and
    - (B) the conservation agreement for the area; and
  - (c) if a management plan is in effect for the area—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.
- (4) If a management statement is in effect for a protected area, the statement is to be considered in managing 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.
- (3) Subject to subsections (1) and (2), a national park (scientific), or a part of a national park (scientific), that is also an indigenous joint management area 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.

## **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; and
  - (d) provide opportunities for educational and recreational activities in a way consistent with the area's natural and cultural resources and values; and

- (e) provide opportunities for ecotourism in a way consistent with the area's natural and cultural resources and values.
- (1A) However, if the whole or part of a national park is declared as a special management area (controlled action), the management of the park or part may include the following—
  - (a) the manipulation of the area's natural and cultural resources to protect or restore the area's natural or cultural values;
  - (b) the continuation of an existing use of the area consistent with maintaining the area's natural and cultural values.
- (2) The management principle mentioned in subsection (1)(a) is the cardinal principle for the management of national parks.
- (3) Subject to subsections (1) to (2), a national park, or a part of a national park, that is also an indigenous joint management area 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.
- (4) In this section—

*existing use*, of a special management area (controlled action), means a lawful use made of the area immediately before the declaration of the area as a special management area (controlled action).

## **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.

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**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.

**20 Management principles of national parks (Cape York Peninsula Aboriginal land)**

- (1) A national park (Cape York Peninsula Aboriginal land) is to be managed as a national park.
- (2) Subject to subsection (1), a national park (Cape York Peninsula 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.

**21 Management principles of conservation parks**

- (1) 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) provide opportunities for educational and recreational activities in a way consistent with the area’s natural and cultural resources and values; and
  - (d) ensure that any commercial use of the area’s natural resources, including fishing and grazing, is ecologically sustainable.
- (2) Subject to subsection (1), a conservation park, or a part of a conservation park, that is also an indigenous joint

management area 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.

### **21A 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.
- (3) Subject to subsections (1) and (2), a resources reserve, or a part of a resources reserve, that is also an indigenous joint management area 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.

### **21B Management principles of special wildlife reserves**

- (1) A special wildlife reserve is to be managed to—
  - (a) permanently protect the area’s exceptional natural and cultural resources and values; and
  - (b) protect the area’s exceptional scientific values; and
  - (c) present the area’s cultural and natural resources and values; and
  - (d) ensure the only use of the area is nature-based and ecologically sustainable.

- 
- (2) Also, a special wildlife reserve is to be managed to do any of the following stated in the conservation agreement for the reserve—
- (a) allow controlled scientific study and monitoring of the area's natural resources;
  - (b) provide opportunities for educational and recreational activities in a way consistent with the area's natural and cultural resources and values;
  - (c) provide opportunities for ecotourism in a way consistent with the area's natural and cultural resources and values;
  - (d) provide for the manipulation of the area's natural and cultural resources to protect or restore the area's natural or cultural values;
  - (e) provide for the manipulation of threatened wildlife's habitat and the control of threatening processes relating to threatened wildlife, including threatening processes caused by other wildlife.

## **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 landholders 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 landholders; and

[s 27]

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- (b) take account of the area's values, including its recreational, educational and commercial values; and
- (c) provide for the interests of the various landholders to be maintained.

## **27 Prohibition on mining, geothermal activities and GHG storage activities**

- (1) A mining interest, geothermal tenure or GHG authority 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 (Cape York Peninsula Aboriginal land); or
  - (f) a conservation park; or
  - (g) a special wildlife reserve.
- (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 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, 35, 42AD, 42AE, 43F or 43G has been granted, made, issued or given for the licence.
- (3) Subsection (1) applies in relation to land in a protected area even if the land is also subject to a tenure on which a mining interest, geothermal tenure or GHG authority could otherwise be granted.

*Example of land in a protected area—*

land in a special wildlife reserve that is subject to a lease under the *Land Act 1994*

(4) 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.

## **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 conservation park; or
- (d) a resources reserve.

### **Subdivision 2        Dedication, revocation and                                  amalgamation of protected areas**

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

- (1) A regulation may dedicate a specified area of State land as—
  - (a) a national park (scientific); or
  - (b) a national park; or

- (c) a conservation park; or
  - (d) a resources reserve.
- (2) 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.
- (3) This section does not apply to a protected area, or a part of a protected area, that is an indigenous joint management area.

*Note—*

For a protected area that is also an indigenous joint management area, see section 42AK. Also, note section 42AM.

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

- (1) The Governor in Council may, by regulation—

[s 33A]

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- (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 the same or 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.
- (3) This section does not apply to a protected area, or a part of a protected area, that is an indigenous joint management area.

*Note—*

For a protected area, or part of a protected area, that is an indigenous joint management area, see section 42AL. Also, note section 42AM.

### **33A Chief executive to lodge document for dedication, revocation and amalgamation etc.**

- (1) This section applies if a regulation is made under this subdivision for—
- (a) the dedication or revocation of a protected area under section 29 or 32; or
  - (b) the revocation of a State forest or timber reserve under section 30; or
  - (c) the amalgamation or other change to a protected area under section 33; or

- (d) the appointment or revocation of trustees under section 31.
- (2) The chief executive must lodge for registration with the chief executive (lands) a document evidencing the matter the subject of the regulation.
- (3) The document must—
  - (a) be lodged as soon as practicable after the regulation is made; and
  - (b) comply with any requirements of the chief executive (lands).
- (4) If the dedication, revocation, amalgamation or other change to a protected area affects a part of a lot within the meaning of the *Land Act 1994*, the document lodged must be accompanied by a plan of subdivision for the change.

### **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) or national park—the chief executive under this Act; or
    - (ii) if the area is a conservation park or resources reserve—the chief executive or trustees of the area with the consent of the chief executive; or
  - (b) under another Act by—
    - (i) the Governor in Council; or

- (ii) someone else with the consent of the Minister or chief executive.
- (2) A lease, agreement, licence, permit or other authority mentioned in subsection (1) must be consistent with—
- (a) the management principles for the area; and
  - (b) if a management plan has been approved for the area, the management plan.
- (3) This section does not apply to a protected area, or a part of a protected area, that is an indigenous joint management area.

*Note—*

For a protected area, or part of a protected area, that is an indigenous joint management area, see section 42AN.

### **35 Chief executive's powers about permitted uses in national parks**

- (1) The chief executive may grant, make, issue or give a lease, agreement, licence, permit or other authority over, or in relation to, land in a national park if—
- (a) the use under the authority is only for a service facility or an ecotourism facility; and
  - (b) if the use under the authority is for a service facility, the chief executive is satisfied—
    - (i) the cardinal principle for the management of national parks will be observed to the greatest possible extent; and
    - (ii) the use will be in the public interest; and
    - (iii) the use is ecologically sustainable; and
    - (iv) there is no reasonably practicable alternative to the use; and
  - (c) if the use under the authority is for an ecotourism facility, the chief executive is satisfied—
    - (i) the use will be in the public interest; and

- 
- (ii) the use is ecologically sustainable; and
  - (iii) the use will provide, to the greatest possible extent, for the preservation of the land's natural condition and the protection of the land's cultural resources and values; and
  - (d) 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).
  - (3) This section does not apply to a national park, or a part of a national park, that is an indigenous joint management area.

*Note—*

For an indigenous joint management area, see section 42AO.

### **35A Chief executive's powers about permitted uses for existing service facilities in national parks**

- (1) The chief executive may grant, make, issue or give a lease, agreement, licence, permit or other authority over, or in relation to, land in a national park if—
  - (a) the use under the authority is only for an existing service facility; and
  - (b) the chief executive is satisfied—
    - (i) the use is ecologically sustainable; and
    - (ii) the use does not include carrying out substantial improvements to the existing service facility.

*Examples of a substantial improvement to an existing service facility—*

- an upgrade of a road that provides access to a communications tower
  - the replacement of a pipeline with a larger pipeline
- (2) Subsection (1) applies despite sections 15 and 34(2), and does not limit section 35.

- (3) This section does not apply to a national park, or a part of a national park, that is an indigenous joint management area.

### 36 Authorities for new national park

- (1) This section applies if—
- (a) land is dedicated as a national park; 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 56.
- (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 sections 35 and 35A.
- (5A) This section does not apply to a national park, or a part of a national park, that is an indigenous joint management area.

*Note—*

For an indigenous joint management area, see section 42AP.

- (6) In this section—
- allowable term***, for a previous use of a national park, 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 56, 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;
  - (v) a lease under the *Land Act 1994*; or
- (b) otherwise—3 years after the dedication.

**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).

### **37A Leases must be registered**

As soon as practicable after a lease is granted under section 34, 35, 35A or 36, or renewed under section 37, the chief executive must lodge the lease or renewed lease with the chief executive (lands) for registration.

### **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) if a management plan is in effect for the area—the management plan for the area; and
  - (b) for a lease other than a rolling term lease under the *Land Act 1994*—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.



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### **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 4A Carbon abatement products**

### **39D Definition for sdiv 4A**

In this subdivision—

*owner*, of land in the area of a conservation park or resources reserve, means the trustee appointed for the land under section 31.

### **39E Chief executive may keep guidelines**

- (1) The chief executive may keep guidelines about the making of an application under this part.
- (2) The *Land Act 1994*, section 420B applies to the chief executive for the making of the guidelines—
  - (a) as if a reference to the chief executive in that section were a reference to the chief executive administering this Act; and
  - (b) with other necessary changes.

### **39F Application for right to deal with carbon abatement products**

- (1) An owner may apply to the chief executive to be granted a right to deal with carbon abatement products on the land.
- (2) The application must be in the approved form.

### **39G Deciding application**

- (1) The chief executive must decide whether to approve the application.

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- (2) In deciding the application, the chief executive must consider whether the land the subject of the application will, or is likely to, be used or dealt with under this Act in a way that is inconsistent with the grant of the proposed right.
- (3) The chief executive may grant the application subject to conditions.

### **39H Notice of decision**

- (1) As soon as practicable after deciding the application, the chief executive must give written notice of the decision to the following—
  - (a) the applicant; and
  - (b) if the chief executive approves the application—
    - (i) for an application relating to land registered in the freehold land register—the registrar of titles; or
    - (ii) for an application relating to land registered in the land registry under the *Land Act 1994*—the chief executive (lands).
- (2) The notice must state—
  - (a) the decision; and
  - (b) if the chief executive refuses the application, or approves the application with conditions not agreed to in writing by the applicant—
    - (i) the reasons for the decision; and
    - (ii) that the applicant may seek an internal review of the decision; and
    - (iii) how the review is started.

### **39I Internal review of chief executive's decision**

- (1) The applicant may apply to the Minister for an internal review of the chief executive's decision.
- (2) The application must—

- (a) be made within 42 days after notice of the decision was given to the applicant, or any longer period allowed by the Minister; and
- (b) be written; and
- (c) include details of the grounds on which the applicant seeks review of the decision.

### **39J Decision on reconsideration**

- (1) After reviewing the decision (the *original decision*), the Minister must make a further decision (the *review decision*) to confirm the original decision or substitute a new decision.
- (2) The Minister must immediately give written notice of the review decision to—
  - (a) the applicant; and
  - (b) if notice of the original decision was given to the registrar of titles or chief executive (lands) and the Minister substitutes a new decision—
    - (i) for an application relating to land registered in the freehold land register—the registrar of titles;
    - (ii) for an application relating to land registered in the land registry under the *Land Act 1994*—the chief executive (lands).

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

### **Subdivision 1                National parks (Aboriginal land) and national parks (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—
  - (a) is not in the Cape York Peninsula Region or the North Stradbroke Island Region; and
  - (b) becomes Aboriginal land or Torres Strait Islander land.
- (2) On approval of the management statement or management plan for the national park land under section 113A or 118, 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 indigenous landholder for the land.

#### **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 indigenous landholder for 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

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a national park (Aboriginal land) or national park (Torres Strait Islander land)—

- (a) the chief executive may prepare a management statement for the land; or
  - (b) the Minister may prepare a management plan for the land.
- (3) Part 7 applies to the management statement or management plan as if it were a management statement or management plan for a protected area.
- (4) The management statement or management plan must be prepared in cooperation with the indigenous landholder, and the board of management, for the land.
- (5) On—
- (a) the signing of the lease; and
  - (b) the approval of a management statement or 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) 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)—
  - (a) the chief executive may prepare a management statement for the land; or

- (b) the Minister may prepare a management plan for the land.
- (3) Part 7 applies to the management statement or management plan as if it were a management statement or management plan for a protected area.
- (4) The management statement or management plan must be prepared 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 statement or 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) Despite any other Act, a regulation under this section takes effect on the registration of the sublease.
- (7) 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.

## **Subdivision 2      National parks (Cape York Peninsula Aboriginal land)**

### **42AA Dedication of national park as national park (Cape York Peninsula Aboriginal land)**

- (1) This section applies to a national park, or part of a national park, (the *national park land*) if—
  - (a) the national park land is in the Cape York Peninsula Region and becomes Aboriginal land; and

- (b) the Minister is satisfied an indigenous management agreement about the management of the Aboriginal land has been entered into.
- (2) On the land becoming Aboriginal land, the Minister must recommend to the Governor in Council the making of a regulation dedicating the land as a national park (Cape York Peninsula Aboriginal land).
- (3) Despite any other Act, the dedication under the regulation is taken to have effect on the delivery of the deed of grant over the national park land to the indigenous landholder for the land.

**42AB Dedication of Aboriginal land as national park (Cape York Peninsula Aboriginal land)**

- (1) This section applies to Aboriginal land that is not a national park or included in a national park if—
  - (a) the indigenous landholder for the land has entered into an indigenous management agreement for it; and
  - (b) the Minister and the indigenous landholder agree that the land is to be managed as a national park (Cape York Peninsula Aboriginal land).
- (2) The Minister must recommend to the Governor in Council the making of a regulation dedicating the land as a national park (Cape York Peninsula Aboriginal land).

**42AC Dedication of other land as national park (Cape York Peninsula Aboriginal land)**

- (1) This section applies to land, other than land to which section 42AB applies, that is not a national park or included in a national park if—
  - (a) under the *Aboriginal Land Act 1991*, an entity has entered into an indigenous management agreement for the land; and

- (b) the Minister and the entity agree that the land is to be managed as a national park (Cape York Peninsula Aboriginal land).
- (2) If the land becomes Aboriginal land—
- (a) the grant of the land as Aboriginal land is subject to a condition that the land must become a national park (Cape York Peninsula Aboriginal land); and
  - (b) the Minister must recommend to the Governor in Council the making of a regulation dedicating the land as a national park (Cape York Peninsula Aboriginal land).

#### **42AD Leases etc. over national park (Cape York Peninsula Aboriginal land)**

- (1) A lease, agreement, licence, permit or other authority over, or in relation to, land in a national park (Cape York Peninsula Aboriginal land), 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 the chief executive with the consent of the indigenous landholder for the land; or
  - (b) by the indigenous landholder for the land with the consent of the chief executive.
- (2) A lease, agreement, licence, permit or other authority mentioned in subsection (1) must be consistent with—
- (a) the management principles and any management plan for the national park (Cape York Peninsula Aboriginal land); and
  - (b) any indigenous land use agreement for the land; and
  - (c) the indigenous management agreement for the land.
- (3) If a lease is granted under subsection (1), the chief executive must, as soon as practicable after the grant, lodge the lease with the chief executive (lands) for registration.



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**42AE Particular powers about permitted uses in national park  
(Cape York Peninsula Aboriginal land)**

- (1) The chief executive and the indigenous landholder for land in a national park (Cape York Peninsula Aboriginal land), may grant, make, issue or give a lease, agreement, licence, permit or other authority over, or in relation to, the land if—
  - (a) the use under the authority is only for a service facility or an ecotourism facility; and
  - (b) if the use under the authority is for a service facility, the chief executive and the indigenous landholder are satisfied—
    - (i) the cardinal principle for the management of national parks will be observed to the greatest possible extent; and
    - (ii) the use will be in the public interest; and
    - (iii) the use is ecologically sustainable; and
    - (iv) there is no reasonably practicable alternative to the use; and
  - (c) if the use under the authority is for an ecotourism facility, the chief executive and the indigenous landholder are satisfied—
    - (i) the use will be in the public interest; and
    - (ii) the use is ecologically sustainable; and
    - (iii) the use will provide, to the greatest possible extent, for the preservation of the land's natural condition and the protection of the land's cultural resources and values; and
  - (d) the use under the authority is prescribed under a regulation made for this section to be a permitted use for the protected area.
- (2) Subsection (1) has effect despite sections 15 and 42AD(2).

- (3) If a lease is granted under subsection (1), the chief executive must, as soon as practicable after the grant, lodge the lease with the chief executive (lands) for registration.

#### **42AEA Particular powers about permitted uses for existing service facilities in national park (Cape York Peninsula Aboriginal land)**

- (1) The chief executive and the indigenous landholder for land in a national park (Cape York Peninsula Aboriginal land) may grant, make, issue or give a lease, agreement, licence, permit or other authority over, or in relation to, the land if—
- (a) the use under the authority is only for an existing service facility; and
- (b) the chief executive and the indigenous landholder are satisfied—
- (i) the use is ecologically sustainable; and
- (ii) the use does not include carrying out substantial improvements to the existing service facility.

*Examples of a substantial improvement to an existing service facility—*

- an upgrade of a road that provides access to a communications tower
  - the replacement of a pipeline with a larger pipeline
- (2) Subsection (1) applies despite sections 15 and 42AD(2), and does not limit section 42AE.
- (3) As soon as practicable after a lease is granted under subsection (1), the chief executive must lodge the lease with the chief executive (lands) for registration.

#### **42AF Revocation of national park (Cape York Peninsula Aboriginal land)**

- (1) A regulation may revoke the dedication of all or a part of a national park (Cape York Peninsula Aboriginal land) if the

land in the national park or the part of the national park has been surrendered to the State.

- (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.

### **Subdivision 3      Indigenous joint management areas**

#### **42AG Purpose of sdiv 3**

The purpose of this subdivision is to provide for the declaration of prescribed protected areas situated in the North Stradbroke Island Region as indigenous joint management areas.

#### **42AH Declaration of a prescribed protected area as indigenous joint management area**

- (1) This section applies to a prescribed protected area, or part of a prescribed protected area, (the *protected area land*) if—
  - (a) the protected area land is in the North Stradbroke Island Region and becomes Aboriginal land; and
  - (b) the Minister is satisfied an indigenous management agreement about the management of the Aboriginal land has been entered into.
- (2) On the land becoming Aboriginal land, the Minister must recommend to the Governor in Council the making of a regulation declaring the protected area land as an indigenous joint management area.
- (3) Despite any other Act, the declaration under the regulation is taken to have effect on the delivery of the deed of grant over the protected area land to the indigenous landholder for the land.

**42AI Declaration of Aboriginal land as indigenous joint management area**

- (1) This section applies to Aboriginal land in the North Stradbroke Island Region that is not a prescribed protected area or included in a prescribed protected area if—
  - (a) the indigenous landholder for the land has entered into an indigenous management agreement for it; and
  - (b) the Minister and the indigenous landholder agree that the land is to be managed as an indigenous joint management area.
- (2) The Minister must recommend to the Governor in Council the making of a regulation—
  - (a) dedicating the land as a prescribed protected area; and
  - (b) declaring the land as an indigenous joint management area.

**42AJ Declaration of other land as an indigenous joint management area**

- (1) This section applies to land in the North Stradbroke Island Region, other than land to which section 42AI applies, that is not a prescribed protected area or included in a prescribed protected area if—
  - (a) under the *Aboriginal Land Act 1991*, an entity has entered into an indigenous management agreement for the land; and
  - (b) the Minister and the entity agree that the land is to be managed as an indigenous joint management area.
- (2) If the land becomes Aboriginal land—
  - (a) the grant of the land as Aboriginal land is subject to a condition that the land must become—
    - (i) a prescribed protected area; and
    - (ii) an indigenous joint management area; and

- (b) the Minister must recommend to the Governor in Council the making of a regulation—
  - (i) dedicating the land as a prescribed protected area; and
  - (ii) declaring the land as an indigenous joint management area.

#### **42AK Revocation of dedication of protected area or declaration of indigenous joint management areas**

- (1) A regulation may—
  - (a) revoke the dedication of a protected area, or part of a protected area, that is an indigenous joint management area; or
  - (b) revoke the declaration of all or a part of an indigenous joint management area;only if the land the subject of the revocation has been surrendered to the State.
- (2) A regulation under subsection (1)(a) 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.

#### **42AL Amalgamation etc. of protected areas that are indigenous joint management areas**

- (1) This section applies only to protected areas that are indigenous joint management areas.
- (2) 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.

- (3) If, because of the change in the class of a protected area, the area will be given less protection under this Act, the regulation may be made—
  - (a) only with the consent of the indigenous landholder for the land; and
  - (b) 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.
- (4) If, 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 the same or a higher level of protection under this Act), the regulation may be made only if—
  - (a) the land to be removed has been surrendered to the State; and
  - (b) 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.
- (5) This section applies despite section 42AK.

**42AM Effect of revocation of prescribed protected area on indigenous joint management area**

- (1) This section applies if—
  - (a) the dedication of a prescribed protected area, or part of a prescribed protected area, that is an indigenous joint management area is revoked under this Act; or
  - (b) a prescribed protected area, or part of a prescribed protected area, that is an indigenous joint management area is removed under section 42AL(2).
- (2) On the revocation of the dedication of, or the removal of, the prescribed protected area or part—

- (a) if the area or part is dedicated as another class of prescribed protected area—the declaration of the indigenous joint management area continues in force; or
- (b) otherwise—the declaration of the indigenous joint management area for the protected area or part is taken to have been revoked.

#### **42AN Leases etc. over land in indigenous joint management area**

- (1) A lease, agreement, licence, permit or other authority over, or in relation to, land in an indigenous joint management 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 the chief executive with the consent of the indigenous landholder for the land; or
  - (b) by the indigenous landholder for the land with the consent of the chief executive.
- (2) A lease, agreement, licence, permit or other authority mentioned in subsection (1) must be consistent with—
  - (a) the management principles and any management plan for the indigenous joint management area; and
  - (b) any indigenous land use agreement for the land; and
  - (c) the indigenous management agreement for the land.
- (3) If a lease is granted under subsection (1), the chief executive must, as soon as practicable after the grant, lodge the lease with the chief executive (lands) for registration.

#### **42AO Particular powers about permitted uses on land in particular indigenous joint management areas**

- (1) The chief executive and the indigenous landholder for land in a national park, or part of a national park, that is an indigenous joint management area, may grant, make, issue or give a lease,

agreement, licence, permit or other authority over, or in relation to, the land if—

- (a) the use under the authority is only for a service facility or an ecotourism facility; and
  - (b) if the use under the authority is for a service facility, the chief executive and the indigenous landholder are satisfied—
    - (i) the cardinal principle for the management of national parks will be observed to the greatest possible extent; and
    - (ii) the use will be in the public interest; and
    - (iii) the use is ecologically sustainable; and
    - (iv) there is no reasonably practicable alternative to the use; and
  - (c) if the use under the authority is for an ecotourism facility, the chief executive and the indigenous landholder are satisfied—
    - (i) the use will be in the public interest; and
    - (ii) the use is ecologically sustainable; and
    - (iii) the use will provide, to the greatest possible extent, for the preservation of the land's natural condition and the protection of the land's cultural resources and values; and
  - (d) the use under the authority is prescribed under a regulation made for this section to be a permitted use for the indigenous joint management area.
- (2) Subsection (1) has effect despite sections 15 and 42AN(2).
- (3) As soon as practicable after a lease is granted under subsection (1), the chief executive must lodge the lease with the chief executive (lands) for registration.



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**42AOA Particular powers about permitted uses for existing service facilities on land in particular indigenous joint management areas**

- (1) The chief executive and the indigenous landholder for land in a national park, or part of a national park, that is an indigenous joint management area, may grant, make, issue or give a lease, agreement, licence, permit or other authority over, or in relation to, the land if—
  - (a) the use under the authority is only for an existing service facility; and
  - (b) the chief executive and the indigenous landholder are satisfied—
    - (i) the use is ecologically sustainable; and
    - (ii) the use does not include carrying out substantial improvements to the existing service facility.

*Examples of a substantial improvement to an existing service facility—*

- an upgrade of a road that provides access to a communications tower
  - the replacement of a pipeline with a larger pipeline
- (2) Subsection (1) applies despite sections 15 and 42AN(2), and does not limit section 42AO.
  - (3) As soon as practicable after a lease is granted under subsection (1), the chief executive must lodge the lease with the chief executive (lands) for registration.

**42AP Authorities for new national park that is an indigenous joint management area**

- (1) This section applies if—
  - (a) land is, or is part of, an indigenous joint management area; and
  - (b) the land is dedicated as a national park; and

- (c) 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 and the indigenous landholder for land in the national park, or a part of the national park, that is an indigenous joint management area, 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 56.
- (4) A previous use authority must not be renewed.
- (5) This section applies despite sections 15 and 42AN(2), and does not limit sections 42AO and 42AOA.
- (6) In this section—
- allowable term**, in relation to a previous use authority, 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 56, 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;
- (v) a lease under the *Land Act 1994*; or
- (b) otherwise—3 years after the dedication.

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

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

## Subdivision 4      Registration

### 42AQ Chief executive to lodge document for dedication, declaration or change

- (1) This section applies if a regulation is made for—
  - (a) the dedication or declaration of the following under this division—
    - (i) a national park (Aboriginal land);
    - (ii) a national park (Torres Strait Islander land);
    - (iii) a national park (Cape York Peninsula Aboriginal land);
    - (iv) an indigenous joint management area; or
  - (b) the revocation, amalgamation or other change to an indigenous joint management area under subdivision 3.
- (2) The chief executive must lodge for registration with the chief executive (lands) a document evidencing the matter the subject of the regulation.
- (3) The document must—
  - (a) be lodged as soon as practicable after the dedication, declaration, revocation, amalgamation or change is made; and
  - (b) comply with any requirements of the chief executive (lands).
- (4) If the dedication, declaration, revocation, amalgamation or other change mentioned in subsection (1) affects a part of a lot with the meaning of the *Land Act 1994*, the document must be accompanied by a plan of subdivision for the change.

## **Division 3A                      Special management areas (controlled action)**

### **42A    Declaration of special management area (controlled action)**

- (1) The chief executive may, by notice, declare a prescribed national park, or part of a prescribed national park, as a special management area (controlled action) to allow activities of a type, or for a purpose, stated in—
  - (a) section 17(1A)(a); or
  - (b) section 17(1A)(b); or
  - (c) section 17(1A)(a) and (b).
- (1A) However, if the prescribed national park is a national park (Cape York Peninsula Aboriginal land), the chief executive may only declare the special management area (controlled action) with the consent of the indigenous landholder for the land.
- (2) The notice declaring the special management area (controlled action) must—
  - (a) be erected or displayed at the entrance of the prescribed national park or part of the prescribed national park declared as a special management area (controlled action); and
  - (b) be easily visible to passers-by; and
  - (c) identify the limits of the area to which the notice applies; and
  - (d) state the prescribed activities that may be carried out in the special management area (controlled action).
- (3) When the notice is erected or displayed, the chief executive must publish—
  - (a) a copy of the notice on the department's website; and
  - (b) a notice in the gazette about the declaration of the special management area (controlled action).

(4) In this section—

*prescribed activities* means the activities of a kind, or for a purpose, mentioned in section 17(1A) for which the special management area (controlled action) was declared.

*prescribed national park* means—

- (a) a national park; or
- (b) a national park (Aboriginal land); or
- (c) a national park (Torres Strait Islander land); or
- (d) a national park (Cape York Peninsula Aboriginal land).

#### **42B When declaration of special management area (controlled action) ends**

- (1) A declaration made under section 42A(1) ends on the day the chief executive removes the notice declaring the special management area (controlled action).
- (2) When the notice is removed, the chief executive must—
  - (a) remove the copy of the notice on the department's website; and
  - (b) publish a notice in the gazette about the ending of the declaration of the special management area (controlled action).

### **Division 3B Special wildlife reserves**

#### **43 Application of division**

- (1) This division applies to the following land—
  - (a) freehold land;
  - (b) Aboriginal land and Torres Strait Islander land;
  - (c) land subject to a lease under the *Land Act 1994*;
  - (d) land that is a reserve under the *Land Act 1994*.

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- (2) However, this division does not apply to transferable land under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*.
- (3) If a relevant provision is inconsistent with a provision of another Act applying to land to which this division applies, the relevant provision prevails to the extent of the inconsistency.
- (4) In this section—  
*relevant provision* means—
  - (a) a provision of this division; and
  - (b) another provision of this Act applying to land to which this division applies because the land is in a special wildlife reserve.

#### **43A Proposal for declaration of special wildlife reserve**

- (1) This section applies if, after considering the following matters in relation to an area of land, the Minister is satisfied the area should be declared as a special wildlife reserve—
  - (a) the State interest;
  - (b) the area's exceptional natural and cultural resources and values.
- (2) The Minister must prepare a proposal for the declaration.
- (3) The proposal must describe the area (the *proposed reserve area*) to be included in the special wildlife reserve.
- (4) The description of the proposed reserve area must include the following details—
  - (a) the geographical area of the proposed reserve area;
  - (b) the proposed reserve area's exceptional natural and cultural resources and values.
- (5) The Minister must give written notice about the proposal to—
  - (a) each person who has an interest in land in the proposed reserve area; and

- 
- (b) each holder of an exploration permit under the *Mineral Resources Act 1989* for land in the proposed reserve area; and
- (c) each holder of an authority to prospect under the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004* for land in the proposed reserve area; and
- (d) each holder of a mining interest, geothermal tenure or GHG authority to which land in the proposed reserve area is subject.
- (6) The notice must state a day by which the person may make submissions to the Minister about the proposal.
- (7) If the Minister considers it is impracticable to give written notice under subsection (5) to persons of a particular class, the Minister may give the notice by taking reasonable steps to ensure the class is made aware of the proposal.

*Examples of taking reasonable steps—*

- advertising in newspapers or other publications
- publishing a notice on the department's website

- (8) In this section—

***State interest*** means an interest the Minister considers to be an economic, environmental or community interest of the State.

### **43B Making conservation agreement for special wildlife reserve**

- (1) The Minister must, for the State, enter into a conservation agreement for a proposed special wildlife reserve if—
- (a) the Minister and the landholder of land in the proposed reserve area for the special wildlife reserve agree—
- (i) the land should be a special wildlife reserve; and
  - (ii) on the terms of the agreement for the reserve; and

- (b) there is an approved management program for the reserve.
- (2) However, if the rights or interests of a person mentioned in section 43A(5) will be materially affected by the conservation agreement, the Minister must not enter into the agreement without the person's written consent.
- (3) Also, the Minister may enter into a conservation agreement for a proposed special wildlife reserve in the Cape York Peninsula Region only if—
- (a) native title for the area has been extinguished; or
  - (b) for an area for which native title has not been extinguished—
    - (i) there is an indigenous land use agreement for the area; and
    - (ii) the dedication of a special wildlife reserve over the area is allowed under the indigenous land use agreement; and
    - (iii) the conservation agreement is consistent with the indigenous land use agreement.
- (4) In this section—
- approved management program*, for a special wildlife reserve, means a management program for the reserve approved by the Minister under section 120EC.

### **43C Terms of conservation agreement for special wildlife reserve**

- (1) A conservation agreement must—
- (a) be consistent with the management principles for a special wildlife reserve; and
  - (b) state it is binding on the landholder of the land and the landholder's successors in title; and
  - (c) contain details of the management program for the special wildlife reserve; and



- 
- (d) contain terms prohibiting the following—
- (i) the granting of a mining interest, geothermal tenure or GHG authority in relation to the land that can not be granted in relation to a special wildlife reserve under section 27;
  - (ii) the carrying out of an activity under the *Forestry Act 1959* on the land that is prohibited from being carried out on a special wildlife reserve under that Act;
  - (iii) the granting of a licence or permit under the *Fossicking Act 1994* in relation to the land.
- (2) A 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 stated activities; or
  - (d) allowing a landholder to carry out stated activities; or
  - (e) prohibiting a stated use of land in the special wildlife reserve; or
  - (f) restricting the use or management of land in the special wildlife reserve; or
  - (g) requiring a landholder to refrain from, or not to permit, stated activities; or
  - (h) requiring a landholder to carry out stated activities; or
  - (i) requiring a landholder to permit or restrict access to the special wildlife reserve by stated persons; or
  - (j) stating the way in which amounts provided to a landholder under the agreement are to be applied by the landholder; or
  - (k) requiring a landholder to repay amounts paid under the agreement if the landholder contravenes the agreement or the agreement ends; or

[s 43D]

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- (l) providing for any other matter relating to the conservation of nature in the special wildlife reserve, including the implementation of the management program for the reserve.

#### **43D Declaration of special wildlife reserve**

A regulation may declare an area of land the subject of a conservation agreement as a special wildlife reserve.

#### **43E Agreeing to amend conservation agreement**

- (1) The Minister and landholders bound by a conservation agreement for a special wildlife reserve may agree to amend the agreement.
- (2) However, the amendment must not adversely affect the conservation of nature in the special wildlife reserve.
- (3) If the amendment materially affects the rights or interests of a person mentioned in section 43A(5), the amendment may be made only with the written consent of the person.
- (4) If a regulation under section 43J is required because of the amendment, the amendment does not take effect until the regulation commences.
- (5) Subsection (1) is subject to section 43C(1).

#### **43F Leases etc. over land in special wildlife reserve**

- (1) A lease, agreement, licence, permit or other authority over, or in relation to, land in a special wildlife reserve (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 the chief executive under this Act with the consent of the landholder of the land; or
  - (b) under another Act by—
    - (i) the Governor in Council; or

- 
- (ii) someone else with the consent of the Minister or chief executive; or
    - (c) if the landholder of the land gives a lease or sublease of the land to another person—by the landholder with the consent of the chief executive.
  - (2) A lease, agreement, licence, permit or other authority mentioned in subsection (1) must be consistent with the management principles and the conservation agreement for the special wildlife reserve.
  - (3) As soon as practicable after a lease is granted or given under subsection (1), the person who granted or gave the lease must lodge the lease for registration with—
    - (a) if the lease is over freehold land—the registrar of titles; or
    - (b) otherwise—the chief executive (lands).

#### **43G Service facilities over land in special wildlife reserve**

- (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 special wildlife reserve if—
  - (a) the use under the authority is only for a new service facility; and
  - (b) the landholder of the land consents to the use; and
  - (c) the chief executive is satisfied—
    - (i) the management principles and the conservation agreement for the special wildlife reserve will be observed to the greatest possible extent; and
    - (ii) the use will be in the public interest; and
    - (iii) the use is ecologically sustainable; and
    - (iv) there is no reasonably practicable alternative to the use; and
  - (d) the use is prescribed by regulation to be a permitted use for the special wildlife reserve.

[s 43H]

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- (2) 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 special wildlife reserve if—
- (a) the use under the authority is only for an existing service facility; and
- (b) the chief executive is satisfied the use—
- (i) is ecologically sustainable; and
- (ii) does not include carrying out substantial improvements to the existing service facility.

*Examples of a substantial improvement to an existing service facility—*

- an upgrade of a road that provides access to a communications tower
  - the replacement of a pipeline with a larger pipeline
- (3) Subsection (1) has effect despite sections 15 and 43F(2).
- (4) Subsection (2) has effect despite sections 15, 43F(1)(a) and 43F(2).
- (5) In this section—
- new service facility*** means a service facility, other than an existing service facility.

#### **43H Previous use authorities in special wildlife reserve**

- (1) This section applies if—
- (a) land is declared as a special wildlife reserve; and
- (b) immediately before the declaration, the land was being used (the ***previous use***) by a person other than the landholder of the land in a way that is inconsistent with the management principles and conservation agreement for the special wildlife reserve.
- (2) The chief executive may grant an authority (a ***previous use authority***) to the person over, or in relation to, the land to allow the previous use to continue for no longer than the allowable term.

- (3) A previous use authority must not be renewed.
- (4) This section—
  - (a) applies despite sections 15, 43F(1)(a) and 43F(2); and
  - (b) does not limit section 43G(2).
- (5) In this section—

*allowable term*, in relation to previous use on a special wildlife reserve, means—

  - (a) if the previous use was under an authority—the unexpired term of the authority; or
  - (b) otherwise—3 years after the declaration of the reserve.

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

#### **43I Amalgamation of special wildlife reserves**

A regulation may—

- (a) amalgamate the areas of 2 or more special wildlife reserves; and
- (b) assign a name to the amalgamated area.

#### **43J Revocation of special wildlife reserves**

- (1) A regulation may revoke the declaration of all or part of a special wildlife 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) Subsection (2) does not apply if the regulation—
  - (a) makes a minor change to the boundaries of a special wildlife reserve and the Minister is satisfied the change does not adversely affect the conservation of nature; or

*Example for paragraph (a)—*

changing the boundaries of a special wildlife reserve to align with a new survey of an existing road

- (b) increases the area of land in a special wildlife reserve and the Minister is satisfied the increase does not adversely affect the conservation of nature; or
  - (c) dedicates the land subject of the revocation as a national park (scientific) or a national park.
- (4) If the regulation revokes the declaration of all of a special wildlife reserve, the conservation agreement and management program for the reserve end on the revocation.
- (5) If the regulation revokes the declaration of part of a special wildlife reserve, on the revocation, the conservation agreement and management program for the reserve stop having effect in relation to the land removed from the reserve.

#### **43K Conservation agreements for special wildlife reserves binding**

- (1) A conservation agreement for a special wildlife reserve is binding on—
- (a) the landholder of the land in the reserve; and
  - (b) the landholder's successors in title; and
  - (c) any other person with an interest in land in the reserve who consented to the agreement.
- (2) Subsection (1) applies even if—
- (a) there is a lease or reserve under the *Land Act 1994* over the land in the special wildlife reserve; and
  - (b) under the *Land Act 1994*—
    - (i) the lease is renewed or extended; or
    - (ii) the lease is converted to freehold land or a different type of lease; or
    - (iii) the reserve is converted to freehold land or a different type of reserve.

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**43L Consent for transfer or surrender of land or expiry of lease**

- (1) This section applies if—
  - (a) a special wildlife reserve is declared over freehold land or land in a lease under the *Land Act 1994*; and
  - (b) a person intends, under the *Land Act 1994*, to do any of the following—
    - (i) surrender all or part of the freehold land or lease;
    - (ii) allow the lease to expire at the end of its term;
    - (iii) transfer the lease.
- (2) The person must obtain the chief executive's written consent—
  - (a) for the surrender or transfer before seeking approval from the chief executive (lands) to surrender the freehold land or lease, or transfer the lease; or
  - (b) for the expiry before giving an expiry advice under the *Land Act 1994* to the chief executive (lands).

**Division 4 Nature refuges and coordinated conservation areas**

**44 Proposal for declaration of nature refuge**

- (1) If the Minister is satisfied that an area should be declared a nature refuge, 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 nature refuge; and
  - (b) specify the proposed management intent for the nature refuge.
- (3) The Minister must give written notice to all landholders affected by the proposal.

- (4) The notice must specify a day by which the landholders may make submissions to the Minister relating to the proposal.
- (5) If the Minister considers that it is impracticable to give notice to each landholder 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—  
*landholder* includes a person having an interest in land.

#### **45 Conservation agreements for nature refuges**

- (1) If the Minister and landholders concerned agree on—
  - (a) a proposal that an area should be a nature refuge; and
  - (b) the management intent for the nature refuge; and
  - (c) the terms of a proposed conservation agreement for the nature refuge to be made between the State and the landholders;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, mining interest, geothermal tenure or GHG authority—the lessee, interest holder or authority 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 a nature refuge.
- (4) The conservation agreement may contain terms that are binding on—
  - (a) the State; and



- (b) a landholder and the landholder'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 landholder to carry out specified activities; or
  - (e) prohibiting a specified use of land in the nature refuge; or
  - (f) restricting the use or management of land in the nature refuge; or
  - (g) requiring a landholder to refrain from, or not to permit, specified activities; or
  - (h) requiring a landholder to carry out specified activities; or
  - (i) requiring a landholder to permit or restrict access to the nature refuge by specified persons; or
  - (j) specifying the way in which amounts provided to a landholder under the agreement are to be applied by the landholder; or
  - (k) requiring a landholder to repay amounts paid under the agreement if the landholder 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 nature refuge, including the implementation of any management plan for the nature refuge.

## **46 Declaration of nature refuges**

- (1) A regulation may declare a specified area of State land, or the area the subject of a conservation agreement, as a nature refuge.

- (2) The regulation must specify—
  - (a) the declared management intent for the nature refuge; 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) For subsection (2)(b), a reference in the regulation to the duration of the conservation agreement for the area is, if the agreement is terminated and replaced by another agreement under section 48, a reference to the duration of the other agreement.
- (4) 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 by another agreement under section 48; or
  - (b) the declaration of the nature refuge or coordinated conservation area to which it relates is revoked.
- (2) Subject to section 48, a conservation agreement may be terminated only if—
  - (a) in the case of a nature refuge—
    - (i) the landholder who entered into the agreement requests its termination under the terms of the agreement; and
    - (ii) the Minister is of the opinion that the nature refuge 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 nature refuge; or

- (b) in the case of a coordinated conservation area—the landholder requests its termination under the terms of the agreement.

#### **48 Variation or replacement of conservation agreements**

- (1) The State and the landholders bound by a conservation agreement for a nature refuge or coordinated conservation area (the *earlier agreement*) may enter into another conservation agreement for the nature refuge or coordinated conservation area (the *later agreement*) that varies, or terminates and replaces, the earlier agreement.
- (2) The earlier agreement may be varied, for example—
  - (a) in the case of a nature refuge—by removing, at the request of the landholder who entered into the agreement, a part of the nature refuge that, in the Minister’s opinion, is no longer needed for, or capable of being used to achieve, the declared management intent for the nature refuge; and
  - (b) in the case of a coordinated conservation area—by removing a part of the coordinated conservation area at the request of one of the landholders.
- (3) Section 45(2) to (5) applies to the later agreement.
- (3A) For a later agreement for a coordinated conservation area, section 45(2) to (5) applies to the later agreement as if a reference to the nature refuge were a reference to the coordinated conservation area.
- (4) However, section 45(2) does not apply in relation to a person whose rights will only be affected by the later agreement in the same way as by the earlier agreement.

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

- (1) If—
  - (a) the Minister and landholders 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 landholders, and persons having an interest in the landholders' 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.

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**50 Revocation of nature refuge or coordinated conservation area**

The Governor in Council may, by regulation, revoke the declaration of a nature refuge or coordinated conservation area in whole or part.

**51 Conservation agreements and conservation covenants for nature refuges binding**

- (1) A conservation agreement in relation to the land in a nature refuge is binding on—
  - (a) the landholder of the land; and
  - (b) the landholder's successors in title; and
  - (c) any other person with an interest in land in the nature refuge to the extent the agreement contains terms to that effect.
- (2) A conservation covenant in relation to the land in a nature refuge is binding on persons with an interest in the land to the extent stated in the covenant.
- (3) Subsection (1) applies even if—
  - (a) there is a lease or reserve under the *Land Act 1994* over the land in the nature refuge; and
  - (b) under the *Land Act 1994*—
    - (i) the lease is renewed or extended; or
    - (ii) the lease is converted to freehold land or a different type of lease; or
    - (iii) the reserve is converted to freehold land or a different type of reserve.

## **Division 4A            Environmental impact statements**

### **53            Application of division**

- (1) This division applies if a person seeks, under section 34, 35, 38, 43F or 43G(1), an interest in relation to land in a protected area.
- (2) This division applies despite any other Act under which the interest is to be created.

### **54            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.
- (3) The person must pay the costs of preparing the EIS.

### **55            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 5            Cultural and natural resources**

### **61            Property in cultural and natural resources**

- (1) All cultural and natural resources of a national park (scientific), national park, conservation park or resources reserve are the property of the State.

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- (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) an indigenous management agreement in relation to the area or any conservation agreement, conservation covenant or management program applicable to the area; or
  - (c) a lease, agreement, licence, permit or other authority granted, made, issued or given—
    - (i) by the chief executive under a prescribed provision; 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 or a coordinated conservation 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, 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—
  - (a) an animal for a commercial purpose; or
  - (b) an animal prescribed under this Act as threatened 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), national park (Torres Strait Islander land) and national park (Cape York Peninsula Aboriginal land).

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

***prescribed provision*** means section 34, 35, 35A, 36, 37, 38, 42AD, 42AE, 42AEA, 42AN, 42AO, 42AOA, 42AP, 43F or 43H.

## **Division 6                      General**

### **63            Meaning of *landholder* in division**

In this division—

***landholder*** 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, 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.
- (2) To allay any doubt—
  - (a) subsection (1) applies subject to sections 32, 33 and 43J; and

- (b) subsection (1) does not apply to the declaration of a protected area that includes another class of protected area.

## 66 Offset condition for protected area authority

- (1) A condition of a protected area authority may require or otherwise relate to an environmental offset (an *offset condition*).

*Note—*

The *Environmental Offsets Act 2014*, part 6, states further conditions that apply to a protected area authority and those further conditions are called deemed conditions. A breach of a deemed condition may be dealt with under this Act.

- (2) An offset condition may require an environmental offset to be undertaken on land to which a protected area authority applies or on other land in the State.
- (3) If an applicant for a protected area authority has entered into an agreement about an environmental offset, an offset condition may require the applicant to comply with the agreement.
- (4) An agreement entered into under subsection (3) is not an environmental offset agreement under the *Environmental Offsets Act 2014*.
- (5) In this section—  
*environmental offset* see the *Environmental Offsets Act 2014*, schedule 2.

*protected area authority* means a lease, agreement, licence, permit or other authority under this Act (including under a regulation) over, or in relation to, land in a protected area.

## 66A Conditions of protected area authority

- (1) This section applies if, on or after the commencement of this section, a protected area authority becomes, under this Act, subject to an offset condition.

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- (2) To the extent the offset condition is inconsistent with a deemed condition, the deemed condition prevails.

*Note—*

See the *Environmental Offsets Act 2014*, section 5(3). Under that provision, particular imposed conditions prevail over deemed conditions.

- (3) In this section—

***deemed condition*** see the *Environmental Offsets Act 2014*, schedule 2.

***offset condition*** see section 66(1).

***protected area authority*** see section 66(5).

## **67 Compensation when nature refuge declared**

- (1) This section applies if a nature refuge is declared under section 49.
- (2) If a landholder's interest in land is injuriously affected by a restriction or prohibition imposed under the declaration on the landholder's existing use of the land, the landholder 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 landholder or, failing agreement, decided by the Land Court.
- (3) The landholder's interest in the land is not injuriously affected if the restriction or prohibition under the declaration 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.
- (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 nature refuge, 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;
  - (c) any change in the profitability of the land because of the declaration.
- (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 if—
- (a) when the nature refuge is declared, the area the subject of the declaration is identified as, or including, a critical habitat or an area of major interest in—
    - (i) a regulation (the *first regulation*); or
    - (ii) a conservation plan; and
  - (b) the regulation making the declaration declares that the first regulation or conservation plan continues to apply to the area after the declaration; and
  - (c) the landholder receives, or is entitled to receive, compensation under section 137A in relation to the land because of the making of the first regulation or approval of the conservation plan.
- (9) In this section—
- existing use* of land includes a lawful use made of the land immediately before the restriction or prohibition imposed under the declaration or regulation mentioned in subsection (1) started applying to the land.

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**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 landholders concerned are not entitled to compensation because of the termination or revocation.

**68A Liability of State**

- (1) The State is not legally liable for an act or omission on, or in relation to, private land merely because—
  - (a) a conservation agreement has been entered into for the land; or
  - (b) the land has been declared as, or as part of, a special wildlife reserve, nature refuge or coordinated conservation area.
- (2) In this section—

*private land* means land other than State land.

**69 Preservation of landholders' interests**

- (1) The interests of a landholder of land forming part of a protected area are not affected by—
  - (a) the dedication or declaration of the protected area; or
  - (b) the declaration of the protected area, or part of the protected area, as a special management area (controlled action).
- (2) Subsection (1) does not apply to the extent—
  - (a) the landholder is bound by a conservation agreement or conservation covenant in relation to the land; or

- (b) of a regulation giving effect to a management plan for the protected area.
- (3) Subsection (1) is subject to section 43L.

## 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).

## 70AA Regulations may define extent of area

- (1) This section applies to a regulation made under a prescribed provision.
- (2) The regulation may define the extent of the area or land dedicated or declared under the regulation by reference to—
  - (a) a specified depth below the surface of land; or
  - (b) a specified height above the surface of land.
- (3) In this section—

***prescribed provision*** means section 29(1), 41(5), 42(5), 42AB(2), 42AC(2), 42AI(2), 42AJ(2), 43D or 46(1).

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## 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 forest reserves as protected areas.
- (2) It is Parliament's intention that, subject to any revocation under this part or the land ceasing to be forest reserve under the *Forestry Act 1959*, section 25A, 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 of land dedicated as a forest reserve under section 70C as in force before the commencement of the *Nature Conservation and Other Legislation Amendment Act (No. 2) 2013*, section 55 if—

- (a) the dedication has not been revoked under section 70E; and
- (b) the land has not ceased to be land in a forest reserve under the *Forestry Act 1959*, section 25A.

**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—

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

***SEQ horse riding trail network*** see section 70BA.

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

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

***unallocated State land*** means unallocated State land under the *Land Act 1994*.

## **70BA SEQ horse riding trail network**

- (1) The ***SEQ horse riding trail network*** is the network of horse riding trails in south-east Queensland designated as ‘finalised horse trails’ on maps held by the department for this section.
- (2) Copies of the maps may be inspected, free of charge, on the department’s website and, during office hours on business days, at the department’s head office.

## **Division 2 Revocation of forest reserves**

### **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.



- (4) Also, subsection (2) does not affect the power of the Governor in Council to make a regulation under the *Forestry Act 1959*, section 25 to set apart and declare as a State forest any forest reserve or part of a forest reserve.

### **70EA Chief executive to lodge document for revocation**

- (1) If a regulation is made under section 70E for the revocation of a forest reserve, the chief executive must lodge for registration with the chief executive (lands) a document evidencing the matter the subject of the regulation.
- (2) The document must—
- (a) be lodged as soon as practicable after the regulation is made; and
  - (b) comply with any requirements of the chief executive (lands).
- (3) If the revocation affects a part of a lot within the meaning of the *Land Act 1994*, the document lodged must be accompanied by a plan of subdivision for the change.

## **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 does not apply to the management of the land.
- (4) This section applies despite the *Forestry Act 1959*.

*Note—*

See, however, the *Forestry Act 1959*, section 25A.

## **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—
  - (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).

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## **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.

#### **70JA    Review of impact of horse riding trails**

- (1) The chief executive must review the areas within forest reserves that comprise horse riding trails in the SEQ horse riding trail network.
- (2) In conducting the review, the chief executive must—
  - (a) have assessments conducted under section 70JB; and
  - (b) consider how to address any significant adverse impacts identified by the assessments including, if appropriate, removing a trail from the SEQ horse riding trail network.
- (3) The review must start as soon as practicable after the commencement of this section and must be completed for all areas by 31 December 2025.

#### **70JB    Assessment by independent scientific advisory committee**

- (1) This section applies to an assessment required under section 70JA(2)(a).
- (2) The assessment must be of the impact, on horse riding trails and adjacent areas, of horse riding use.

- (3) The assessment must be conducted by an advisory committee, established under section 132, comprising members who—
- (a) have expertise in relevant disciplines for the assessment; and
- Examples of disciplines that may be relevant—*
- aquatic science, conservation biology, conservation management, environmental impact assessment, social science, soil science, statistical analysis, sustainable recreation, weed management
- (b) are independent of government or non-government entities that might reasonably be perceived to be particularly interested in decisions affecting horse riding in forest reserves.
- (4) The assessment must be based on monitoring and evaluation conducted over a period long enough to assess the likely impacts of horse riding use.
- (5) The assessment must take account of the cumulative impacts of horse riding and other activities conducted in the areas to which the assessment relates.
- (6) To the extent the assessment relates to a particular horse riding trail, the assessment need not be based on measurement or monitoring of the trail, or of every part of the trail, but may be based on appropriate information obtained from measuring or monitoring, and evaluating, other trails or parts of the trail with relevant characteristics.
- (7) In this section—
- adjacent areas***, in relation to horse riding trails, means areas adjacent to the trails whether or not the areas are part of a forest reserve.

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## **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) for a proposed protected area that includes a horse riding trail in the SEQ horse riding trail network, the chief executive has completed the review under section 70JA to the extent the review relates to the proposed protected area; and
  - (c) 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; or
- (c) the area ceases to be forest reserve under the *Forestry Act 1959*, section 25A.

## **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*; or  
*Note—*  
For State forests or timber reserves, see section 70G(3) (State forest or timber reserve dedicated as a forest reserve).
  - (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, geothermal activities and GHG storage activities in forest reserves**

A mining interest under section 27, a geothermal tenure or a GHG authority 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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## **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 wildlife; and
  - (ii) extinct in the wild wildlife; and
  - (iii) critically endangered wildlife; and
  - (iv) endangered wildlife; and
  - (v) vulnerable wildlife; and
  - (vi) near threatened wildlife; and
  - (vii) 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—

[s 73]

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- (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) to 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 wildlife**

A regulation may prescribe native wildlife as extinct wildlife if there is no reasonable doubt the last member of the species has died.

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

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

[s 78]

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- (a) the wildlife is known only to survive in cultivation, in captivity or as a naturalised population well outside its past range; or
- (b) the wildlife is not known to survive in its known or expected habitat, in its past range, over a period appropriate to the life cycle or form of the wildlife.

## **78 Native wildlife may be prescribed as critically endangered wildlife**

A regulation may prescribe native wildlife as critically endangered wildlife if—

- (a) the wildlife has undergone or is suspected to have undergone a very large reduction in numbers; or
- (b) it is likely that a very large reduction in the wildlife's numbers is imminent; or
- (c) the wildlife's geographic distribution is—
  - (i) precarious for the survival of the wildlife; and
  - (ii) very restricted; or
- (d) the estimated total number of mature individuals is very low and it is likely the number will—
  - (i) continue to decline at a very high rate; or
  - (ii) continue to decline and its geographic distribution is precarious for the survival of the wildlife; or
- (e) the estimated total number of mature individuals is extremely low; or
- (f) the probability of the wildlife's extinction in the wild is at least 50% in the immediate future.

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

- (1) A regulation may prescribe native wildlife as endangered wildlife if the wildlife is not critically endangered and any of the following apply—

- 
- (a) the wildlife has undergone or is suspected to have undergone a large reduction in numbers;
  - (b) it is likely that a large reduction in the wildlife's numbers is imminent;
  - (c) the wildlife's geographical distribution is—
    - (i) precarious for the survival of the wildlife; and
    - (ii) restricted;
  - (d) the estimated total number of mature individuals is low and it is likely the number will—
    - (i) continue to decline at a high rate; or
    - (ii) continue to decline and its geographical distribution is precarious for the survival of the wildlife;
  - (e) the estimated total number of mature individuals is very low;
  - (f) the probability of the wildlife's extinction in the wild is at least 20% in the near future.
- (2) In this section—

*critically endangered*, in relation to wildlife, means the wildlife falls within a description mentioned in section 78.

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

- (1) A regulation may prescribe native wildlife as vulnerable wildlife if the wildlife is not critically endangered or endangered and any of the following apply—
- (a) the wildlife has undergone or is suspected to have undergone a moderate reduction in numbers;
  - (b) it is likely a moderate reduction in the wildlife's numbers is imminent;
  - (c) the wildlife's geographical distribution is—
    - (i) precarious for the survival of the wildlife; and

- (ii) limited;
  - (d) the estimated total number of mature individuals is limited and it is likely the number will—
    - (i) continue to decline at a substantial rate; or
    - (ii) continue to decline and its geographical distribution is precarious for the survival of the wildlife;
  - (e) the estimated total number of mature individuals is low;
  - (f) the probability of the wildlife's extinction in the wild is at least 10% in the medium-term future.
- (2) In this section—

*critically endangered*, in relation to wildlife, means the wildlife falls within a description mentioned in section 78.

*endangered*, in relation to wildlife, means the wildlife falls within a description mentioned in section 78A(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—



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*vulnerable*, in relation to wildlife, means the wildlife falls within a description mentioned in section 78B(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.

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- (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 regulation or 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**

## **Subdivision 1 Particular restrictions relating to protected animals**

### **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.

*Note—*

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

- (2) A person must not take a protected animal unless the person is an authorised person or the taking is authorised under this Act.

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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 (2) 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—
- (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—

[s 88A]

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- (a) 1 or more animals that are extinct, extinct in the wild, critically endangered or endangered wildlife; or
- (b) 5 or more animals that are vulnerable or near threatened wildlife; or
- (c) 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) 10 or more animals that are least concern 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) 5 or more, but less than 10, animals that are least concern 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 or the *Exhibited Animals Act 2015*—
  - (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

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- (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.

### **88BA Restrictions relating to dugongs and marine turtles**

- (1) A person must not sell or give away, at commercial food premises, a prescribed animal or prescribed product.  
Maximum penalty—3000 penalty units or 2 years imprisonment.
- (2) In this section—
  - commercial food premises*—
    - (a) means premises on or from which food is sold or given away as a part of a business operating from the premises; but  
*Examples of a business for paragraph (a)*—  
restaurant, cafe, recreation club
    - (b) does not include premises—
      - (i) being used in association with a public event; and
      - (ii) on or from which the selling or giving away of food takes place only occasionally.

*Examples of premises for paragraph (b)—*

a hall at which a community fair is being held, a temporary stall at a cultural fair

***dugong*** means the mammal Dugong dugon.

***marine turtle*** means a turtle of the family Cheloniidae or Dermochelyidae.

***prescribed animal*** means a protected marine turtle or dugong.

***prescribed product*** means anything made or derived from a prescribed animal.

### **88C Restrictions relating to flying-foxes and flying-fox roosts**

- (1) A person must not destroy a flying-fox roost unless the person is an authorised person or the destruction is authorised under this Act.

Maximum penalty—1000 penalty units or 1 year's imprisonment.

- (2) A person must not drive away, or attempt to drive away, a flying-fox from a flying-fox roost unless the person is an authorised person or the driving away is authorised under this Act.

Maximum penalty—1000 penalty units or 1 year's imprisonment.

- (3) A person must not disturb a flying fox in a flying-fox roost unless the person is an authorised person or the disturbance is authorised under this Act.

Maximum penalty—100 penalty units.

- (4) This section does not apply if the flying-fox roost is in a protected area.

*Note—*

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



(5) Also, this section does not apply for an Aborigine or Torres Strait Islander taking, using or keeping a flying-fox under section 93.

(6) In this section—

*breeding* includes gestating.

*drive away*, a flying-fox from a flying-fox roost, means—

- (a) cause the flying-fox to move away from the roost; or
- (b) if the flying-fox has moved away from the roost, deter the flying-fox from returning to the roost.

*Examples of ways of driving away a flying-fox—*

using sound, light, smoke, electric current or chemicals

*flying-fox* means a protected animal of the genus *Pteropus*.

*flying-fox roost* means a tree or other place where flying-foxes congregate from time to time for breeding or rearing their young.

## **Subdivision 2 Particular restrictions relating to protected plants**

### **88D Regulation may prescribe special least concern plants**

- (1) A regulation may prescribe a least concern plant to be a special least concern plant for this subdivision.
- (2) A least concern plant may be prescribed under subsection (1) if the taking or use of the plant is at risk of not being ecologically sustainable, including, for example, because of—
  - (a) high commercial demand for the plant or a part of the plant; or
  - (b) the biological traits of the plant.

## **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 that is in the wild unless the plant is taken 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—

- (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—165 penalty units.
- (2) Subsection (1) does not apply to the taking of protected plants in a protected area.
- (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—

- (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—165 penalty units.

(5) In this section—

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

- (a) 1 or more plants that are extinct, extinct in the wild, critically endangered or endangered wildlife; or
- (b) 5 or more plants that are vulnerable or near threatened wildlife; or
- (c) 10 or more plants that are special least concern wildlife.

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

- (a) 3 or 4 plants that are vulnerable or near threatened wildlife; or
- (b) 4 or more, but no more than 9, plants that are special least concern 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 plants that are vulnerable or near threatened wildlife; or
- (b) 2 or 3 plants that are special least concern wildlife.

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

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

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

Maximum penalty—

- (a) for a class 1 offence—1000 penalty units; or
- (b) for a class 2 offence—165 penalty units.

(2) In this section—

*class 1 offence* means an offence against this section that involves 1 or more plants that are threatened, near threatened or special least concern wildlife.

*class 2 offence* means an offence against this section other than a class 1 offence.

### **Subdivision 3      Other restrictions**

#### **90A      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.

Maximum penalty—

- (a) if the wildlife ought to have been suspected to have been taken in contravention of section 88(2), 89 or 97—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.

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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 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.

## 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 or the *Exhibited Animals Act 2015*.

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, but subject to the Animal Care and Protection Act 2001, 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*

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*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.*

*Maximum penalty—3000 penalty units or imprisonment for 2 years.*

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

## **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 subsections (8) and (9), 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.
- (3) Despite any Act or law, payment of the conservation value does not, of itself, transfer property in protected wildlife from the State.
- (4) A 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.

- (9) Also, the conservation value of a protected plant is not payable by a person if the person takes a protected plant under



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an authority and pays, within 30 days after the plant is taken, the amount, if any, that the authority states must be paid for the taking of the plant.

(10) For subsection (9), the amount stated on the authority must not be more than the conservation value for the protected plant.

(11) In this section—

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

## **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 non-payment; or
- (b) the person has been convicted of an offence in relation to the non-payment.

## **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) in an area that is identified under a regulation or conservation plan as, or including—

- (a) a critical habitat; or
- (b) an area of major interest.

[s 97A]

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- (2) A person, other than an authorised person, must not take or interfere with the wildlife, other than under—
- (a) the regulation or 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) A person, other than an authorised person, must not use or keep the wildlife, other than under—
- (a) the regulation or conservation plan; or
  - (b) a licence, permit or other authority issued or given under a regulation or the *Exhibited Animals Act 2015*.

Maximum penalty—3000 penalty units or 2 years imprisonment.

- (4) 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.
- (5) Subsection (4) does not allow a person to use or keep the wildlife.

### **97A Additional restriction on hunting native ducks or native quails**

- (1) A regulation or conservation plan under this Act does not and can not authorise, whether directly or indirectly—
- (a) the recreational hunting of native ducks or native quails; or
  - (b) the issue or giving of a licence, permit or other authority authorising the recreational hunting of native ducks or native quails; or

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- (c) the entry into an agreement or other arrangement authorising the recreational hunting of native ducks or native quails.
  - (2) The recreational hunting of native ducks or native quails is not and can not be authorised, for section 62(1), 88(2) or another provision of this Act, in any other way provided for under this Act, including, for example, under anything mentioned in section 62(1)(a), (b), (c), (d) or (e).
  - (3) An authorisation, however called, under this Act that is in existence immediately before the commencement of this section is of no legal effect to the extent it authorises, or purports to authorise, the recreational hunting of native ducks or native quails.
  - (4) In this section—  
*recreational hunting*, of native ducks or native quails, means hunting directed at killing (including, for example, by shooting) native ducks or native quails for a recreational purpose.

## **Division 7                      Provisions for landholders**

### **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 landholder'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 landholder'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—landholders' rights**

(1) This section applies to a person who a landholder suspects on reasonable grounds—

(a) is trespassing on the landholder'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 landholder 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 landholder; 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 landholder;

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 landholder 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) authorising 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 Conservation Act 1999* (Cwlth), section 269A

***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.

### **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;

[s 100E]

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- (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.

Maximum penalty—50 penalty units.

**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.
- (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.



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**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.

**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.

**Division 9 Offset conditions**

**100I Offset condition for wildlife authority**

- (1) A condition of a wildlife authority may require or otherwise relate to an environmental offset (an *offset condition*).

*Note—*

The *Environmental Offsets Act 2014*, part 6, states further conditions that apply to a wildlife authority and those further conditions are called deemed conditions. A breach of a deemed condition may be dealt with under this Act.

- (2) An offset condition may require an environmental offset to be undertaken on land to which a wildlife authority applies or on other land in the State.
- (3) If an applicant for a wildlife authority has entered into an agreement about an environmental offset, an offset condition may require the applicant to comply with the agreement.
- (4) An agreement entered into under subsection (3) is not an environmental offset agreement under the *Environmental Offsets Act 2014*.
- (5) In this section—

***environmental offset*** see the *Environmental Offsets Act 2014*, schedule 2.

***wildlife authority*** means a lease, agreement, licence, permit or other authority under this Act (including under a regulation) in relation to a protected animal or protected plant.

## 100J Conditions of wildlife authority

- (1) This section applies if, on or after the commencement of this section, a wildlife authority becomes, under this Act, subject to an offset condition.
- (2) To the extent the offset condition is inconsistent with a deemed condition, the deemed condition prevails.

*Note—*

See the *Environmental Offsets Act 2014*, section 5(3). Under that provision, particular imposed conditions prevail over deemed conditions.

- (3) In this section—

***deemed condition*** see the *Environmental Offsets Act 2014*, schedule 2.

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*offset condition* see section 100I(1).

*wildlife authority* see section 100I(5).

## Division 10                      Statements of management intent

### 100K    Local government's statement of management intent

- (1) This section applies if a local government is lawfully dealing with protected wildlife in the local government area, other than under a wildlife authority.
- (2) The Minister may, by written notice, require the local government to prepare and publish a statement of management intent for the protected wildlife, within a reasonable period stated in the notice.
- (3) The notice may require that the statement of management intent include stated information.
- (4) The local government must, within the stated period—
  - (a) prepare a statement of management intent for the protected wildlife; and
  - (b) publish the statement on the local government's website.
- (5) The statement of management intent must include—
  - (a) any information required under subsection (3); and
  - (b) any information prescribed by regulation.
- (6) In this section—

*statement of management intent*, for protected wildlife, means a statement about the local government's proposed management intent for the protected wildlife.

## Part 6 Interim conservation orders

### 101 Definitions

In this part—

*landholder* 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 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 landholders 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 landholder if the Minister gives notice of the order to the landholder 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.

#### **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—on the earlier day.
- (5) This section applies despite any other Act.

## **108 Compensation**

- (1) A landholder 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 landholder 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.



- (a) the area is dedicated or declared as a protected area in connection with any of the following changes to a protected area (an *existing protected area*) for which a management statement (an *existing management statement*) or management plan (an *existing management plan*) is in force—
    - (i) renaming the existing protected area;
    - (ii) changing the class of the existing protected area;
    - (iii) adding an area to the existing protected area;
    - (iv) removing an area from the existing protected area;
    - (v) amalgamating the existing protected area with another protected area;
    - (vi) dividing the existing protected area into 2 or more separate protected areas; and
  - (b) any of the following applies—
    - (i) the regulation dedicating or declaring the newly dedicated protected area declares that the existing management statement or existing management plan applies to the newly dedicated protected area;
    - (ii) if there is an existing management statement in effect for the existing protected area—the chief executive amends the existing management statement to apply to the newly dedicated protected area; or
    - (iii) if there is an existing management plan in effect for the existing protected area—the Minister amends the existing management plan to apply to the newly dedicated protected area.
- (3) Also, the chief executive is not required to prepare a management statement for the area if the Minister notifies the chief executive that the Minister is preparing a management plan for the area.
- (4) 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 statement is required to be prepared for the area under this section;

the chief executive may prepare a management statement for the aggregation of areas instead of a statement for the area (whether or not statements have been prepared for other areas included in the aggregation of areas).

- (5) If the chief executive decides to prepare a management statement for an amalgamated area or aggregation of areas, this part applies to the preparation and approval of the statement.
- (6) The chief executive may after the declaration of a nature refuge, other than under section 49, prepare a management statement for the area of the refuge if the landholder of the area agrees.
- (7) A management statement for a national park (Cape York Peninsula Aboriginal land) or an indigenous joint management area must—
  - (a) be prepared jointly with the indigenous landholder for the protected area; and
  - (b) be consistent with any indigenous land use agreement, and the indigenous management agreement, for the protected area.
- (8) A management statement for an area may be combined with a management statement for another area dedicated or declared under this Act.

## **112 Minister may prepare management plan**

- (1) This section applies to—
  - (a) an area mentioned in section 111(1); or
  - (b) an area that is an aggregation of areas assigned a name under section 64.

- (2) The Minister may prepare a management plan for the area if the Minister is satisfied it is appropriate in the circumstances having regard to the following—
  - (a) the importance of the area's natural or cultural resources and values;
  - (b) any significant or particular threats to the area's natural or cultural resources and values;
  - (c) any significant public interest concerns for the area's natural or cultural resources and values;
  - (d) the nature of any proposed commercial or recreational uses of, and opportunities for, the area and the proposed management of those uses.
- (3) 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 landholder of the area agrees.
- (4) A management plan for a national park (Cape York Peninsula Aboriginal land) or an indigenous joint management area must—
  - (a) be prepared jointly with the indigenous landholder for the protected area; and
  - (b) be consistent with any indigenous land use agreement, and the indigenous management agreement, for the protected area.

## **Division 2                      Making and implementing management statements**

### **113      Management statements to be consistent with management principles etc.**

A management statement for an area must—

- (a) be consistent with the management principles for the class of the area; and

- (b) if the area is a nature refuge or coordinated conservation area—be consistent with any conservation agreement or conservation covenant for the area; and
- (c) state management outcomes for the protection, presentation and use of the area and the policies, guidelines and actions to achieve the outcomes.

### **113A Notice of making of management statement**

- (1) The chief executive must notify the making of a management statement by gazette notice.
- (2) The gazette notice must state where a copy of the management statement is available for inspection.

### **113B When management statement has effect**

A management statement has effect on and from the later of the following days—

- (a) the day the gazette notice for the statement is published under section 113A;
- (b) the commencement day stated in the statement.

*Note—*

See, however, section 119B.

### **113C Implementation of management statement**

On the making of a management statement for an area, the following persons must give effect to the statement—

- (a) if the area is a national park (Aboriginal land) or national park (Torres Strait Islander land)—the board of management for the area;
- (b) if the area is a national park (Cape York Peninsula Aboriginal land) or an indigenous joint management area—the indigenous landholder for the area and the chief executive;

- (c) if the area is under the control of trustees appointed under section 31—the trustees;
- (d) if paragraphs (a), (b) and (c) do not apply—the chief executive.

### **Division 3                      Preparing, approving and implementing management plans**

#### **114      Application of division**

This division applies if the Minister decides to prepare a management plan for an area under section 112.

#### **115      Preparation of draft plan**

The Minister must prepare a draft of the management plan (a *draft plan*).

#### **115A    Notice of draft plan**

- (1) This section applies to a draft plan other than a draft plan for a nature refuge that is subject to a conservation agreement.
- (2) The Minister must—
  - (a) publish a notice about the draft plan on the department’s website; and
  - (b) ensure the draft plan is available for inspection as stated in the notice.
- (3) The notice must—
  - (a) state the area to which the draft plan relates; and
  - (b) state that a copy of the draft plan is available for inspection without charge—
    - (i) during business hours at the department’s head office and at each departmental office in the general area in which the area is located; and

- (ii) on the department's website; and
  - (c) invite members of the public, including landholders and indigenous people with an interest in the area, to make written submissions about the draft plan to the Minister, within a stated period.
- (4) The stated period must be at least 20 business days after the notice is published.
- (5) Subsection (3)(c) does not apply if—
  - (a) the draft plan is substantially uniform or complementary with—
    - (i) another Act; or
    - (ii) a law of the Commonwealth or another State; or
  - (b) the following applies—
    - (i) the draft plan adopts an Australian or international protocol, standard, code, or intergovernmental agreement or instrument;
    - (ii) an assessment of the benefits and costs associated with the plan has already been made;
    - (iii) the assessment was made for, or is relevant to, Queensland; or
  - (c) the Minister considers there has already been adequate other public consultation about the matters the subject of the plan.
- (6) In this section—

*landholder* includes a person having an interest in land.

### **115B Obtaining copy of draft plan**

- (1) On payment of the fee, if any, decided by the chief executive, a person may obtain a copy of the draft plan from the chief executive.

- (2) The fee must not be more than the reasonable cost incurred by the chief executive for printing the copy and giving it to the person.
- (3) For subsection (2), if the person asks for the copy to be mailed to the person, the fee may include the reasonable cost of mailing the copy to the person.

### **116 Submissions to be considered when preparing final management plan**

When preparing a final management plan, the Minister must consider all submissions made to the Minister about the draft plan under section 115A(3)(c).

### **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 or coordinated conservation area, any conservation agreement or covenant for the area; and
  - (b) specify management outcomes for the protection, presentation and use of the area and the policies, guidelines and actions to achieve the outcomes.
- (2) A final management plan for a protected area may divide the area into management zones.

### **118 Approval of final management plan**

- (1) The Governor in Council may, by gazette notice, approve a final management plan.
- (2) The gazette notice must state—
  - (a) where a copy of the management plan is available for inspection; and
  - (b) if, immediately before the approval of the management plan, a management statement is in effect for the area—

the management statement ceases to have effect on the day the management plan takes effect.

### **119 Management plan may be combined with another plan**

A management plan for an area may be combined with 1 or more of the following—

- (a) a management plan for another area dedicated or declared under this Act;
- (b) a management plan for a marine park under the *Marine Parks Act 2004*;
- (c) a management plan for a recreation area under the *Recreation Areas Management Act 2006*.

### **119A When management plan has effect**

A management plan has effect on and from the later of the following days—

- (a) the day the gazette notice approving the plan is published;
- (b) the commencement day stated in the plan.

### **119B Management statement ceases to have effect if management plan takes effect**

- (1) This section applies if—
  - (a) a management statement is in effect for an area; and
  - (b) a management plan for the area takes effect under section 119A.
- (2) On the management plan taking effect, the management statement ceases to have effect for the area.

## **120 Implementation of management plan**

On approval of a management plan for a protected area or an indigenous joint management area, the following persons must give effect to the plan—

- (a) if the area is a national park (Aboriginal land) or national park (Torres Strait Islander land)—the board of management for the area;
- (b) if the area is a national park (Cape York Peninsula Aboriginal land) or an indigenous joint management area—the indigenous landholder for the area and the chief executive;
- (c) if the area is under the control of trustees appointed under section 31—the trustees;
- (d) if paragraphs (a), (b) and (c) do not apply—the chief executive.

## **Division 4 Amendment of management plans**

### **120A Procedures for amending management plan**

- (1) Sections 114 to 117 apply to the amendment of a management plan as if a reference to a management plan were a reference to an amendment of a management plan.
- (2) However, sections 115 to 116 do not apply to the amendment of a management plan if—
  - (a) the amendment contains only amendments to—
    - (i) correct an error in the plan; or
    - (ii) make a change other than a change of substance in the plan; or
    - (iii) 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; or



- (b) for a management plan that is substantially uniform or complementary with another Act or a law of the Commonwealth or another State—the amendment contains only amendments needed to ensure the plan remains substantially uniform or complementary; or
- (c) the amendment only adopts an Australian or international protocol, standard, code, or intergovernmental agreement or instrument, and an assessment of the benefits and costs associated with the amendment has already been made and the assessment was made for, or is relevant to, Queensland; or
- (d) the Minister considers there has already been adequate other public consultation about the matters the subject of the amendment.

### **120AB Amendment of management plans for particular land**

- (1) This section applies in relation to the amendment of a management plan for land in a national park (Cape York Peninsula Aboriginal land) or an indigenous joint management area.
- (2) The amendment of the management plan must be prepared jointly with the indigenous landholder for the land.
- (3) The management plan as amended must be consistent with any indigenous land use agreement or indigenous management agreement for the land.
- (4) This section does not limit section 120A.

### **120B Approval of amendment**

- (1) An amendment of a management plan may be approved, by gazette notice, by—
  - (a) for an amendment to which section 120A(2) applies—the Minister; or
  - (b) otherwise—the Governor in Council.

- (2) The gazette notice must state where a copy of each of the following is available for inspection—
  - (a) the amendment of the management plan;
  - (b) the management plan as amended.

### **120C When amendment has effect**

The amendment of a management plan has effect on and from the later of the following days—

- (a) the day the gazette notice approving the amendment is published;
- (b) the commencement day stated in the amendment.

## **Division 5 Publication of management statements and management plans**

### **120D Publication and availability of management statements and management plans**

- (1) The chief executive must publish a copy of each management statement and management plan, as amended from time to time, on the department's website.
- (2) The copy must be published—
  - (a) within 20 business days after the statement or plan first takes effect under this part; or
  - (b) for a copy incorporating an amendment of the statement or plan—within 20 business days after the day on which the amendment takes effect.
- (3) Also, the chief executive must keep a copy of each management statement and management plan, as amended from time to time, available for inspection, without charge by the chief executive, by members of the public during normal business hours at—
  - (a) the department's head office; and

- (b) each departmental office in the general area in which the area the subject of the statement or plan is located.

### **120E Obtaining copies of management statements or management plans**

- (1) On payment of the fee decided by the chief executive, a person may obtain a copy of a management statement or management plan, as in effect at a particular time, from the chief executive.
- (2) The fee must not be more than the reasonable cost incurred by the chief executive for printing the copy and giving it to the person.
- (3) For subsection (2), if the person asks for the copy to be mailed to the person, the fee may include the reasonable cost of mailing the copy to the person.

## **Division 6 Management programs**

### **120EA Preparation of management program**

A landholder who intends to enter into a conservation agreement for a special wildlife reserve must prepare and give the Minister a management program for the reserve.

### **120EB Content of management program**

- (1) A management program must state management outcomes for the protection, presentation and use of the special wildlife reserve and actions to achieve the outcomes.
- (2) A management program may also—
  - (a) divide the area of the special wildlife reserve into management zones; and
  - (b) authorise or restrict the taking, using or keeping of, or interfering with, a cultural or natural resource of the reserve.

### **120EC Approval of management program**

The Minister may approve a management program for a special wildlife reserve only if the Minister is satisfied—

- (a) the program is consistent with the management principles and proposed conservation agreement for the reserve; and
- (b) the program states appropriate management outcomes for the protection, presentation and use of the reserve and appropriate actions to achieve the outcomes; and
- (c) if the program authorises or restricts the taking, using or keeping of, or interfering with, a cultural or natural resource—that the authorisation or restriction is ecologically sustainable.

### **120ED When management program has effect**

A management program for a special wildlife reserve has effect when the reserve is declared under this Act.

### **120EE Implementation of management program**

The landholder of land in a special wildlife reserve must give effect to the management program for the reserve.

### **120EF Amendment of management program**

- (1) The landholder of land in a special wildlife reserve may, at any time, prepare an amended management program for the reserve for approval by the chief executive.
- (2) Section 120EC applies to the amended management program as if—
  - (a) a reference to the Minister were a reference to the chief executive; and
  - (b) a reference to a management program were a reference to the amended management program.

- (3) An amended management program for a special wildlife reserve has effect when it is approved by the chief executive.

## **Division 7                      Reviewing management statements, management plans and management programs**

### **120F    Review of management statements**

- (1) The chief executive must review the management statement for an area not later than 10 years after it is made.
- (2) On completing the review, the chief executive may—
  - (a) prepare a new management statement for the area; or
  - (b) amend the existing management statement for the area;  
or
  - (c) leave the existing management statement for the area unchanged.

### **120G    Review of management plans**

- (1) The Minister must review the operation of a management plan for an area not later than 10 years after its approval.
- (2) On completing the review, the Minister may—
  - (a) prepare a new management plan for the area; or
  - (b) amend the existing management plan for the area; or
  - (c) leave the existing management plan for the area unchanged; or
  - (d) if the Minister is satisfied it is appropriate in the circumstances, decide that the existing management plan be replaced with a management statement for the area.

- (3) If the Minister decides, under subsection (2)(d), that the existing management plan be replaced with a management statement for the area—
  - (a) the Governor in Council may revoke the approval of the existing management plan; and
  - (b) if the approval is revoked—the chief executive must prepare a management statement for the area under this part to take effect immediately after the revocation.
- (4) Subsection (3)(b) does not apply if the area is amalgamated with another area for which a management statement is required under section 111, and either—
  - (a) the regulation dedicating or declaring the amalgamated area declares that an existing management statement or existing management plan applies to the amalgamated area; or
  - (b) an existing management statement or existing management plan is amended to apply it to the amalgamated area.
- (5) Also, if the area is a protected area, section 111(4) applies to the area as if section 111(4)(b) also included a reference to a management statement required to be prepared under subsection (3)(b).

### **120GA Review of management program**

- (1) The chief executive and the landholder of land in a special wildlife reserve must jointly review the management program for the reserve—
  - (a) no later than 5 years after the program first takes effect (the *first review*); and
  - (b) subsequently, at intervals of not more than 5 years after the first review.
- (2) Subsection (1) applies even if the management program has been amended in the period before the review is required.

- (3) On completing a review under subsection (1), the chief executive and landholder may agree—
- (a) that the landholder will prepare an amended management program under section 120EF; or
  - (b) to leave the management program unchanged.

## **Division 8                      Conservation plans**

### **120H Preparation of 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 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.
- (4) If the conservation plan is to provide for matters for which a regulation may be made under this Act, subsection (3) only applies if the Minister is satisfied it is more appropriate in the circumstances for a conservation plan to provide for the matters.
- (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.

#### **120I Conservation plans to be consistent with management principles etc.**

- (1) A conservation plan for wildlife must be consistent with the management principles for the class of wildlife.
- (2) A conservation plan for wildlife, or a class of wildlife, may provide for the State to be divided into wildlife districts.

#### **120J Approval of conservation plan**

- (1) A conservation plan does not have effect until it has been approved by the Governor in Council.
- (2) A conservation plan is subordinate legislation.



## **120K Implementation of conservation plan**

On approval of a conservation plan, the chief executive must give effect to the plan.

## **Division 9 Miscellaneous provisions**

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

- (1) A management statement or management plan for a coordinated conservation area replaces the interim 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.

### **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.

## **Part 7A**                      **Regulations identifying critical habitats or areas of major interest**

### **126A Local governments' decisions to be consistent with regulations**

- (1) This section applies to land in an area identified under a regulation 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.

## **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; or
  - (d) with the person's consent, appoint another person;to be a conservation officer.

*Note—*

Under the *Police Powers and Responsibilities Act 2000*, section 13, a police officer may be appointed as a conservation officer only with the written approval of the commissioner of the police service.

- (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.

## 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.

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### **131 Proof of authority**

- (1) 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—
  - (a) produces his or her identity card for the person's inspection before exercising the power; or
  - (b) has his or her identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the conservation officer or honorary protector must produce the identity card for the person's inspection at the first reasonable opportunity.
- (3) For subsection (1), a conservation officer or honorary protector does not exercise a power in relation to a person only because the conservation officer or honorary protector has entered a place as mentioned in section 145(2)(c) or (d).

### **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) protected area management advisory committees; and
  - (c) 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 identification, classification and management of protected areas; and
  - (b) the classification of wildlife; and
  - (c) 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.

### **132A Committees for protected areas in Cape York Peninsula Region**

- (1) The Minister may establish committees to advise the Minister about matters relating to particular protected areas in the Cape York Peninsula Region, including, for example, matters about the preparation of management plans, and matters about implementing the plans, for the areas.
- (2) Also, the Minister must establish a committee of indigenous people who have an interest in a protected area in the Cape York Peninsula Region (the *Regional Protected Area Management Committee*) to advise the Minister about matters relating to protected areas in the region, including, for example, matters about—
  - (a) employment opportunities for indigenous people in the areas; and
  - (b) any management plans for the areas; and
  - (c) the provision of resources for the management of the areas.
- (3) Each committee established under subsection (1) must consist of representatives of indigenous people the Minister is satisfied have an interest in the protected areas for which the committee is established.
- (4) The Regional Protected Area Management Committee may consist of representatives of—
  - (a) the committees established under subsection (1); or
  - (b) indigenous regional organisations in the Cape York Peninsula Region.

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

- (1) The chief executive must keep a register of—

- (a) management statements, management plans and conservation plans; and
  - (b) critical habitats; and
  - (c) areas of major interest; and
  - (d) captive breeding agreements that are in force; and
  - (e) interim conservation orders; and
  - (f) conservation officers; and
  - (g) 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 kept by registrar**

- (1) Subsections (2) to (4) apply in relation to the following instruments—
- (a) a conservation agreement, including an amended conservation agreement;
  - (b) a regulation or conservation plan identifying an area as, or including—
    - (i) a critical habitat; or
    - (ii) an area of major interest;

- (c) a regulation declaring a protected area.
- (2) The chief executive must, within 14 days after the instrument is made, give the registrar a compliant document for the instrument.
- (3) The registrar must record the information in the compliant document about the instrument, and the land to which it relates, in the appropriate register for the land in a way that a search of the register will show the existence of the instrument in relation to the land.
- (4) The record must also state where the instrument may be inspected.
- (5) Subsections (6) and (7) apply in relation to the following actions—
  - (a) the ending of a conservation agreement;
  - (b) the removal of an area as, or including, a critical habitat or an area of major interest from a regulation or conservation plan;
  - (c) the revocation of a protected area, in whole or part.
- (6) The chief executive must, within 14 days after the action happens, give the registrar a compliant document for the action.
- (7) The registrar must record the happening of the action in the appropriate register for the land.
- (8) In this section—

***appropriate register*** means—

  - (a) for freehold land—the freehold land register; or
  - (b) for other land—the appropriate register under the *Land Act 1994*.

***compliant document***, for an instrument or action, means a document stating the information about the instrument or action, and the land to which it applies, required by the registrar for recording the information in the appropriate register for the land.



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*registrar* means—

- (a) for an instrument or action relating to freehold land—the registrar of titles; or
- (b) for an instrument or action relating to other land—the chief executive (lands).

### **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, management plan or conservation agreement**

(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) any of the following for the area—

- (i) the interim or declared management intent;
  - (ii) a management plan;
  - (iii) a conservation agreement.
- (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.

### **137A Compensation if landholder's interest in land injuriously affected**

- (1) This section applies if—
- (a) a regulation is made, or a conservation plan is approved, for an area identified under the regulation or plan as, or including, a critical habitat or an area of major interest; and
  - (b) a landholder's interest in land in the area is injuriously affected by a restriction or prohibition imposed under the regulation or plan on the landholder's existing use of the land.
- (2) The landholder 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 landholder or, failing agreement, decided by the Land Court.
- (3) The landholder's interest in the land is not injuriously affected if the restriction or prohibition under the regulation or conservation plan is the same, or to the same effect, as a provision of another law applying to the land immediately

before the restriction or prohibition started applying to the land.

- (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 making of the regulation or 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 making of the regulation or approval of the conservation plan;
  - (c) any change in the profitability of the land because of the making of the regulation or approval of the conservation plan;
  - (d) any conservation agreement with the landholder.
- (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 restriction or prohibition imposed under the regulation or conservation plan mentioned in subsection (1) started applying to the land.

### **138 Compensation not payable if authority not renewed etc.**

- (1) In this section—

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**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 a prescribed provision.
- (3) In this section—  
*prescribed provision* means section 34, 35, 35A, 36, 37, 38, 39G, 42AD, 42AE, 42AEA, 42AN, 42AO, 42AOA, 42AP, 42A, 43F, 43G, 43H or 136.

## 142 Protection from liability

- (1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.
- (3) Also, the State or an official is not civilly liable in a proceeding for an act done, or omission made, in—
  - (a) the performance or purported performance of a function under this Act in relation to a State protected area; or
  - (b) the exercise or purported exercise of a power under this Act in relation to a State protected area; or
  - (c) the management or operation of a State protected area.
- (4) However, subsection (3) does not apply to any liability of the State or an official arising from the State's or official's—
  - (a) construction, installation or maintenance of a State fixture, or State road, that is defective other than because of a natural event; or
  - (b) failure to give adequate notice of a State fixture, or State road, that is defective other than because of a natural event; or
  - (c) carrying out of a State management activity.

*Examples of a natural event for paragraphs (a) and (b)—*  
a storm, flood, period of heavy rain

- (5) Also, subsection (3) does not apply in relation to—

- (a) any liability of the State or an official for an MAIA injury incurred by the State or official as an insured person; or
  - (b) any liability of the State or an official for an injury for which compensation is payable under the *Workers' Compensation and Rehabilitation Act 2003* incurred by the State or official in the State's or official's capacity as an employer.
- (6) For subsection (5)(b), the following is immaterial—
- (a) whether compensation for the injury is actually claimed under the *Workers' Compensation and Rehabilitation Act 2003*;
  - (b) whether the entitlement to seek damages for the injury is regulated under that Act.

(7) In this section—

**compensation** see the *Workers' Compensation and Rehabilitation Act 2003*, section 9.

**damages** includes any form of monetary compensation.

**defective** includes damaged or destroyed.

**insured person** see the *Motor Accident Insurance Act 1994*, section 4.

**MAIA injury** means a personal injury to which the *Motor Accident Insurance Act 1994* applies.

**official** means each of the following—

- (a) the Minister;
- (b) the chief executive;
- (c) for a State protected area for which an indigenous management agreement has been entered into—the indigenous landholder with whom the indigenous management agreement has been entered into for the land;
- (d) a conservation officer;

- (e) a public service employee or another employee of the State authorised to carry out functions under this Act;
- (f) a person acting under a direction given under this Act by a person mentioned in paragraph (a), (b), (c), (d) or (e).

***personal injury*** see the *Civil Liability Act 2003*, schedule 2.

***proceeding*** means a proceeding for damages based on a liability for personal injury, damage to property or economic loss resulting from personal injury or damage to property, and, for a fatal injury, includes a proceeding for the deceased's dependants or estate.

***State fixture*** means a building, structure or other thing constructed or installed by the State including, for example, the following—

- (a) a boardwalk, jetty, lookout or mooring;
- (b) a stairway;
- (c) a fence or other barrier;
- (d) a thing used for a recreational purpose.

*Examples for paragraph (d)—*

- a flying fox ride or zipline ride
- a rope or swing over a river or waterhole
- a ramp or jump on a mountain bike trail
- an anchor point for rock climbing

***State management activity*** means—

- (a) programmed shooting or poisoning of animals; or
- (b) programmed burning or poisoning of vegetation.

***State protected area*** means—

- (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



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- (e) a national park (Cape York Peninsula Aboriginal land);  
or
  - (f) a conservation park; or
  - (g) a resources reserve.

**State road** means—

- (a) a State-controlled road within the meaning of the *Transport Infrastructure Act 1994*, schedule 6; or
- (b) another road, within the meaning of the *Transport Operations (Road Use Management) Act 1995*, constructed by 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.

### **143A False or misleading documents**

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

- (a) indicating to the authorised person 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 authorised person if the person has, or can reasonably obtain, the correct information.

Maximum penalty—100 penalty units.

### **143B Chief executive may approve use of information system**

- (1) The chief executive may approve a system (an *information system*) for generating, receiving, sending, or otherwise processing electronic communications between an authorised person and another person.
- (2) Communications received by the information system are taken to be documents given to the authorised person.
- (3) A decision generated by the information system is taken to be a decision made by the authorised person.

## **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

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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

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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;
  - (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 any conservation officer or a stated 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.



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- (4) The warrant must—
- (a) authorise any conservation officer or a stated 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 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.

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- (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 non-payment 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 areas, 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
      - (B) whether a conservation agreement should be entered into in relation to the area; or
    - (iii) investigating or monitoring compliance with a conservation agreement for a protected 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—



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- (a) obtain or, in urgent circumstances, take all reasonable steps to obtain, the consent of the landholder concerned;  
or
  - (b) give at least 14 days written notice to the landholder 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.

### **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—

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*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 or 89 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.



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**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**

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.

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- (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.

*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.

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### 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—
  - (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; or

(iii) the planting and nurturing of, or the restoration and rehabilitation of, a protected plant or population of protected plants.

- (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;
- (b) taking protected wildlife, other than in a protected area;
- (c) taking or interfering with native wildlife, other than protected wildlife, in a critical habitat or area of major interest.

*Notes—*

- 1 For paragraph (a), see section 62 (Restriction on taking etc. of cultural and natural resources of protected areas).
- 2 For paragraph (b), 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).
- 3 For paragraph (c), see section 97 (Restriction on taking etc. of native wildlife in areas of major interest and critical habitats).



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### **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.

### **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*

[s 173L]

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- (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

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- (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.

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

### **1730 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* has the meaning given to it by that Act.

## **Division 4 Stay of decisions by QCAT**

### **173OA Limitation on stays granted by QCAT for particular decisions**

QCAT can not make an order staying the operation of a decision by the chief executive under this Act to suspend or cancel a licence, permit or other authority that authorises the holder of the authority to—

- (a) take or interfere with the cultural or natural resources of a protected area; or
- (b) take protected wildlife.

## **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, 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).



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

- (1) This section applies for—
  - (a) a revocation under section 30, 32 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—
    - (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 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 43J(1)
  - section 70E(2).
- (2) Subsection (1) has effect despite the *Statutory Instruments Act 1992*, section 52.

#### **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
  - (c) protected wildlife.
- (2) The *Statutory Instruments Act 1992*, sections 49, 50 and 51 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.

#### **174B Chief executive may make assessment guidelines**

- (1) The chief executive may, by gazette notice, approve or make guidelines (the *assessment guidelines*) about considering an application under this Act.
- (2) The chief executive must publish the assessment guidelines, and any instrument amending or repealing the assessment guidelines, in the gazette.

- (3) The chief executive must publish a copy of the assessment guidelines as in force from time to time on the department's website.
- (4) In considering an application for an authority, the chief executive must have regard to the assessment guidelines.
- (5) In this section—  
*authority* means a licence, permit or other authority for protected wildlife issued or given under a regulation or conservation plan.

#### **174C No fee for instrument, information or notice**

- (1) This section applies if the chief executive is required, under this Act, to do any of the following—
  - (a) give an instrument to, or lodge an instrument with, the registrar of titles or the chief executive (lands);
  - (b) give information in relation to an instrument to the registrar of titles or the chief executive (lands);
  - (c) give notice, under section 134, about an action to the registrar of titles or the chief executive (lands).
- (2) No fee is payable by the chief executive under this Act in relation to the instrument, information or notice.

#### **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;
- (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 landholder'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) the use or development of land, and activities, in an area identified under the regulation as, or including, a critical habitat or an area of major interest;
- (k) giving effect to, and enforcing compliance with, management and conservation plans or codes of practice approved or made under section 174A;
- (l) 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;

- (m) 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;
- (n) the disqualification of persons from holding a licence, permit or other authority;
- (o) 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;
- (p) the matters in respect of which royalties are payable under this Act, the amounts of the royalties, the persons who are liable to pay the royalties, when the royalties are payable, and the recovery of any amount of the royalties not paid;
- (q) the institution and conduct of appeals against decisions under a regulation;
- (r) authorising the taking, keeping or use of a protected animal;
- (s) exemption from compliance with provisions of a regulation or a conservation plan;
- (t) 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.
- (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, 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.

### **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, 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.
- (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 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.

## **Division 4                      Transitional provisions for amendments under Waste Reduction and Recycling Act 2011**

### **187      Existing protected areas and indigenous joint management areas**

- (1) This section applies to a protected area or indigenous joint management area dedicated or declared under this Act as in force immediately before the commencement of this section.
- (2) As soon as practicable after the commencement, the chief executive must give the chief executive (lands) written notice of the existence of the protected area or indigenous joint management area.
- (3) To remove any doubt, it is declared that sections 33B, 42AR and 70EB do not apply to the protected area or indigenous joint management area.

### **188      Existing leases and conservation agreements must still be registered**

- (1) This section applies for a lease granted under any of the following provisions as in force immediately before the commencement of this section (the *commencement*), if the lease is still in force after the commencement—
  - (a) section 34;
  - (b) section 42AD(1);
  - (c) section 42AE(1);
  - (d) section 42AN(1).
- (2) Also, this section applies for a conservation agreement entered into before the commencement, if the agreement—
  - (a) is still in force after the commencement; and
  - (b) relates to relevant land under section 50A.

- (3) As soon as practicable after the commencement, the chief executive must lodge the lease or agreement with the chief executive (lands) for registration.
- (4) For the *Land Act 1994*, chapter 6, part 2, the lease or agreement is taken to have been registered on the day the lease was granted or the agreement was entered into.

## **Division 5                      Transitional provisions for Nature Conservation and Other Legislation Amendment Act (No. 2) 2013**

### **Subdivision 1                Provisions about management of protected areas and conservation plans**

#### **189      Definitions for sdiv 1**

In this subdivision—

*amended part 7* means part 7 as in force at the commencement.

*commencement* means the commencement of this subdivision.

*previous part 7* means part 7 as in force before the commencement.

*properly made submission*, for a public notice under previous part 7 about a proposal to prepare a draft management plan or conservation plan, or about a draft management plan or conservation plan, means a submission made in response to the notice before the day specified in the notice as the day by which submissions may be made (whether or not the submission was made before or after the commencement).

**190 Application of amended part 7 to existing dedications or declarations**

- (1) This section applies if—
  - (a) before the commencement, a management plan was required to be prepared for a protected area or indigenous joint management area; and
  - (b) at the commencement, a management plan is not in effect for the area.
- (2) From the commencement—
  - (a) the requirement under previous part 7 to prepare a management plan for the area stops applying for the area; and
  - (b) amended part 7 applies for the area, subject to subsections (3) to (5) and section 191, as if it had been in force when the area was dedicated or declared.
- (3) Subsections (4) and (5) apply if the Minister had started the process for preparing a management plan for the area under previous part 7 before the commencement.
- (4) Anything done by the Minister for preparing the plan under previous part 7 is taken to have been done by—
  - (a) the chief executive; or
  - (b) if the Minister decides to prepare a management plan for the area under amended part 7—the Minister.
- (5) If the Minister had given a public notice under previous part 7 about a proposal to prepare a draft management plan, or about a draft management plan, for the area—
  - (a) the chief executive must have regard to any properly made submissions for the notice in preparing a management statement under amended part 7 for the area; or
  - (b) if the Minister decides to prepare a management plan for the area—the Minister must have regard to any properly made submissions for the notice in preparing the management plan.

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## 191 Existing management statements

- (1) This section applies to a document about an area prepared by the chief executive that—
  - (a) is consistent with the requirements for a management statement under section 113; and
  - (b) at the commencement, is published on the department's website.
- (2) The document—
  - (a) is taken to be a management statement made by the chief executive under amended part 7; and
  - (b) takes effect as a management statement for the area on the commencement.
- (3) To remove any doubt, it is declared that sections 113A and 113B do not apply to the management statement.

## 192 Preparation of other plans not completed at commencement

- (1) This section applies if, before the commencement, the Minister had started, but not completed, the process for preparing a plan for an area or wildlife under previous part 7.
- (2) From the commencement, amended part 7 applies for the preparation of the plan, subject to subsections (3) and (4).
- (3) Anything done by the Minister for preparing the plan under previous part 7 is taken to have been done by the Minister under amended part 7.
- (4) If the Minister had given a public notice under previous part 7 about a proposal to prepare the draft plan, or about the draft plan, for the area or wildlife, the Minister must have regard to any properly made submissions for the notice in preparing the final plan for the area or wildlife.
- (5) In this section—

*plan* means—

- (a) a management plan to amend another management plan;  
or
  - (b) a conservation plan; or
  - (c) a conservation plan to amend another conservation plan.
- wildlife* includes a class of wildlife.

### **193 References to particular protected areas**

A reference in an Act or document to any of the following is, if the context permits, redundant—

- (a) a wilderness area under this Act;
- (b) a World Heritage management area under this Act;
- (c) an international agreement area under this Act.

### **194 Existing leases must still be registered**

- (1) This section applies for a lease granted under any of the following provisions as in force before the commencement, if the lease is still in force at the commencement—
  - (a) section 35;
  - (b) section 35A;
  - (c) section 36;
  - (d) section 42AEA;
  - (e) section 42AO;
  - (f) section 42AOA.
- (2) As soon as practicable after the commencement, the chief executive must lodge the lease with the chief executive (lands) for registration.
- (3) For the *Land Act 1994*, chapter 6, part 2, the lease is taken to have been registered on the day the lease was granted.

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## Subdivision 2 Provisions about classes of protected areas

### 195 Definitions for sdiv 2

In this subdivision—

*amendment Act* means the *Nature Conservation Act 1992*.

*commencement* means the commencement of this subdivision.

*old class*, of protected area, means any of the following classes of protected area under the unamended Act—

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

*unamended Act* means this Act as in force before the commencement.

### 196 National parks (scientific) taken to be national parks and special management areas (scientific)

- (1) On the commencement, the area of each national park (scientific)—
  - (a) continues as a national park under this Act as if it had been dedicated under this Act as a national park; and
  - (b) is taken to be declared under this Act as a special management area (scientific).
- (2) As soon as practicable after the commencement, the chief executive must—
  - (a) erect or display a notice for the special management area complying with the requirements stated in section 42A(2); and

(b) publish a copy of the notice on the department's website and in the gazette.

(3) In this section—

*national park (scientific)* means an area that, immediately before the commencement, was a national park (scientific) under this Act.

### **197 National parks (recovery) taken to be national parks and special management areas (controlled action)**

(1) On the commencement, the area of each national park (recovery)—

(a) continues as a national park under this Act as if it had been dedicated under this Act as a national park; and

(b) is taken to be declared under this Act as a special management area (controlled action) to allow activities of the type, or for the purpose, stated in section 17(1A)(a)(i).

(2) As soon as practicable after the commencement, the chief executive must—

(a) erect or display a notice for the special management area complying with the requirements stated in section 42A(2); and

(b) publish a copy of the notice on the department's website and in the gazette.

(3) In this section—

*national park (recovery)* means an area that, immediately before the commencement, was a national park (recovery) under this Act.

### **198 Conservation parks taken to be regional parks**

(1) On the commencement, the area of each conservation park continues under this Act as a regional park as if it had been dedicated under this Act as a regional park.



(2) In this section—

*conservation park* means an area that, immediately before the commencement, was a conservation park under this Act.

## 199 Resources reserves taken to be regional parks and regional park (resource use area)

(1) On the commencement, the area of each resources reserve—

- (a) continues under this Act as a regional park as if it had been dedicated under this Act as a regional park; and
- (b) despite section 42C, is taken to be declared under this Act as a regional park (resource use area).

(2) In this section—

*resources reserve* means an area that, immediately before the commencement, was a resources reserve under this Act.

## 200 References to particular protected areas

From the commencement, in an Act or document—

- (a) a reference to a national park (scientific) may, if the context permits, be taken to be a reference to—
  - (i) a national park; or
  - (ii) a special management area (scientific); and
- (b) a reference to a national park (recovery) may, if the context permits, be taken to be a reference to—
  - (i) a national park; or
  - (ii) a special management area (controlled action); and
- (c) a reference to a conservation park may, if the context permits, be taken to be a reference to—
  - (i) a regional park; or
  - (ii) a regional park (general); and

- (d) a reference to a resources reserve may, if the context permits, be taken to be a reference to—
  - (i) a regional park; or
  - (ii) a regional park (resource use area).

## **201 Trustees of conservation parks and resources reserves continue**

- (1) This section applies if, immediately before the commencement, an area was a conservation park or resources reserve under the management of trustees under this Act.
- (2) A person who was, immediately before the commencement, a trustee of the area under this Act, continues to be a trustee of the area as a regional park under this Act.
- (3) The trust over the area continues as a trust under this Act over the area as a regional park.

## **202 Change in class does not affect instruments applying to an area**

- (1) This section applies if, under this subdivision, an area is changed from an old class of protected area to another class of protected area (the *new class*).
- (2) Any of the following (each a *relevant instrument*) in force for the area immediately before the commencement continues to apply to the area as a protected area of the new class—
  - (a) a lease, agreement, licence, permit or other authority;
  - (b) a management statement;
  - (c) a management plan;
  - (d) a direction, requirement, notice or decision given or made, in writing, under this Act.
- (3) The relevant instrument continues in force for the area until it expires, is terminated or repealed or otherwise ends under its terms or this Act.

- (4) Subsections (2) and (3) apply even if the relevant instrument authorises the carrying out of activities in the area that are not consistent with the management principles for protected areas of the new class.

### **203 Particular previous use authorities continue**

- (1) This section applies to a previous use authority taken to have been granted by the chief executive under section 173R(2) as in force before the commencement if the authority is still in force immediately before the commencement.
- (2) Section 173R(3) and (4) of the unamended Act continue to apply to the previous use authority as if the amendment Act had not been enacted.

### **204 Deciding application for lease etc. for a protected area of an old class**

- (1) This section applies to an application for a lease, agreement, licence, permit or other authority (the *relevant authority*) that—
  - (a) was made, but not decided, under this Act before the commencement; and
  - (b) is for a protected area of an old class that, under this subdivision, is changed to a protected area of another class (the *new class*).
- (2) The application is to be decided, as an application for the relevant authority for a protected area of the old class, under the unamended Act, as if the amendment Act had not been enacted.
- (3) If the application is granted, the chief executive must give or grant to the applicant the relevant authority for the area as a protected area of the new class.
- (4) To remove any doubt, it is declared that subsection (3) applies even if the carrying out of the activities under the relevant authority is not consistent with the management principles for protected areas of the new class.

- (5) However, the grounds on which the chief executive may refuse an application to renew the relevant authority include the ground that the carrying out of the activities under the authority is not consistent with the management principles for protected areas of the new class.

## **Division 6                      Transitional provisions for Nature Conservation and Other Legislation Amendment Act 2016**

### **205      Definitions for division**

In this division—

*old class*, of protected area, means—

- (a) a national park in which an area of the national park was declared as a special management area (scientific) under the unamended Act; or
- (b) a regional park under the unamended Act.

*unamended Act* means this Act as in force immediately before the commencement.

### **206      Application of division**

This division applies despite any provision of division 5.

### **207      Special management area (scientific) taken to be national park (scientific)**

On the commencement, each special management area (scientific) under the unamended Act is taken to be a national park (scientific).

### **208      Regional park (general) taken to be conservation park**

On the commencement, each regional park (general) under the unamended Act is taken to be a conservation park.

**209 Regional park (resource use area) taken to be resources reserve**

On the commencement, each regional park (resource use area) under the unamended Act is taken to be a resources reserve.

**210 References to particular protected areas**

From the commencement, in an Act or document—

- (a) a reference to a special management area (scientific) may, if the context permits, be taken to be a reference to a national park (scientific); and
- (b) a reference to a regional park may, if the context permits, be taken to be a reference to a conservation park or resources reserve; and
- (c) a reference to a regional park (general) may, if the context permits, be taken to be a reference to a conservation park; and
- (d) a reference to a regional park (resource use area) may, if the context permits, be taken to be a reference to a resources reserve.

**211 Trustees of regional park (general)**

- (1) This section applies if, immediately before the commencement, an area was a regional park (general) under the management of trustees under this Act.
- (2) A person who was, immediately before the commencement, a trustee of the area under this Act, continues to be a trustee of the area as a conservation park under this Act.
- (3) The trust over the area continues as a trust under this Act over the area as a conservation park.

## **212 Trustees of regional park (resource use area)**

- (1) This section applies if, immediately before the commencement, an area was a regional park (resource use area) under the management of trustees under this Act.
- (2) A person who was, immediately before the commencement, a trustee of the area under this Act, continues to be a trustee of the area as a resources reserve under this Act.
- (3) The trust over the area continues as a trust under this Act over the area as a resources reserve.

## **213 Change in class does not affect instruments applying to an area**

- (1) This section applies if, under this division, an area is changed from an old class of protected area to another class of protected area (the *new class*).
- (2) Any of the following (each a *relevant instrument*) in force for the area immediately before the commencement continues to apply to the area as a protected area of the new class—
  - (a) a lease, agreement, licence, permit or other authority under this Act or another Act;
  - (b) a management statement;
  - (c) a management plan;
  - (d) a direction, requirement, notice or decision given or made, in writing, under this Act.
- (3) The relevant instrument continues in force for the area until it expires, is terminated or repealed or otherwise ends under its terms, under this Act or another Act.
- (4) Subsections (2) and (3) apply even if the relevant instrument authorises the carrying out of activities in the area that are not consistent with the management principles for protected areas of the new class.

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## 214 Deciding application for relevant authorities

- (1) This section applies to an application for a lease, agreement, licence, permit or other authority (the *relevant authority*) that—
  - (a) was made, but not decided, under this Act before the commencement; and
  - (b) is for a protected area of an old class that, under this division, is changed to a protected area of another class (the *new class*).
- (2) The application is to be decided, as an application for the relevant authority for a protected area of the old class—
  - (a) under this Act as in force before the commencement; and
  - (b) as if the *Nature Conservation and Other Legislation Amendment Act 2016* had not been enacted.
- (3) If the application is granted, the chief executive must give or grant to the applicant the relevant authority for the area as a protected area of the new class.
- (4) To remove any doubt, it is declared that subsection (3) applies even if the carrying out of the activities under the relevant authority is not consistent with the management principles for protected areas of the new class.
- (5) However, the grounds on which the chief executive may refuse an application to renew the relevant authority include the ground that the carrying out of the activities under the authority is not consistent with the management principles for protected areas of the new class.

## Schedule Dictionary

### section 7

*Aboriginal land* has the meaning given by the *Aboriginal Land Act 1991*, section 8.

*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
- (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.

***Cape York Peninsula Region*** means the Cape York Peninsula Region under the *Cape York Peninsula Heritage Act 2007*.

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

***carbon abatement product*** means all or any of the following—

- (a) living biomass;
- (b) dead organic matter;
- (c) soil;
- (d) carbon sequestration by, and carbon stored in, a carbon abatement product mentioned in paragraphs (a) to (c).

***carbon sequestration***, for living biomass, dead organic matter or soil, includes—

- (a) the process by which the biomass, matter or soil removes and stores carbon dioxide from the atmosphere; and
- (b) the use of the biomass, matter or soil to avoid, reduce or eliminate greenhouse gas emissions.

***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.

***chief executive (lands)*** means the chief executive within the meaning of the *Land Act 1994*.

***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.

*Editor's note—*

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

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

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***conservation agreement*** means—

- (a) for a special wildlife reserve—a conservation agreement entered into under section 43B or amended under section 43E; or
- (b) for a nature refuge—a conservation agreement entered into under section 45 or 48; or
- (c) for a coordinated conservation area—a conservation agreement entered into under—
  - (i) section 45 as in force before the commencement of the *Nature Conservation and Other Legislation Amendment Act (No. 2) 2013*, section 43; or
  - (ii) section 48.

***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 dedicated 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 as a coordinated conservation area under section 46 as in force before the commencement of the *Nature Conservation and Other Legislation Amendment Act (No. 2) 2013*, section 44.

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

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

***critically endangered wildlife*** means native wildlife prescribed under this Act as critically endangered wildlife.

***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.

***ecotourism*** means tourism that is ecologically sustainable and primarily focused on experiencing an area in a way that fosters understanding, appreciation and conservation of the area and its natural and cultural values.

***ecotourism facility***, for land, means a facility that—

- (a) is designed and managed to facilitate the presentation, appreciation and conservation of the land's natural condition and cultural resources and values (the ***primary purpose***); and
- (b) is managed in a way that does not allow an activity to be carried out on the land that—
  - (i) is inconsistent with the primary purpose; and
  - (ii) would require a significant change to the land's natural condition or would adversely affect the conservation of the land's cultural resources and values.

*Example of an activity for subparagraph (ii)—*

the construction of a golf course, amusement park or casino on the land

***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.

***existing service facility*** means—

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- (a) for land in a national park, other than land stated in paragraph (c)—a service facility in existence on the land immediately before the land was dedicated as a national park; or
  - (b) for land in a national park (Cape York Peninsula Aboriginal land)—a service facility in existence on the land immediately before the land was dedicated as a national park (Cape York Peninsula Aboriginal land); or
  - (c) for land in a national park, or part of a national park, that is an indigenous joint management area—a service facility in existence on the land immediately before the land was declared as an indigenous joint management area; or
  - (d) for land in a special wildlife reserve—a service facility in existence on the land immediately before the land was declared as a special wildlife reserve.

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

***extinct wildlife*** means native wildlife prescribed under this Act as extinct wildlife.

***fee*** includes tax.

***forest reserve*** see section 70B.

***geothermal tenure*** see the *Geothermal Energy Act 2010*, section 19(2).

***GHG authority*** means a GHG authority under the *Greenhouse Gas Storage Act 2009*.

***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 joint management area*** means an area declared under this Act as an indigenous joint management area.

***indigenous landholder***, for a protected area or land, means the entity that, under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*, is the trustee for the protected area or land.

***indigenous land use agreement*** means an indigenous land use agreement registered on the Register of Indigenous Land Use Agreements under the *Native Title Act 1993* (Cwlth).

***indigenous management agreement***, in relation to land, means an indigenous management agreement under the *Aboriginal Land Act 1991* about the management of the land.

***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, geothermal tenure or GHG authority.

***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 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.

**landholder** 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 in relation to transferred land as defined under the *Aboriginal Land Act 1991*—the indigenous landholder for 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.

**management program**, for a special wildlife reserve, means a management program or amended management program approved under part 7, division 6.

**management statement** means a management statement made by the chief executive under part 7.

**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* or *Petroleum and Gas (Production and Safety) Act 2004*.

**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 (Cape York Peninsula Aboriginal land)** means an area dedicated under this Act as a national park (Cape York Peninsula 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 regulation or 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.

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

***North Stradbroke Island Region*** see the *North Stradbroke Island Protection and Sustainability Act 2011*, section 5.

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

***owner***, of land for part 4, division 2, subdivision 4A, see section 39D.

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



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**place** includes—

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

**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.

**prescribed protected area** means a protected area of a following class—

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

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

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

***proposed reserve area***, for part 4, division 3B, see section 43A(3).

***protect*** includes rehabilitate.

***protected animal*** means an animal that is prescribed under this Act as threatened, 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, 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 wildlife; or
- (b) extinct in the wild wildlife; or
- (c) critically endangered wildlife; or
- (d) endangered wildlife; or
- (e) vulnerable wildlife; or
- (f) near threatened wildlife; or
- (g) least concern wildlife.

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

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**registrar** means the registrar of titles under the *Land Title Act 1994*.

**registrar of titles** means the registrar of titles under the *Land Title Act 1994*.

**resources reserve** means an area dedicated under this Act as a 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.

**SEQ horse riding trail network** see section 70BA.

**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.

***special least concern plant*** means a least concern plant prescribed under section 88D.

***special management area (controlled action)*** means an area declared under this Act as a special management area (controlled action).

***special wildlife reserve*** means an area declared under this Act as a special wildlife reserve.

***species*** means a species, subspecies, hybrid, variant, race, mutation or geographically separate population of any animal or plant.

***State*** includes Territory.

***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, geothermal tenure or GHG authority.

***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).

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***threatened wildlife*** means native wildlife that is prescribed under this Act as—

- (a) extinct wildlife; or
- (b) extinct in the wild wildlife; or
- (c) critically endangered wildlife; or
- (d) endangered wildlife; or
- (e) 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 7.

***unnatural hybrid*** of wildlife means a hybrid, variant, race or mutation of the wildlife that has been derived because of manipulation by humans.

***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.

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