

Conservation Legislation Amendment Bill 2010

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Western Australia

LEGISLATIVE COUNCIL

(As amended in Committee)

Conservation Legislation Amendment Bill 2010

A Bill for

**An Act to amend the *Conservation and Land Management Act 1984*
and the *Wildlife Conservation Act 1950*.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary matters

1. Short title

This is the *Conservation Legislation Amendment Act 2010*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

1 **Part 2 — Conservation and Land Management Act 1984**
2 **amended**

3 **3. Act amended**

4 This Part amends the *Conservation and Land Management*
5 *Act 1984*.

6 **4. Section 3 amended**

7 (1) In section 3 delete the definitions of:

8 *associated body*

9 *conservation park*

10 *marine management area*

11 *marine nature reserve*

12 *marine park*

13 *national park*

14 *nature reserve*

15 *State forest*

16 *timber reserve*

17 (2) In section 3 insert in alphabetical order:

18

19 *Aboriginal person* means a person wholly or partly
20 descended from the original inhabitants of Australia;

21 *associated body* means each person or body that,
22 jointly with either the Conservation Commission or the
23 Marine Authority —

24 (a) is vested with land, or land and waters; or

25 (b) has the care, control and management of land,
26 or land and waters;

27 *conservation park* means land that is a conservation
28 park under section 6(4) or is treated as a conservation
29 park under section 8B(2);

s. 4

- 1 ***exclusive native title***, in relation to an area of land or
2 waters, means native title rights and interests (as
3 defined in section 223 of the NT Act) —
- 4 (a) that exist in relation to the area, whether or not
5 they have been determined under the NT Act to
6 exist; and
- 7 (b) that confer possession, occupation, use and
8 enjoyment of the area on the holders of the
9 native title rights and interests to the exclusion
10 of all others;
- 11 ***intertidal zone*** means the land, or the land and waters,
12 below the high water mark and above the low water
13 mark;
- 14 ***land to which this Act applies*** has the meaning given
15 in sections 5(1) and 8B(2) and (3);
- 16 ***marine management area*** means waters, land, or land
17 and waters, that are a marine management area under
18 section 6(6);
- 19 ***marine nature reserve*** means waters, land, or land and
20 waters, that are a marine nature reserve under
21 section 6(6);
- 22 ***marine park*** means waters, land, or land and waters,
23 that are a marine park under section 6(6);
- 24 ***Minister for Indigenous Affairs*** means the Minister to
25 whom the administration of the *Aboriginal Affairs*
26 *Planning Authority Act 1972* and the *Aboriginal*
27 *Heritage Act 1972* is committed, or each of the
28 Ministers to whom their administration is committed;
- 29 ***national park*** means land that is a national park under
30 section 6(3) or is treated as a national park under
31 section 8B(2);
- 32 ***nature reserve*** means land that is a nature reserve
33 under section 6(5) or is treated as a nature reserve
34 under section 8B(2);

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non-exclusive native title, in relation to an area of land or waters, means native title rights and interests (as defined in section 223 of the NT Act) —

- (a) that exist in relation to the area, whether or not they have been determined under the NT Act to exist; and
- (b) that do not confer possession, occupation, use and enjoyment of the area on the holders of the native title rights and interests to the exclusion of all others;

NT Act means the *Native Title Act 1993* (Commonwealth);

section 8A agreement means an agreement made under section 8A;

section 8A land means land, waters, or land and waters, that are the subject of a section 8A agreement;

section 8C land means land that, under an order made under section 8C, is managed by the CEO;

State forest means land that is a State forest under section 6(1) or is treated as a State forest under section 8B(2);

timber reserve means land that is a timber reserve under section 6(2) or is treated as a timber reserve under section 8B(2);

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1 **5. Section 4 amended**

2 After section 4(4) insert:

3

4 (5) Nothing in this Act or in a management plan or in a
5 section 8A agreement —

6 (a) prevents the CEO or any other person from
7 taking any action permitted under the
8 *Aboriginal Heritage Act 1972* —

9 (i) in respect of land to which this Act
10 applies or section 8A land or section 8C
11 land; or

12 (ii) in respect of any decision made under
13 that Act in respect of that land;

14 or

15 (b) limits any action the CEO or any other person
16 may take under that Act in respect of that land;

17 or

18 (c) prevents the CEO, or any other person, who is
19 authorised under that Act to do any act in
20 respect of that land from doing the act.

21

22 **6. Part II heading replaced**

23 Delete the heading to Part II and insert:

24

25 **Part II — Land subject to this Act**

26

1 **7. Section 5 amended**

2 In section 5(1)(h) delete “Authority” and insert:

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6

Authority, whether solely or jointly with
another person.

7 **8. Sections 8A, 8B and 8C inserted**

8 At the end of Part II Division 1 insert:

9

10 **8A. CEO may agree to manage private or other land**

11 (1) In this section —

12 *agreed area*, in relation to an agreement made under
13 this section, means the eligible land to which the
14 agreement applies;

15 *alienated land* has the meaning given in the *Land*
16 *Administration Act 1997* section 3(1);

17 *Crown land* has the meaning given in the *Land*
18 *Administration Act 1997* section 3(1);

19 *eligible land* means land, waters, or land and waters,
20 that are above the low water mark and are —

21 (a) alienated land; or

22 (b) Crown land unless it is —

23 (i) land to which this Act applies; or

24 (ii) section 8C land;

25 *person responsible*, for eligible land, means —

26 (a) if the land is alienated land, each of these
27 persons —

28 (i) the owner;

s. 8

- 1 (ii) any person who has an interest in the
2 land that is registered under the *Transfer*
3 *of Land Act 1893* or the *Registration of*
4 *Deeds Act 1856*;
- 5 (iii) the lessee, if any, of the land;
- 6 (b) if the land is Crown land, each of these
7 persons —
- 8 (i) the Land Administration Minister;
- 9 (ii) the management body (as defined in the
10 *Land Administration Act 1997*
11 section 3(1)), if any, of the land under
12 that Act;
- 13 (iii) the person, if any, in whom the land is
14 vested under a written law other than
15 that Act;
- 16 (iv) the person, if any, who has the control
17 and management of the land under a
18 written law other than that Act;
- 19 (v) the lessee, if any, of the land;
- 20 (vi) if exclusive native title has been
21 determined under the NT Act to exist in
22 relation to the land, the registered native
23 title body corporate (as defined in
24 section 253 of the NT Act) in respect of
25 the native title rights and interests
26 concerned.
- 27 (2) This section does not affect the operation of the
28 NT Act in relation to any person who claims or holds
29 exclusive native title or non-exclusive native title.
- 30 (3) An agreement may be made under this section in
31 respect of Crown land that is the subject of an interest
32 (as defined in the *Land Administration Act 1997*
33 section 3(1)) granted or entered into under that Act,
34 notwithstanding that Act.

- 1 (4) An agreement made under this section cannot apply to
2 any land, waters, or land and waters to which a mining
3 lease, or a general purpose lease, granted under the
4 *Mining Act 1978*, applies.
- 5 (5) The CEO may enter into an agreement under which the
6 CEO agrees to manage an area of eligible land, either
7 alone or jointly with one or more other persons —
- 8 (a) as if the agreed area were one of these
9 categories of land under this Act —
- 10 (i) a State forest;
- 11 (ii) a timber reserve;
- 12 (iii) a national park;
- 13 (iv) a conservation park;
- 14 (v) a nature reserve;
- 15 or
- 16 (b) for a public purpose that is consistent with this
17 Act.
- 18 (6) An agreement made under this section cannot agree to
19 manage an area of eligible land as if it were —
- 20 (a) a marine management area; or
- 21 (b) a marine nature reserve; or
- 22 (c) a marine park.
- 23 (7) An agreement made under this section may require the
24 Conservation Commission to assess the
25 implementation of the management plan for the agreed
26 area.
- 27 (8) The parties to an agreement made under this section
28 must include —
- 29 (a) the person responsible, or at least one of the
30 persons responsible, for the agreed area; and
- 31 (b) the CEO; and

s. 8

- 1 (c) if it provides for the CEO to manage the agreed
2 area jointly with one or more other persons,
3 each such person who is not already a party;
4 and
- 5 (d) if it requires the Conservation Commission to
6 assess the implementation of the management
7 plan for the agreed area, the Conservation
8 Commission.
- 9 (9) An agreement made under this section has no effect
10 unless the Minister for Fisheries, the Minister for
11 Forest Products, the Minister for Indigenous Affairs,
12 the Minister for Mines and the Minister (Water
13 Resources) have each been given —
- 14 (a) in writing, notice of, and an invitation to give
15 the CEO submissions about, the proposed
16 agreement; and
- 17 (b) a reasonable time to respond.
- 18 (10) An agreement made under this section has no effect
19 unless the local government of each local government
20 district in which the agreed area is situated —
- 21 (a) is a party to the agreement; or
- 22 (b) was given, before the agreement was made —
- 23 (i) in writing, notice of, and an invitation to
24 give the CEO submissions about, the
25 proposed agreement; and
- 26 (ii) a reasonable time to respond.
- 27 (11) An agreement made under this section in respect of any
28 eligible land has no effect unless —
- 29 (a) each person responsible for the land is either a
30 party, or has given written approval, to it; and
- 31 (b) the Minister has given written approval to it.

- 1 (12) If the agreed area under an agreement made under this
2 section is or includes the intertidal zone, the agreement
3 has no effect in relation to that land unless —
- 4 (a) the chief executive officer of the Fisheries
5 Department is a party to it; or
- 6 (b) the Minister for Fisheries has given written
7 approval to it.
- 8 (13) An agreement made under this section that says the
9 CEO is to manage the agreed area jointly with another
10 person must include, in addition to any other terms,
11 terms that do the following —
- 12 (a) establish a joint management body to manage
13 the area;
- 14 (b) state the members of the body which must
15 include at least —
- 16 (i) the CEO or a person nominated by the
17 CEO; and
- 18 (ii) a person to represent the interests of
19 each other party to the agreement;
- 20 (c) establish the body's procedures.
- 21 (14) An agreement made under this section for the
22 management of land for a public purpose that is
23 consistent with this Act must include, in addition to
24 any other terms, terms that —
- 25 (a) state the purpose for which the agreed area is to
26 be managed; and
- 27 (b) state the policies or guidelines to be followed,
28 and summarise the operations to be undertaken,
29 in the management of the agreed area.
- 30 (15) If an agreement made under this section applies to land
31 to which a pastoral lease, or a lease for grazing
32 purposes, granted under the *Land Administration*
33 *Act 1997*, applies, the lessee remains entitled to use the

1 land for grazing purposes in accordance with the lease,
2 except to the extent that the agreement otherwise
3 provides.

4 **8B. Effect of s. 8A agreements**

5 (1) A section 8A agreement has no effect to the extent it
6 binds the CEO to do anything in relation to the
7 section 8A land concerned that is inconsistent with or
8 contrary to the provisions of section 56(1) that relate to
9 the land by virtue of it being treated, under
10 subsection (2), as if it were of a category of land
11 referred to in section 56(1).

12 (2) If under a section 8A agreement the section 8A land
13 concerned is to be managed as if it were land of a
14 category listed in section 8A(5)(a) —

15 (a) the land is to be treated under this Act as if it
16 were land, waters, or land and waters, as the
17 case requires, of that category and reserved for
18 that category's purpose; and

19 (b) the land becomes land to which this Act applies
20 for the purposes of this Act,

21 but —

22 (c) the land does not become land of that category,
23 or land reserved for that category's purpose, or
24 land to which this Act applies, for the purposes
25 of any written law other than this Act; and

26 (d) sections 9 and 17 do not apply to the land; and

27 (e) the land is not Crown land for the purposes of
28 Part VIII Division 1 by reason only of
29 paragraph (b) of the definition of *Crown land*
30 in section 87(1); and

31 (f) the land does not vest in the Conservation
32 Commission; and

- 1 (g) a party to the agreement who is not a person
2 responsible for the land (as defined in
3 section 8A(1)) is not an occupier of the land for
4 the purposes of the *Mining Act 1978*; and
- 5 (h) any right (whether arising before or after the
6 agreement is made) a person has under this Act
7 or another written law that may be exercised on
8 or in relation to the land is not affected unless
9 the person is a party to the agreement and the
10 agreement provides otherwise; and
- 11 (i) any right a person has under the common law to
12 carry out recreational fishing on the land is not
13 affected.
- 14 (3) If under an agreement made under section 8A(5)(b) the
15 section 8A land concerned is to be managed for a
16 public purpose that is consistent with this Act, the land
17 becomes land to which this Act applies for the
18 purposes of this Act but —
- 19 (a) the land does not become land to which this Act
20 applies for the purposes of any written law
21 other than this Act; and
- 22 (b) section 17 does not apply to the land; and
- 23 (c) the land is not Crown land for the purposes of
24 Part VIII Division 1 by reason only of
25 paragraph (a) of the definition of *Crown land*
26 in section 87(1); and
- 27 (d) a party to the agreement who is not a person
28 responsible for the land (as defined in
29 section 8A(1)) is not an occupier of the land for
30 the purposes of the *Mining Act 1978*; and
- 31 (e) any right (whether arising before or after the
32 agreement is made) a person has under this Act
33 or another written law that may be exercised on
34 or in relation to the land is not affected unless

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- 1 the person is a party to the agreement and the
2 agreement provides otherwise; and
3 (f) any right a person has under the common law to
4 carry out recreational fishing on the land is not
5 affected.

6 **8C. Certain land may be put under CEO's management**

- 7 (1) In this section —
8 *eligible land* means any Crown land, as defined in the
9 *Land Administration Act 1997* section 3, that is —
10 (a) unallocated Crown land as defined in that
11 section; or
12 (b) an unmanaged reserve as defined in that
13 section.
14 (2) On the recommendation of the Minister and the Land
15 Administration Minister, the Governor, by order —
16 (a) may place any eligible land under the
17 management of the CEO; and
18 (b) may specify the CEO's functions in relation to
19 managing the land.
20 (3) On the recommendation of the Minister and the Land
21 Administration Minister, the Governor, by order, may
22 vary or cancel an order made under subsection (2).
23

24 **9. Section 14 amended**

25 In section 14(2d) before “apply” insert:

26

27 and (2)

28

29 **10. Sections 16, 16A and 16B deleted**

30 Delete sections 16, 16A and 16B.

1 **11. Section 17 amended**

2 In section 17(2) delete “vested” and insert:

3

4 vested, or which has the care, control and management
5 of the land,

6

7 **12. Section 19 amended**

8 (1) In section 19(1):

9 (a) delete “Commission are —” and insert:

10

11 Commission are as follows —

12

13 (b) in paragraph (b) delete “it;” and insert:

14

15 it, whether solely or jointly with another person;

16

17 (c) in paragraph (c)(iii) delete “and (e);” and insert:

18

19 and (e) and (2);

20

21 (d) delete paragraphs (e), (f) and (g) and insert:

22

23 (e) in accordance with section 17, to consider any
24 cancellation or change of purpose, or boundary
25 alteration, of land vested in or under the care,
26 control and management of the Conservation
27 Commission, whether solely or jointly with an
28 associated body;

29 (f) in accordance with Part V, to prepare and deal
30 with proposed management plans for land
31 vested in or under the care, control and
32 management of the Conservation Commission,

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- 1 whether solely or jointly with an associated
2 body;
- 3 (g) in relation to management plans for land vested
4 in or under the care, control and management of
5 the Conservation Commission, whether solely
6 or jointly with an associated body —
- 7 (i) to develop guidelines for monitoring;
8 and
- 9 (ii) to set performance criteria for
10 evaluating; and
- 11 (iii) to conduct periodic assessments of,
12 the implementation of the management plans
13 by those responsible for implementing them,
14 including the CEO and, if the land is State
15 forest or a timber reserve, the Forest Products
16 Commission;
- 17 (ha) if a section 8A agreement requires the
18 Conservation Commission to assess the
19 implementation of the management plan for the
20 section 8A land concerned, to do so in
21 accordance with the agreement;
- 22
- 23 (e) delete paragraph (k) and insert:
- 24
- 25 (k) upon request, to provide advice on matters
26 relating to land vested in or under the care,
27 control and management of the Conservation
28 Commission, whether solely or jointly with an
29 associated body, to any body or person, if to do
30 so is in the public interest and it is practicable
31 for the Conservation Commission to provide it;
- 32

- 1 (f) after paragraph (c)(i) insert:
2
3 and
4
- 5 (2) In section 19(7):
6 (a) in paragraph (a) delete “reserve or to enter into an
7 agreement under section 16 for the management of land
8 as a State forest, timber reserve, national park,
9 conservation park or nature”;
10 (b) after paragraph (a) insert:
11
12 (ba) any proposal to enter into a section 8A
13 agreement under which land will be managed
14 as if it were a State forest, timber reserve,
15 national park, conservation park or nature
16 reserve; and
17
- 18 (3) In section 19(9) after “vested in” insert:
19
20 or under the care, control and management of
21
- 22 **13. Section 20 amended**
23 In section 20(6) delete “in, or land the care, control and
24 management of which are placed with,” and insert:
25
26 in or under the care, control and management of
27

s. 14

- 1 **14. Section 26B amended**
- 2 (1) In section 26B(1):
- 3 (a) delete “Authority are —” and insert:
- 4
- 5 Authority are as follows —
- 6
- 7 (b) in paragraph (aa) delete “it;” and insert:
- 8
- 9 it, whether solely or jointly with another person;
- 10
- 11 (c) in paragraph (b)(iv) delete “and (e);” and insert:
- 12
- 13 and (e) and (2);
- 14
- 15 (d) delete paragraph (c) and insert:
- 16
- 17 (c) in accordance with section 17, to consider any
- 18 cancellation or change of purpose, or boundary
- 19 alteration, of land and waters vested in or under
- 20 the care, control and management of the Marine
- 21 Authority, whether solely or jointly with an
- 22 associated body;
- 23
- 24 (e) delete paragraphs (e), (f) and (g) and insert:
- 25
- 26 (e) in accordance with Part V, to prepare and deal
- 27 with proposed management plans for land and
- 28 waters vested in or under the care, control and
- 29 management of the Marine Authority, whether
- 30 solely or jointly with an associated body;

- 1 (f) in relation to management plans for land and
2 waters vested in or under the care, control and
3 management of the Marine Authority, whether
4 solely or jointly with an associated body —
5 (i) to develop guidelines for monitoring;
6 and
7 (ii) to set performance criteria for
8 evaluating; and
9 (iii) to conduct periodic assessments of,
10 the implementation of the management plans
11 by those responsible for implementing them,
12 including the CEO;
13 (g) upon request, to provide advice on matters
14 relating to land and waters vested in or under
15 the care, control and management of the Marine
16 Authority, whether solely or jointly with an
17 associated body, to any body or person, if to do
18 so is in the public interest and it is practicable
19 for the Marine Authority to provide it;
20
21 (f) in paragraph (i) delete “advice; and” and insert:
22
23 advice;
24
25 (g) after each of paragraph (b)(i) and (ii) insert:
26
27 and
28

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- 1 (2) In section 26B(4) delete “The Marine Authority shall not advise
2 the Minister on any matter to which this subsection applies” and
3 insert:

4

5 If the Minister, in writing, directs the Marine Authority
6 to advise the Minister on a matter, it must not advise
7 the Minister on the matter

8

- 9 (3) Delete section 26B(5).

- 10 (4) In section 26B(7) after “vested in” insert:

11

12 or under the care, control and management of

13

14 **15. Section 26D amended**

15 In section 26D(6) after “vested in” insert:

16

17 or under the care, control and management of

18

19 **16. Section 33 amended**

- 20 (1) In section 33(1):

21 (a) delete paragraph (a) and insert:

22

23 (a) to manage —

24 (i) land to which this Act applies; and

25 (ii) subject to the relevant section 8A
26 agreement, section 8A land; and

27 (iii) subject to the relevant order made under
28 section 8C, section 8C land,

29 and the associated fauna, flora and forest
30 produce;

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(b) delete paragraph (cb)(iii) and insert:

- (iii) operations, in accordance with the provisions of section 56(1) applicable to the land, on land vested in or under the care, control and management of the Conservation Commission, whether solely or jointly with an associated body, that is State forest, a timber reserve or land referred to in section 5(1)(g) or (h);

(2) Delete section 33(2) and insert:

- (2) If any land to which this Act applies or any section 8A land —
 - (a) is not the subject of a management plan; or
 - (b) is the subject of a management plan that, due to an exemption given under section 57A(2), was not prepared in accordance with section 56(2),then, despite subsections (1) and (3), the management of it and the associated forest produce, fauna and flora shall be carried out in a manner that —
 - (a) protects and conserves the value of the land to the culture and heritage of Aboriginal persons, in particular from any material adverse effect caused by —
 - (i) entry on or the use of the land by other persons; or
 - (ii) the taking or removal of the land’s fauna, flora or forest produce;but

s. 17

- 1 (b) does not have an adverse effect on the
2 protection or conservation of the land’s fauna
3 and flora.
- 4 (3A) Functions the CEO has in relation to managing
5 section 8C land in accordance with the relevant order
6 made under section 8C shall be performed in a manner
7 that —
- 8 (a) protects and conserves the value of the land to
9 the culture and heritage of Aboriginal persons
10 from any material adverse effect caused by
11 performing the functions; but
- 12 (b) does not have an adverse effect on the
13 protection or conservation of the land’s fauna
14 and flora.
- 15

16 (3) In section 33(3)(b)(iii) delete “section 56” and insert:

17

18 section 56(1)

19

20 **17. Section 33A amended**

21 Delete section 33A(1) and insert:

22

- 23 (1) In section 33(1)(cb) and (3)(b) *necessary operations* on
24 land or waters, means those that are necessary —
- 25 (a) to protect or preserve persons, property, land,
26 waters, flora or fauna; or
- 27 (b) in the case of land or waters for which a
28 management plan is required but not yet
29 approved under this Act, for the preparation of
30 a management plan for the land or waters; or

- 1 (c) to protect or conserve the value of the land or
2 waters to the culture and heritage of Aboriginal
3 persons.
4

5 **18. Section 53 amended**

- 6 (1) In section 53 insert in alphabetical order:
7

8 *responsible body* for land means —

- 9 (a) if the land is vested in or under the care, control
10 and management of a controlling body solely,
11 the controlling body;
12 (b) if the land is vested in or under the care, control
13 and management of a controlling body jointly
14 with an associated body, the controlling body
15 and the associated body acting jointly;
16 (c) if the land is section 8A land and, under the
17 relevant section 8A agreement, is to be
18 managed by the CEO alone as if the land were
19 of a category listed in section 8A(5)(a), the
20 Conservation Commission;
21 (d) if the land is section 8A land and, under the
22 relevant section 8A agreement, is to be
23 managed by the CEO alone for a public
24 purpose that is consistent with this Act, the
25 CEO;
26 (e) if the land is section 8A land and, under the
27 relevant section 8A agreement, is to be
28 managed jointly, the joint management body
29 established by the agreement.
30

s. 19

1 (2) In section 53 in the definition of *relevant water utility* delete
2 “Act 1995.” and insert:

3

4 *Act 1995;*

5

6 **19. Section 54 amended**

7 (1) Delete section 54(1) and (2) and insert:

8

9 (1) A management plan prepared and approved under this
10 Part is required for —

11 (a) all land that is vested in or under the care,
12 control and management of a controlling body,
13 whether solely or jointly with an associated
14 body; and

15 (b) all section 8A land.

16 (2) The responsible body for land referred to in
17 subsection (1) is responsible for —

18 (a) the preparation of the initial and every other
19 proposed management plan; and

20 (b) the review of each expiring management plan,
21 for the land.

22

23 (2) In section 54(3):

24 (a) in paragraph (a)(i) delete “controlling” and insert:

25

26 responsible

27

28 (b) in paragraph (a)(ii) delete “Conservation Commission”
29 and insert:

30

31 responsible body for that land

32

1 (c) in paragraph (a)(iii) delete “Conservation Commission”
2 and insert:

3

4 responsible body for that land

5

6 (3) After section 54(3) insert:

7

8 (4) Without limiting subsection (3), proposed management
9 plans for section 8A land that, under the relevant
10 section 8A agreement, is to be managed jointly as if it
11 were land of a category listed in section 8A(5)(a) shall
12 be prepared by the responsible body for the land
13 through the agency of the CEO in consultation with the
14 controlling body in which the land would be vested
15 under section 7 if the land were of that category.

16

17 **20. Section 56A inserted**

18 After section 55 insert:

19

20 **56A. Management plans may require CEO to manage**
21 **land jointly**

22 (1) A management plan for land (other than section 8A
23 land) may require the CEO to manage the land jointly
24 with one or more other persons specified in the plan.

25 (2) Subsection (1) applies even if the land is vested in or
26 under the care, control and management of a
27 controlling body solely.

28 (3) If under subsection (1) a management plan for land
29 requires the CEO to manage the land jointly, the plan
30 must have attached to it an agreement (a **section 56A**
31 **agreement**) for the joint management of the land to be

s. 20

- 1 signed as soon as practicable after the plan is approved
2 under section 60.
- 3 (4) The parties to a section 56A agreement for the joint
4 management of the land must be the CEO and each
5 person who is to manage the land jointly with the CEO.
- 6 (5) If land is vested in or under the care, control and
7 management of a controlling body jointly with an
8 associated body, this section does not prevent the
9 associated body from being a party to a section 56A
10 agreement for the land.
- 11 (6) A section 56A agreement for land must include, in
12 addition to any other terms, terms that do the
13 following —
- 14 (a) establish a joint management body to manage
15 the land;
- 16 (b) specify the members of the body which must
17 include at least —
- 18 (i) the CEO or a person nominated by the
19 CEO; and
- 20 (ii) a person to represent the interests of
21 each other party to the agreement;
- 22 (c) establish the body's procedures.
- 23 (7) A section 56A agreement for land has no effect
24 unless —
- 25 (a) the controlling body in which the land is vested
26 or that has the care, control and management of
27 the land has given written approval to the
28 agreement; and
- 29 (b) any associated body in which the land is vested,
30 or that has the care, control and management of
31 the land, jointly with the controlling body, is
32 either a party, or has given written approval, to
33 the agreement; and

- 1 (c) the Minister has given written approval to the
2 agreement.
3

4 **21. Section 56 amended**

- 5 (1) In section 56(1) delete the passage that begins with “A
6 controlling” and ends with “designed —” and insert:
7

8 In preparing a proposed management plan for any land,
9 the responsible body for the land shall have the
10 objective of achieving or promoting the purpose for
11 which the land is reserved and in particular the
12 proposed plan shall be designed —
13

- 14 (2) In section 56(1)(e) delete “body.” and insert:
15

16 body, whether solely or jointly.
17

- 18 (3) After section 56(1) insert:
19

- 20 (2) In preparing a proposed management plan for any land,
21 the responsible body for the land shall have the
22 objectives of —

23 (a) protecting and conserving the value of the land
24 to the culture and heritage of Aboriginal
25 persons, in particular from any material adverse
26 effect caused by —

27 (i) entry on or the use of the land by other
28 persons; or

29 (ii) the taking or removal of the land’s
30 fauna, flora or forest produce;

31 but

s. 22

1 (b) in a manner that does not have an adverse effect
2 on the protection or conservation of the land's
3 fauna and flora.

4 (3) If an objective set out in subsection (1) conflicts or is
5 inconsistent with an objective set out in subsection (2),
6 the objective set out in subsection (2) prevails.
7

8 **22. Section 57A inserted**

9 After section 56 insert:
10

11 **57A. Ascertaining value of land to Aboriginal persons**

12 (1) In preparing a proposed management plan for any land,
13 the responsible body for the land may consult any
14 person for the purposes of determining the value of the
15 land to the culture and heritage of Aboriginal persons.

16 (2) If the Minister is satisfied that the time needed to
17 determine the value of any land to the culture and
18 heritage of Aboriginal persons is likely to delay
19 unreasonably the process provided in sections 57 to 60
20 in relation to a management plan for the land, the
21 Minister, in writing, may exempt the responsible body
22 from complying with section 56(2) in relation to the
23 proposed management plan for the land.

24 (3) If the responsible body is exempted from complying
25 with section 56(2) in relation to the proposed
26 management plan for any land, the proposed
27 management plan must state that the exemption has
28 been given.

29 (4) A responsible body that is exempted from complying
30 with section 56(2) must, within the period (if any)
31 specified by the Minister in the exemption or, if no

- 1 period is specified, as soon as practicable after being
2 exempted —
- 3 (a) amend the proposed management plan; or
4 (b) subject to section 61, take steps to have the
5 management plan amended or to have it
6 revoked and a new plan substituted for it,
7 as the case requires, and in doing so comply with
8 section 56(2).
- 9 (5) The Minister, in writing, may vary or cancel an
10 exemption given under this section.
11

12 **23. Section 57 amended**

13 In section 57(2)(d) delete “controlling” and insert:

14
15 responsible
16

17 **24. Section 59 amended**

18 (1) In section 59(1) delete “controlling” and insert:

19
20 responsible
21

22 (2) In section 59(2) delete “controlling” and insert:

23
24 responsible
25

s. 24

- 1 (3) Delete section 59(3) and insert:
2
- 3 (3) In the case of section 8A land, the responsible body
4 must submit the proposed management plan —
5 (a) to any party to the relevant section 8A
6 agreement who, under the agreement, is not
7 involved in managing the land; and
8 (b) if the land is or includes the intertidal zone, to
9 the Minister for Fisheries; and
10 (c) if the land includes an Aboriginal site, as
11 defined in the *Aboriginal Heritage Act 1972*
12 section 4, to the Minister for Indigenous
13 Affairs.
14
- 15 (4) Delete section 59(4) and insert:
16
- 17 (4) If a person to whom a proposed plan is referred under
18 subsection (1) or (3) considers the responsible body
19 should vary the plan or make any addition to or delete
20 any provision from the plan, the person, within one
21 month after the date of receiving the plan, may request
22 the responsible body in writing to make the variation,
23 addition or deletion.
24
- 25 (5) In section 59(5) delete “Marine Authority” and insert:
26
- 27 responsible body
28
- 29 (6) In section 59(6) delete “Conservation Commission” and insert:
30
- 31 responsible body
32

1 (7) In section 59(7) delete “Conservation Commission” and insert:

2

3 responsible body

4

5 (8) In section 59(8) delete “controlling” and insert:

6

7 responsible

8

9 **25. Section 59A inserted**

10 After section 59 insert:

11

12 **59A. Plans to be submitted to Minister**

13 (1) Subject to this Part, the responsible body for land must
14 submit a proposed management plan for the land,
15 modified as it thinks fit to give effect to submissions
16 made under section 58 and any request made under
17 section 59(4), to the Minister for approval together
18 with a copy of all requests so made.

19 (2) If a plan submitted under subsection (1) relates to
20 section 8A land that, under the relevant section 8A
21 agreement, is to be managed jointly as if it were land of
22 a category listed in section 8A(5)(a), the Minister may
23 refer the plan to the Conservation Commission with a
24 request that the Commission give the Minister a written
25 report about the plan to enable the Minister to make a
26 decision under section 60(2) about the plan.

27

28 **26. Section 60 amended**

29 (1) Delete section 60(1).

s. 27

- 1 (2) In section 60(2) delete “the proposed plan” and insert:
2
3 a proposed management plan submitted under section 59A
4
- 5 (3) In section 60(2a):
6 (a) delete “controlling body” and insert:
7
8 relevant responsible body
9
10 (b) delete “park or a marine management area,” and insert:
11
12 park, or a marine management area, or section 8A land
13 that is or includes the intertidal zone,
14
15 (c) in paragraph (a) delete “area; and” and insert:
16
17 area or intertidal zone; and
18
- 19 (4) In section 60(2b) delete “controlling body” and insert:
20
21 Marine Authority
22
- 23 **27. Section 62 amended**
- 24 (1) In section 62(1):
25 (a) delete the passage that begins with “Subject” and ends
26 with “Commission as —” and insert:
27
28 Subject to this section, the Minister may, on the
29 recommendation of the responsible body (as defined in
30 section 53) for land to which this subsection applies, by

- 1 notice published in the *Gazette*, classify the land or a
2 part of it as —
3
- 4 (b) in paragraph (f) delete “Conservation Commission,” and
5 insert:
6
7 responsible body,
8
- 9 (2) After section 62(1) insert:
10
- 11 (1aaa) Subsection (1) applies to land that is —
12 (a) a State forest; or
13 (b) a timber reserve; or
14 (c) a national park; or
15 (d) a conservation park; or
16 (e) a nature reserve; or
17 (f) land referred to in section 5(1)(g) and vested in
18 the Conservation Commission; or
19 (g) land referred to in section 5(1)(h) and under the
20 care, control and management of the
21 Conservation Commission; or
22 (h) land that, under an agreement made under
23 section 8A(5)(b), is managed for a public
24 purpose that is consistent with this Act.
25
- 26 (3) Delete section 62(2) and insert:
27
- 28 (2) A classification of land as a temporary control area
29 under subsection (1)(d) —
30 (a) shall be made for only one or more of these
31 purposes —
32 (i) public safety;

s. 27

- 1 (ii) protecting flora or fauna, or both flora
2 and fauna;
- 3 (iii) protecting the value of the land to the
4 culture and heritage of Aboriginal
5 persons;
- 6 and
- 7 (b) shall not have effect for more than 90 days but
8 may be made more than once for the same
9 purpose and for the same land.
10
- 11 (4) In section 62(3):
- 12 (a) in paragraph (a) delete “section 56” and insert:
13
14 section 56(1)
15
- 16 (b) after paragraph (a) insert:
17
- 18 (ba) unless it is in conformity with section 56(2);
19 and
20
- 21 (c) delete paragraph (b) and insert:
22
- 23 (b) in the case of section 8A land, unless each
24 person responsible (as defined in section 8A)
25 for the land, has given written approval to the
26 classification or the amended classification; and
27
- 28 (d) after paragraph (a) insert:
29
30 and
31

1 **28. Section 64 amended**

2 In section 64(1):

3 (a) in paragraph (d) delete “vested in the Conservation
4 Commission” and insert:

5

6 vested in or under the care, control and
7 management of the Conservation Commission,

8

9 (b) in paragraph (da) delete “vested in the Marine
10 Authority; and” and insert:

11

12 vested in or under the care, control and
13 management of the Marine Authority, whether
14 solely or jointly with an associated body; and

15

16 **29. Part VIII Division 1A inserted**

17 At the beginning of Part VIII insert:

18

19 **Division 1A — General matters**

20 **86A. Restrictions on performance of functions**

21 (1) Subsection (2) does not apply in relation to land if it is
22 the subject of a management plan prepared in
23 accordance with section 56(2).

24 (2) The functions of the Minister and the CEO under this
25 Part in relation to land must be performed in a manner
26 that —

27 (a) protects and conserves the value of the land to
28 the culture and heritage of Aboriginal persons,
29 in particular from any material adverse effect
30 caused by —

31 (i) entry on or the use of the land by other
32 persons; or

s. 30

- 1 (ii) the taking or removal of the land's
2 fauna, flora or forest produce,
3 under any permit, licence, contract, lease or
4 other authority granted under this Part; but
5 (b) does not have an adverse effect on the
6 protection or conservation of the land's fauna
7 and flora.
8

9 **30. Section 87 amended**

10 Delete section 87(2) and insert:
11

- 12 (2) Despite subsection (1) and section 11, the Governor, by
13 order, may declare to be Crown land, for the purposes
14 of this Division, any land that is section 8C land.
15

16 **31. Section 87A amended**

17 In section 87A(1):

- 18 (a) after paragraph (c) insert:
19
20 (da) in the case of section 8A land, consistently with
21 the relevant section 8A agreement; and
22 (db) in the case of section 8C land, consistently with
23 the order made under section 8C that relates to
24 the land; and
25
26 (b) after each of paragraphs (a), (b) and (c) insert:
27
28 and
29

1 **32. Section 97 amended**

2 After section 97(1) insert:

3

4 (2A) The CEO cannot grant a lease under subsection (1) of
5 any section 8A land.

6

7 **33. Section 97A amended**

8 (1) In section 97A(1) delete “to which this Division applies.” and
9 insert:

10

11 within State forest or a timber reserve.

12

13 (2) In section 97A(2) delete “to which this Division applies.” and
14 insert:

15

16 within State forest or a timber reserve.

17

18 (3) In section 97A(4) delete “to which this Division applies,” and
19 insert:

20

21 within State forest or a timber reserve,

22

23 (4) In section 97A(6) delete “to which this Division applies —” and
24 insert:

25

26 within State forest or a timber reserve —

27

s. 34

1 **34. Section 98 amended**

2 Delete section 98(1)(b) and insert:

3

4 (b) section 8C land,

5

6 **35. Section 99 amended**

7 In section 99(1):

8 (a) in paragraph (aa) after “vested in” insert:

9

10 or under the care, control and management of

11

12 (b) delete paragraph (ab) and insert:

13

14 (ab) in the case of land vested in or under the care,
15 control and management of the Marine
16 Authority, after consultation with the Marine
17 Authority and, where applicable, an associated
18 body; and

19

20 (c) delete paragraph (b) and insert:

21

22 (b) in the case of section 8A land, consistently with
23 the relevant section 8A agreement; and

24 (baa) in the case of section 8C land, consistently with
25 the order made under section 8C that relates to
26 the land; and

27

28 (d) after each of paragraphs (a), (aa) and (ac) insert:

29

30 and

31

1 **36. Section 99A amended**

2 (1) In section 99A(1) delete “vested in the Conservation
3 Commission.” and insert:

4
5 vested in or under the care, control and management of
6 the Conservation Commission, whether solely or
7 jointly with an associated body.
8

9 (2) In section 99A(3) delete “section 56” and insert:

10
11 section 56(1)
12

13 (3) In section 99A(6) delete “vested in the Conservation
14 Commission.” and insert:

15
16 vested in or under the care, control and management of
17 the Conservation Commission, whether solely or
18 jointly with an associated body.
19

20 **37. Section 100 amended**

21 After section 100(1) insert:

22
23 (2A) The CEO cannot grant a lease under subsection (1) of
24 any section 8A land.

25 (2B) The CEO cannot grant a lease under subsection (1) of
26 any section 8C land.
27

s. 38

1 **38. Section 101 amended**

2 In section 101(1e)(b) delete “vested in the Conservation
3 Commission” and insert:

4

5 vested in or under the care, control and management of the
6 Conservation Commission, whether solely or jointly with an
7 associated body,

8

9 **39. Section 102 amended**

10 In section 102(1) in the definition of *land to which this Part*
11 *applies*:

12 (a) delete paragraph (b) and insert:

13

14 (b) section 8C land; and

15 (ca) land owned by, vested in or under the care,
16 control and management of the Executive
17 Body, whether solely or jointly with another
18 body; and

19

20 (b) after paragraph (a) insert:

21

22 and

23

24 **40. Sections 103A and 103B inserted**

25 At the end of Part IX Division 1 insert:

26

27 **103A. Aboriginal persons may do things for customary**
28 **purposes**

29 (1) In this section —

30 *Aboriginal customary purpose* means —

31 (a) preparing or consuming food customarily eaten
32 by Aboriginal persons; or

- 1 (b) preparing or using medicine customarily used
2 by Aboriginal persons; or
- 3 (c) engaging in artistic, ceremonial or other
4 cultural activities customarily engaged in by
5 Aboriginal persons; or
- 6 (d) engaging in activities incidental to a purpose
7 stated in paragraph (a), (b) or (c);
- 8 ***exclusive native title holder***, for an area in relation to
9 which exclusive native title exists, means —
- 10 (a) the registered native title body corporate (as
11 defined in section 253 of the NT Act) in respect
12 of the native title rights and interests concerned;
13 or
- 14 (b) if there is no such body corporate, each person
15 who holds the native title rights and interests
16 concerned or a person acting with the authority
17 of each such person;
- 18 ***managed land*** means any land, waters or any land and
19 waters, that are the subject of a management plan;
- 20 ***protected thing*** means any flora, fauna, forest produce
21 or other naturally occurring thing, the taking or
22 removal of which from land to which this Part applies
23 is prohibited or restricted by this Act;
- 24 ***relevant act***, on land to which this Part applies,
25 means —
- 26 (a) entering the land;
- 27 (b) driving or riding a vehicle or navigating a
28 vessel on the land;
- 29 (c) bringing an animal on to the land;
- 30 (d) camping temporarily on the land;
- 31 (e) lighting or kindling a fire on the land;
- 32 (f) taking or removing a protected thing on the
33 land;

s. 40

- 1 **take**, in relation to fauna, includes the following —
- 2 (a) to capture, injure, interfere with and kill fauna;
- 3 (b) to attempt to do any such act;
- 4 (c) to hunt fauna even though no fauna is captured,
- 5 injured or killed;
- 6 (d) to cause or permit any such act to be done;
- 7 **take**, in relation to any protected thing other than fauna,
- 8 includes the following —
- 9 (a) to cut, damage, destroy, dig up, gather, pick and
- 10 uproot the thing;
- 11 (b) to attempt to do any such act;
- 12 (c) to cause or permit any such act to be done;
- 13 **vehicle** has the meaning given in section 81.
- 14 (2) This section does not affect the operation of the
- 15 *Wildlife Conservation Act 1950*.
- 16 (3) It is a defence to a charge of an offence against this Act
- 17 that is alleged to have been committed on land to
- 18 which this Part applies and that is constituted by a
- 19 relevant act on the land to prove —
- 20 (a) the accused is an Aboriginal person; and
- 21 (b) the accused did the relevant act for an
- 22 Aboriginal customary purpose; and
- 23 (c) in doing the relevant act the accused complied
- 24 with any regulations that restrict or exclude the
- 25 operation of this subsection; and
- 26 (d) if the offence is alleged to have been committed
- 27 in an area in relation to which exclusive native
- 28 title exists, the accused either —
- 29 (i) held the exclusive native title alone or
- 30 with other persons; or

- 1 (ii) did the relevant act with the consent of
2 the exclusive native title holder;
- 3 and
- 4 (e) if the offence is alleged to have been committed
5 on section 8A land, the accused, under the
6 relevant section 8A agreement, was permitted
7 to do the act on the land for an Aboriginal
8 customary purpose.
- 9 (4) If, but for this subsection, the defence provided by
10 subsection (3) would entitle an Aboriginal person to do
11 an act that is inconsistent with the continued existence,
12 enjoyment or exercise of any native title rights and
13 interests (as defined in section 223 of the NT Act) held
14 by another Aboriginal person, the defence does not
15 apply to that act.
- 16 (5) An Aboriginal person who takes or removes a
17 protected thing for an Aboriginal customary purpose
18 must not sell the thing, or any part of it, unless, under
19 the regulations, the sale is excepted or the person is
20 authorised or licensed to do so.
- 21 Penalty: a fine of \$4 000.
- 22 (6) Regulations made under Part X —
- 23 (a) may, by reference to time, place, protected
24 thing, circumstances or class of person, or to a
25 combination of them, restrict or exclude the
26 operation of subsection (3); and
- 27 (b) may restrict or exclude the operation of
28 subsection (3) in relation to the taking or
29 removal of protected things by reference to any
30 of, or a combination of, the following —
- 31 (i) the kind of protected thing taken or
32 removed;
- 33 (ii) the class of person taking or removing
34 the protected thing;

s. 41

- 1 (iii) the time of taking or removal;
- 2 (iv) the place of taking or removal;
- 3 (v) the manner of taking or removal;
- 4 (vi) the quantity of a protected thing taken
- 5 or removed;
- 6 (vii) the circumstances of the taking or
- 7 removal,

8 but must not restrict or exclude the operation of
9 subsection (3) in respect of managed land except for a
10 purpose that is consistent with the management plan
11 for the land.

12 **103B. People acting under s. 8A agreements, defence for**

13 It is a defence to a charge of an offence against this Act
14 alleged to have been committed on section 8A land to
15 prove —

- 16 (a) the accused was a party to the relevant
- 17 section 8A agreement or was acting with the
- 18 authority of such a party; and
- 19 (b) the agreement authorised the party to do the act
- 20 or make the omission constituting the offence.
- 21

22 **41. Section 103 amended**

23 In section 103(2b):

- 24 (a) delete paragraph (c) and insert:
- 25
- 26 (c) in the case of section 8A land, consistently with
- 27 the relevant section 8A agreement; and
- 28

- 1 (b) delete paragraph (d) and insert:
2
3 (d) in conformity with section 33(2) and (3).
4
5 (c) after each of paragraphs (a) and (b) insert:
6
7 and
8

9 **42. Section 126 amended**

10 After section 126(1) insert:
11

- 12 (2A) The regulations may apply to any or all of the
13 following —
14 (a) land to which this Act applies;
15 (b) section 8C land;
16 (c) land owned by, vested in or under the care,
17 control and management of the Executive
18 Body, whether solely or jointly with another
19 body;
20 (d) public land as defined in section 81;
21 (e) Crown land as defined in section 87(1);
22 (f) land to which section 131 applies.
23

24 **43. Section 128A inserted**

25 After section 127 insert:
26

27 **128A. Regulations as to s. 8C land**

28 Regulations that apply to section 8C land may
29 prescribe only matters that are consistent with the

s. 44

1 functions that the CEO has in respect of the land under
2 the relevant order made under section 8C.
3

4 **44. Section 130 amended**

5 Delete section 130(2) and insert:
6

7 (2) Regulations made under subsection (1) that apply to
8 section 8A land apply only to the extent the relevant
9 section 8A agreement says they apply.
10

11 **45. Section 130B inserted**

12 At the end of Part X insert:
13

14 **130B. Relationship to regulations made under the *Land***
15 ***Administration Act 1997***

16 If a regulation made under this Act that applies to
17 section 8A land or section 8C land is inconsistent with
18 a regulation made under the *Land Administration*
19 *Act 1997* that also applies to the land, the regulation
20 made under this Act prevails to the extent of the
21 inconsistency.
22

23 **46. Section 143 inserted**

24 At the end of Part XI insert:

25 **143. Review of amendments made by *Conservation***
26 ***Legislation Amendment Act 2010***

27 (1) The Minister must review the operation of the
28 amendments made to this Act by the *Conservation*
29 *Legislation Amendment Act 2010* (the ***amendment Act***)

- 1 as soon as is practicable after 5 years after the date on
2 which the amendment Act receives the Royal Assent.
- 3 (2) When doing the review the Minister must consider —
- 4 (a) whether the policy objectives upon which the
5 amendments made to this Act by the
6 amendment Act were based remain valid; and
- 7 (b) whether those amendments remain appropriate
8 to achieve those objectives.
- 9 (3) The Minister must prepare a report based on the review
10 and, as soon as practicable after the report is prepared
11 and in any event not more than 2 years after the expiry
12 of the period referred to in subsection (1), cause it to be
13 laid before each House of Parliament.

1 **Part 3 — Wildlife Conservation Act 1950 amended**

2 **47. Act amended**

3 This Part amends the *Wildlife Conservation Act 1950*.

4 **48. Section 6 amended**

5 (1) In section 6(1) delete the definitions of:

6 *nature reserve*

7 *wildlife sanctuary*

8 (2) In section 6(1) in the definition of *wildlife officer* delete “that
9 Act;” and insert:

10

11 that Act.

12

13 **49. Section 23 replaced**

14 Delete section 23 and insert:

15

16 **23. Aboriginal persons may take flora and fauna for**
17 **customary purposes**

18 (1) In this section —

19 *Aboriginal customary purpose* means —

20 (a) preparing or consuming food customarily eaten
21 by Aboriginal persons; or

22 (b) preparing or using medicine customarily used
23 by Aboriginal persons; or

24 (c) engaging in artistic, ceremonial or other
25 cultural activities customarily engaged in by
26 Aboriginal persons; or

27 (d) engaging in activities incidental to a purpose
28 stated in paragraph (a), (b) or (c);

- 1 **Aboriginal person** means a person wholly or partly
2 descended from the original inhabitants of Australia;
- 3 **CALM Act** means the *Conservation and Land*
4 *Management Act 1984*;
- 5 **CALM Act land** means —
- 6 (a) land, or land and waters, listed in the CALM
7 Act section 5; and
- 8 (b) land that, under the CALM Act section 8C, is
9 under the management of the CEO; and
- 10 (c) land to which the CALM Act section 131
11 applies;
- 12 **exclusive native title**, in relation to an area of land or
13 waters, means native title rights and interests (as
14 defined in section 223 of the NT Act) —
- 15 (a) that exist in relation to the area, whether or not
16 they have been determined under the NT Act to
17 exist; and
- 18 (b) that confer possession, occupation, use and
19 enjoyment of the area on the holders of the
20 native title rights and interests to the exclusion
21 of all others;
- 22 **exclusive native title holder**, for an area in relation to
23 which exclusive native title exists, means —
- 24 (a) the registered native title body corporate (as
25 defined in section 253 of the NT Act) in respect
26 of the native title rights and interests concerned;
27 or
- 28 (b) if there is no such body corporate, each person
29 who holds the native title rights and interests
30 concerned or a person acting with the authority
31 of each such person;
- 32 **NT Act** means the *Native Title Act 1993*
33 (Commonwealth).

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- 1 (2) This section does not affect the operation of the CALM
2 Act.
- 3 (3) It is a defence to a charge of an offence against this Act
4 of taking fauna or flora to prove —
- 5 (a) the accused is an Aboriginal person; and
- 6 (b) the accused took the fauna or flora for an
7 Aboriginal customary purpose; and
- 8 (c) in taking the fauna or flora the accused
9 complied with any regulations that restrict or
10 exclude the operation of this subsection; and
- 11 (d) if the offence is alleged to have been committed
12 on land other than CALM Act land, the person
13 who has control or management of the land
14 consented to the taking of the fauna or flora;
15 and
- 16 (e) if the offence is alleged to have been committed
17 in an area in respect of which exclusive native
18 title exists, the accused either —
- 19 (i) held the exclusive native title alone or
20 with other persons; or
- 21 (ii) took the fauna or flora with the consent
22 of the exclusive native title holder.
- 23 (4) If, but for this subsection, the defence provided by
24 subsection (3) would entitle an Aboriginal person to do
25 an act that is inconsistent with the continued existence,
26 enjoyment or exercise of any native title rights and
27 interests (as defined in section 223 of the NT Act) held
28 by another Aboriginal person, the defence does not
29 apply to that act unless it is proved the accused did the
30 act in order to obtain fauna or flora sufficient only for
31 food for the accused and his or her family, but not for
32 sale.

- 1 (5) An Aboriginal person who takes fauna or flora for an
2 Aboriginal customary purpose must not sell the flora or
3 fauna, or any part of it, unless, under the regulations,
4 the sale is excepted or the person is authorised or
5 licensed to do so.
6 Penalty: a fine of \$4 000.
- 7 (6) Regulations made under section 28 may restrict or
8 exclude the operation of subsection (3) by reference to
9 any of, or a combination of, the following —
- 10 (a) the fauna or flora taken;
11 (b) the class of person taking the fauna or flora;
12 (c) the time of taking;
13 (d) the place of taking;
14 (e) the manner of taking;
15 (f) the quantity of fauna or flora taken;
16 (g) the circumstances of the taking.
17

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