# CONSERVATION LEGISLATION AMENDMENT BILL 2010

# EXPLANATORY MEMORANDUM

## Overview of Bill

The purpose of the *Conservation Legislation Amendment Bill 2010* (the Bill) is to amend the *Conservation and Land Management Act 1984* and the *Wildlife Conservation Act 1950*.

### Conservation and Land Management Act

The purposes of the amendments to the *Conservation and Land Management Act 1984* (CALM Act) are to provide for:

- the CALM Act CEO to enter into agreements to jointly manage land with another party or parties who would be members of a joint management body established for the purpose under the relevant agreement, where that land is not vested in either the Conservation Commission of Western Australia or the Marine Parks and Reserves Authority, for example private land, pastoral lease land and other Crown land;

- the CALM Act CEO, as required under a management plan, to jointly manage land vested in the Conservation Commission of Western Australia or the Marine Parks and Reserves Authority, with another party or parties who would be members of a joint management body established for the purpose by agreement;

- the performance of management functions by the CALM Act CEO, the preparation of management plans under section 14 and Part V of the CALM Act, and the authorization functions under Part VIII, to be carried out in accordance with recognition of the value of land and waters to the culture and heritage of Aboriginal persons;

- the Conservation Commission of Western Australia and the Marine Parks and Reserves Authority to have a function to develop policies to achieve or promote the value of land and waters to the culture and heritage of Aboriginal persons;

- Aboriginal persons to carry out activities for Aboriginal customary purposes on reserves vested in the Conservation Commission of Western Australia or the Marine Parks and Reserves Authority, and other land, and regulation of those activities;

- a Governor's order that places the management of unallocated Crown land or an unmanaged reserve with the CALM Act CEO to specify the management functions to be carried out under such a placement;

- amendments related to the above matters.

**Wildlife Conservation Act**

The purposes of the amendments to the *Wildlife Conservation Act 1950* (WC Act) are to provide for:

- Aboriginal persons to take flora and fauna for Aboriginal customary purposes;
- continuation of the existing entitlement of Aboriginal persons to take flora and fauna for food;
- regulation of the taking of flora and fauna for Aboriginal customary purposes;
- amendments consequential to those to be made to the CALM Act under Part 1 of the Bill.

The Bill is arranged in three parts:

- Part 1 — Preliminary matters;
- Part 2 — *Conservation and Land Management Act 1984* amended; and
- Part 3 — *Wildlife Conservation Act 1950* amended.

Outlined below is an explanation of the contents of the Bill on a clause by clause basis (Clause Notes).

**Clause Notes**

## Part 1 — Preliminary matters

**Clause 1. Short title**

Clause 1 provides that the title of the proposed Act is the *Conservation Legislation Amendment Act 2010*.

**Clause 2. Commencement**

Clause 2 sets out the commencement provisions.

Clause 2(a) provides that Part 1 (this Part) of the Conservation Legislation Amendment Act will come into operation on the day on which the Act receives the Royal Assent.

Clause 2(b) provides that the rest of the Act will come into operation on a day fixed by proclamation and that different days may be fixed for different provisions.

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

**Clause 3. Act amended**

Clause 3 provides that Part 2 of the Bill amends the *Conservation and Land Management Act 1984*.

**Clause 4. Section 3 amended**

Clause 4 will amend section 3 which provides definitions for certain terms used in the CALM Act.

Clause 4 will replace some existing definitions with revised definitions, and provide some new ones.

Clause 4(1) will delete the section 3 definitions of: ***associated body***; ***conservation park***; ***marine management area***; ***marine nature reserve***; ***marine park***; ***national park***; ***nature reserve***; ***State forest***; and ***timber reserve***.

Revised definitions for each of these terms are provided in clause 4(2).

Clause 4(2) will insert definitions for the following terms:

***Aboriginal person*** — this definition is derived from a recommendation made by the Law Reform Commission of Western Australia in its report *Aboriginal Customary Laws, The interaction of Western Australian law with Aboriginal law and culture*., Final Report, Project 94, 2006 (recommendation 4 [p. 63]);

An Aboriginal person is a person wholly or partly descended from the original inhabitants of Australia.

A similar definition is provided for the WC Act under clause 49, section 23(1).

***associated body*** — this revision of the current definition has been made to address deficiencies in terminology that do not reflect the capacity of the *Land Administration Act 1997* (LA Act) to place the care, control and management of a reserve jointly with the Conservation Commission of Western Australia or the Marine Parks and Reserves Authority, and another body or bodies, e.g. for a section 5(1)(h) reserve.

Similarly, the amended definition reflects that under the LA Act the care, control and management of a reserve is placed with a body or bodies rather than being vested, which was the process under the now repealed *Land Act 1933*.

A number of other amendments in the Bill address these matters and collectively these particular amendments are referred to in the clause notes as being "for the purpose of alignment with LA Act processes and terminology".

These amendments will be made under clauses: 7; 11; 12(1)(b), (d) and (e), and (3); 14(1)(b), (d) and (e), and (3); 15; 16(1)(b); 19(1); 21(2); 28(a) and (b); 35(a) and (b); 36(1) and (3); and 38.

***conservation park*** — this revised version of the current definition has been made because section 16B is to be deleted (clause 10) and a section 8A agreement may, as provided under new section 8B(2), enable land to be managed as if it were a conservation park (clause 8);

***exclusive native title*** — this definition is derived from the *Native Title Act 1993* (Cth) (NT Act) sections 223 and 225;

***intertidal zone*** — is land, or land and waters, between the high and low water marks;

***land to which this Act applies*** — this term presently applies to the land specified in section 5(1), and it is now defined because the term will apply to both section 5(1) land and land subject to a section 8A agreement which is to be treated as if it were section 5(1) land, and land agreed to be managed for a public purpose consistent with the CALM Act (as provided for under sections 8B(2) and (3) in clause 8);

***marine management area*** — this revised version of the current definition has been made because section 16B is to be deleted (clause 10), and section 8A agreements will not be available to manage land as if it were a marine management area;

***marine nature reserve*** — this revised version of the current definition has been made because section 16B is to be deleted (clause 10), and section 8A

agreements will not be available to manage land as if it were a marine nature reserve;

***marine park*** — this revised version of the current definition has been made because section 16B is to be deleted (clause 10), and section 8A agreements will not be available to manage land as if it were a marine park;

***Minister for Indigenous Affairs*** — this definition is provided because the Minister for Indigenous Affairs is to be notified about each proposed section 8A agreement under new section 8A(9) (clause 8), and is also to be provided a proposed management plan for section 8A land under new section 59(3)(c) if the relevant land includes an Aboriginal site as defined in the *Aboriginal Heritage Act 1972* (clause 24(3));

***national park*** — this revised version of the current definition has been made because section 16B is to be deleted (clause 10) and a section 8A agreement may, as provided under new section 8B(2), enable land to be managed as if it were a national park (clause 8);

***nature reserve*** — this revised version of the current definition has been made because section 16B is to be deleted (clause 10) and a section 8A agreement may, as provided under new section 8B(2), enable land to be managed as if it were a nature reserve (clause 8);

***non-exclusive native title*** — this definition is derived from NT Act sections 223 and 225;

***NT Act*** — is an abbreviation for the *Native Title Act 1993* (Commonwealth);

***section 8A agreement*** — section 8A will provide for voluntary agreements to manage private and other land (clause 8);

***section 8A land*** — self explanatory (clause 8);

***section 8C land*** — section 8C will provide for unallocated Crown land and unmanaged reserves to be placed with the CEO for specified management functions (clause 8);

***State forest*** — this revised version of the current definition has been made because section 16B is to be deleted (clause 10) and a section 8A agreement may, as provided under new section 8B(2), enable land to be managed as if it were a State forest (clause 8);

***timber reserve*** — this revised version of the current definition has been made because section 16B is to be deleted (clause 10) and a section 8A

agreement may, as provided under new section 8B(2), enable land to be managed as if it were a timber reserve (clause 8).

**Clause 5. Section 4 amended**

Clause 5 will amend section 4 which specifies the relationship of the CALM Act to certain other Acts.

Clause 5 will insert new section 4(5) after section 4(4).

New section 4(5) enables continuation of the existing entitlement of the CEO and other persons to take actions permitted under the *Aboriginal Heritage Act 1972*.

In the absence of this provision the objectives and requirements to manage land to protect and conserve the value of land to Aboriginal heritage and culture provided under the Bill would, for example, prevent the CEO from applying for an authorization under the *Aboriginal Heritage Act 1972* to disturb an Aboriginal site and exercising an authority granted, if such an action becomes necessary.

Provisions of the Bill applicable to protecting and conserving the value of land to Aboriginal heritage and culture are found in clauses 9, 12(1)(c), 14(1)(c), 16(2), 17, 21(3), 27(3) and (4)(b), 29, and 41(d).

**Clause 6. Part II heading replaced**

Clause 6 will insert a new heading for the CALM Act Part II, namely:

**Part II – Land subject to this Act** .

The current heading uses the term "land to which this Act applies" which is presently only applicable to the land and waters specified in section 5(1), and, under the Bill, Part II will subsequently include new provisions for ***section 8A land*** and ***section 8C land*** (see clauses 4(2) and 8).

**Clause 7. Section 5 amended**

Clause 7 will amend section 5 which sets out reserved land and waters to which the CALM Act applies.

Clause 7 will amend section 5(1)(h) for the purpose of alignment with LA Act processes and terminology.

See also the explanation provided for the revised definition of ***associated body*** in clause 4(2).

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

Clause 8 will insert three new sections into CALM Act Part II, these are:

- section 8A, to replace sections 16 and 16A which presently provide for management agreements for management of land by the CEO alone (see also clause 10);
- section 8B, to replace section 16B which presently sets out some of the effects of section 16 and section 16A agreements (see also clause 10); and

- section 8C, to replace section 33(2) which presently provides for the placement of unallocated Crown land and unmanaged reserves with the CEO for their management (see also opening words of clause 16(2)).

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

Section 8A will enable the CEO to enter into agreements with land owners, management bodies and others, e.g. exclusive native title holders, to manage land either alone, or jointly with another party or parties.
In addition, it will enable section 8A land to be managed as if the land were a State forest, timber reserve, national park, conservation park, or nature reserve, under the CALM Act; or for a public purpose consistent with the Act.

Section 8A(1) provides definitions for certain terms used in section 8A:

***agreed area*** is an area of eligible land the subject of a section 8A agreement;

***alienated land*** is freehold land;

***Crown land*** is land other than alienated land;

***eligible land*** is above the low water mark and may comprise alienated land; or Crown land other than land to which the Act applies or section 8C land;

***person responsible*** for eligible land is:

(a) for alienated land: the owner, a person having a registered interest, or any lessee;

(b) for Crown land: the Land Administration Minister, an LA Act management body, a vestee under another Act, a person having care, control and management under another Act, a lessee, or if exclusive native title has been determined – the relevant registered native title body corporate.

Note: definitions for the terms ***exclusive native title*** and ***section 8C land*** are provided in clause 4(2); and a definition of ***Land Administration Minister*** is provided in CALM Act section 3.

Section 8A(2) is provided to make it clear that section 8A will have no effect on the operation of the NT Act for any person claiming or holding exclusive native title or non-exclusive native title over land the subject of a section 8A agreement.
Note: the term ***non-exclusive native title*** is defined in clause 4(2).

Section 8A(3) will enable Crown land the subject of an interest under the LA Act such as a Crown lease, easement, lease, mortgage, or a profit à prendre, to be the subject of a section 8A agreement.

With regard to Crown land, the current provisions, i.e. sections 16, 16A and 16B, enable pastoral leases to be the subject of a land management agreement.

Section 8A(4) will prevent an agreement applying to an area subject to a mining lease, or a general purpose lease, granted under the *Mining Act 1978*.

Section 8A(5) will empower the CEO to enter into agreements to manage eligible land alone, or jointly with one or more other persons as if the land were a State forest, timber reserve, national park, conservation park, or nature reserve under the CALM Act; or for a public purpose consistent with the Act.
The current provisions do not enable land to be managed jointly under a section 16 land management agreement.

Section 8A(6) will prevent an agreement being entered into for the purpose of managing land as if it were a marine management area, a marine nature reserve, or a marine park.
Management of land or waters as a category of CALM Act marine reserve will only occur subsequent to the consultation and reservation processes provided under the Act.
Revised definitions for the three categories of marine reserve are provided in clause 4(2).

Section 8A(7) enables a section 8A agreement to provide that the Conservation Commission will assess the implementation of the management plan for the agreed area.
If an agreement makes such a provision the Conservation Commission will have to be included as a party to the agreement (see clause 8, section 8A(8)(d)).

Section 8A(8) specifies the persons that must be included as parties to a section 8A agreement:

(a) for alienated land it will be the owner, person with a registered interest or the lessee, or at least one of these persons; and for Crown land it will be the Land Administration Minister, an LA Act management body, a vestee under another Act, a person having care, control and management under another Act, a lessee or an exclusive native title holder, or at least one of these persons;

(b) the CEO;

(c) for land agreed to be managed jointly it will be the parties to the section 8A agreement, and a third party or parties if they are not a party described in paragraphs (a) or (b), such as Aboriginal people who may not be a person responsible for the land (see ***person responsible***, clause 8, section 8A(1)); and

(d) the Conservation Commission, if the agreement provides that the Conservation Commission will assess the implementation of the management plan for the agreed area (see clause 8, section 8A(7)).

Section 8A(9) will require the Minister for Fisheries, the Minister for Forest Products, the Minister for Indigenous Affairs, the Minister for Mines, and the Minister (Water Resources), as defined under CALM Act section 3, to be consulted about a proposed management agreement (see ***Minister for Indigenous Affairs*** in clause 4(2)).
If consultation has not occurred in accordance with this provision and an agreement is entered into it will be of no effect.

Section 8A(10) will require, if a relevant local government is not a party to a proposed agreement, each relevant local government to be consulted about a proposed agreement.
If consultation has not occurred in accordance with this provision and an agreement is entered into it will be of no effect.

Section 8A(11) specifies the persons responsible for eligible land that must give written approval to an agreement being made.
These are the persons responsible for the eligible land if they are not a party to the agreement, and the CALM Act Minister.
If written approval has not been given in accordance with this provision and an agreement is entered into it will be of no effect.

Section 8A(12) will, in respect of an agreed area of land in the intertidal zone, require either the chief executive officer of the Fisheries Department to be a party to the relevant agreement, or, alternatively, the Minister for Fisheries to give written approval to the agreement, in respect of the intertidal zone.
If either of these requirements have not been met in accordance with this provision and an agreement is entered into it will be of no effect.
Note: the term ***intertidal zone*** is defined in clause 4(2); and definitions for the terms ***Fisheries Department*** and ***Minister for Fisheries*** are provided in CALM Act section 3.

Section 8A(13) provides that an agreement to manage land jointly with the CEO must include terms that establish a joint management body; the membership of that joint management body, which must include the CEO or CEO's nominee and someone to represent the interests of each other party; and the agreement needs to establish the joint management body's procedures.

Section 8A(14) provides that a section 8A agreement for a public purpose, i.e. a purpose other than State forest, timber reserve, national park, conservation park, or nature reserve, must state the purpose for the agreement land e.g. conservation and recreation; the policies and guidelines to be followed; and a summary of the operations to be undertaken in managing the land.

Section 8A(15) provides that where an agreement is made for pastoral lease or grazing lease land, the lessee can still run stock, i.e. the lessee can continue to use it for grazing purposes, unless precluded by the agreement.

New section 8A(15) will replace section 16A(2), which is a similar provision.

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

Section 8B addresses the extent to which the CALM Act applies to land subject to a section 8A agreement, and the application of other written laws to section 8A land.
Note: definitions for the terms ***section 8A agreement*** and ***section 8A land*** are provided in clause 4(2).

Section 8B(1) will have the effect of precluding the CEO from managing section 8A land inconsistently with, or contrary to, the relevant objectives of management plans provided in section 56(1) for State forest, timber reserves, national parks, conservation parks, and nature reserves.
Section 8B(1) will replace section 16B(1), which is a similar provision.

Section 8B(2)(a) will apply such that, subject to sections 8B(2)(c), (d), (e), (f), (g), (h) and (i), if a section 8A agreement provides that the section 8A land is to be managed as if it were a State forest, timber reserve, national park, conservation park, or nature reserve, it is to be treated under the CALM Act as if the land was actually one of these reserve categories.

Section 8B(2)(b) will apply such that, subject to sections 8B(2)(c), (d), (e), (f), (g), (h) and (i), if land is to be managed under a section 8A agreement as if it were a State forest, timber reserve, national park, conservation park, or nature reserve, it will be brought under the meaning of "land to which this Act applies" (see also clause 4(2)).

Section 8B(2)(c) will limit the application of section 8B(2)(a) and (b) so that these provisions apply for the purposes of the CALM Act but do not affect the operation of any other written law.
An effect of this provision is that the underlying tenure of the section 8A land is not affected, and therefore the written laws applying to that tenure of land are not affected and continue to apply (see also section 8B(2)(h)).

Section 8B(2)(d) will limit the application of section 8B(2)(a) and (b) by excluding from their application the provisions of the Act that provide for the cancellation and amendment of the purpose of State forest (section 9) and other CALM Act land (section 17).

Section 8B(2)(e) will limit the application of section 8B(2)(a) and (b) by precluding the inclusion of section 8A land agreed to be managed as a State forest or timber reserve in the meaning of ***Crown land*** provided in section 87(1).

Section 8B(2)(f) will limit the application of section 8B(2)(a) and (b) by providing that land which is subject to a section 8A agreement does not vest in the

Conservation Commission, i.e. the underlying tenure of the land will not change despite it being managed as if it were a State forest, timber reserve, national park, conservation park, or nature reserve, and that this land will come under the meaning of "land to which this Act applies".

Section 8B(2)(g) will preclude the CEO and other parties to a section 8A agreement to manage land as if it were a State forest, timber reserve, national park, conservation park, or nature reserve, other than a person responsible, from being treated as if they were an occupier of the relevant section 8A land for the purposes of the *Mining Act 1978* (see also ***person responsible*** in clause 8, section 8A(1)).

Section 8B(2)(h) will preserve the exercise of any rights that may be held under the CALM Act or another written law over section 8A land unless the person holding the rights is a party to a corresponding section 8A agreement to manage land as if it were a State forest, timber reserve, national park, conservation park, or nature reserve, and the agreement entered into affects such rights;

Section 8B(2)(i) will prevent a section 8A agreement from affecting common law rights to carry out recreational fishing.

Section 8B(3) will apply such that, subject to sections 8B(3)(a), (b), (c), (d), (e) and (f), if a section 8A agreement provides that the section 8A land is to be managed for a public purpose consistent with the CALM Act then that land becomes "land to which this Act applies" (see also clause 4(2)).

Section 8B(3)(a) will limit the application of section 8B(3) so that this provision applies for the purposes of the CALM Act but does not affect the operation of any other written law.
An effect of this provision is that the underlying tenure of the section 8A land is not affected, and therefore the written laws applying to that tenure of land are not affected and continue to apply (see also section 8B(3)(e)).

Section 8B(3)(b) will limit the application of section 8B(3) by excluding from its application the provisions of the Act that provide for the cancellation and amendment of the purpose of certain CALM Act land (section 17).

Section 8B(3)(c) will limit the application of section 8B(3) by precluding the inclusion of section 8A land agreed to be managed for a public purpose consistent with the CALM Act in the meaning of ***Crown land*** provided in section 87(1).

Section 8B(3)(d) will preclude the CEO and other parties to a section 8A agreement to manage land for a public purpose consistent with the CALM Act, other than a person responsible, from being treated as if they were an occupier of the relevant section 8A land for the purposes of the *Mining Act 1978* (see also ***person responsible*** in clause 8, section 8A(1)).

Section 8B(3)(e) will preserve the exercise of any rights that may be held under the CALM Act or another written law over section 8A land unless the person holding the rights is a party to a corresponding section 8A agreement to manage land for a public purpose, and the agreement entered into affects such rights.

Section 8B(3)(f) will prevent a section 8A agreement from affecting common law rights to carry out recreational fishing.

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

Section 8C will replace the current section 33(2).
Note: the subsection designation "(2)" is re-used for an amendment to section 33 under this Bill – see clause 16(2) for the new section 33(2).
Under the current provision the Governor may place management of unallocated Crown land or unmanaged reserves with the CEO on the recommendation of the CALM Act Minister and the Land Administration Minister.
The current provision is silent on what instrument is to be used to make this placement (by default it is an Executive Council minute), and, similarly, the matter of specifying the CEO's management functions for the land is not provided for.
The recast provision, new section 8C, addresses these matters and will be placed in CALM Act Part II.
Note: ***function*** includes powers, duties, responsibilities, authorities, and jurisdictions (*Interpretation Act 1984* section 5).

Section 8C(1) provides a definition of the land that is eligible for placement with the CEO for its management (***eligible land***), i.e. LA Act unallocated Crown land and unmanaged reserves.

Section 8C(2) will empower the Governor, on the recommendation of the CALM Act Minister and the Land Administration Minister, to place by order unallocated Crown land or unmanaged reserves with the CEO for management; and to specify in the order the CEO's management functions for the land, e.g. management functions of fire prevention, and the control of feral animals and weeds.

Section 8C(3) will empower the Governor, on the recommendation of the CALM Act Minister and the Land Administration Minister, to vary or cancel an order that has been made under section 8C(2).

## Clause 9. Section 14 amended

Clause 9 will amend section 14 which includes the public notification requirements applicable to proposed marine nature reserves, marine parks and marine management areas (proposed marine reserves).
Indicative management plans are prepared for this purpose.

The amendment to section 14(2d) will add reference to new section 56(2) which provides for management plan objectives applicable to protection and conservation of the value of land to the culture and heritage of Aboriginal persons (see clause 21(3)).
These management plan objectives will now apply to the preparation of indicative management plans for proposed marine reserves under section 14.

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

Clause 10 will delete sections 16 and 16A because these sections will be replaced by new section 8A – CEO may agree to manage private or other land (clause 8).
Section 16B will be deleted by this clause because it will be replaced by new section 8B – Effect of s. 8A agreements (clause 8).

**Clause 11. Section 17 amended**

Clause 11 will amend section 17 which provides process for cancellation or amendment of purpose of certain reserves.
Clause 11 will amend section 17(2) for the purpose of alignment with LA Act processes and terminology.
See also the explanation provided for the revised definition of ***associated body*** in clause 4(2).

**Clause 12. Section 19 amended**

Clause 12 will amend section 19 which provides functions of the Conservation Commission.

Clause 12(1)(a) provides a grammatical change to section 19(1).

Clause 12(1)(b) will amend section 19(1)(b) for the purpose of alignment with LA Act processes and terminology.
See also the explanation provided for the revised definition of ***associated body*** in clause 4(2).

Clause 12(1)(c) will amend section 19(1)(c)(iii) to add reference to new section 56(2) which provides for management plan objectives applicable to protection and conservation of the value of land to the culture and heritage of Aboriginal persons (see clause 21(3)).
It will be a function of the Conservation Commission to develop policies to achieve or promote these objectives.

Clause 12(1)(d) will delete paragraphs (e), (f) and (g) from section 19(1) and replace them with new corresponding paragraphs (e), (f) and (g) for the purpose of alignment with LA Act processes and terminology.
See also the explanation provided for the revised definition of ***associated body*** in clause 4(2).
A new provision will also be inserted in section 19(1), that is, paragraph (ha), which provides that it is a function of the Conservation Commission to assess the

implementation of management plans for section 8A land if required under, and subject to, the relevant section 8A agreement (see also clause 8, sections 8A(7) and 8A(8)(d)).

Clause 12(1)(e) will delete paragraph (k) from section 19(1) and provide a new paragraph (k) for the purpose of alignment with LA Act processes and terminology.
See also the explanation provided for the revised definition of ***associated body*** in clause 4(2).
The word "and" after paragraph (k) will also be deleted.

Clause 12(1)(f) provides a grammatical change to section 19(1)(c)(i).

Clause 12(2)(a) will delete part of section 19(7)(a) because section 16 agreements will be replaced by section 8A agreements (see clauses 8 and 10), and also because the Conservation Commission's advice to the Minister about section 8A agreements will be subject to new section 19(7)(ba) (see clause 12(2)(b) below).

Clause 12(2)(b) provides a new paragraph (ba) in section 19(7) which is in similar terms to the existing provision deleted under clause 12(2)(a) but updated to reflect that section 16 agreements will be replaced by section 8A agreements (see clauses 8 and 10).

Clause 12(3) will amend section 19(9) for the purpose of alignment with LA Act processes and terminology.
See also the explanation provided for the revised definition of ***associated body*** in clause 4(2).

**Clause 13. Section 20 amended**

Clause 13 will amend section 20 which provides powers of the Conservation Commission.
Clause 13 provides grammatical changes to section 20(6).

**Clause 14. Section 26B amended**

Clause 14 will amend section 26B which provides functions of the Marine Authority.

Clause 14(1)(a) provides a grammatical change to section 26B(1).

Clause 14(1)(b) will amend section 26B(1)(aa) for the purpose of alignment with LA Act processes and terminology.
See also the explanation provided for the revised definition of ***associated body*** in clause 4(2).

Clause 14(1)(c) will amend section 26B(1)(b)(iv) to add reference to new section 56(2) which provides for management plan objectives applicable to protection and

conservation of the value of land to the culture and heritage of Aboriginal persons (see clause 21(3)).
It will be a function of the Marine Authority to develop policies to achieve or promote these objectives.

Clause 14(1)(d) will delete paragraph (c) from section 26B(1) and provide a new paragraph (c) for the purpose of alignment with LA Act processes and terminology.
See also the explanation provided for the revised definition of ***associated body*** in clause 4(2).

Clause 14(1)(e) will delete paragraphs (e), (f) and (g) from section 26B(1) and replace them with new corresponding paragraphs (e), (f) and (g) for the purpose of alignment with LA Act processes and terminology.
See also the explanation provided for the revised definition of ***associated body*** in clause 4(2).

Clause 14(1)(f) provides a grammatical change to section 26B(1)(i).

Clause 14(1)(g) provides grammatical changes after sections 26B(1)(b)(i) and (ii).

Clause 14(2) will amend section 26B(4) by incorporating the effect of existing section 26B(5)(b) because section 26B(5) is to be deleted (see clause 14(3) below).

Clause 14(3) will delete section 26B(5).
Section 26B(5)(a) will be deleted because section 8A agreements, which will replace section 16 agreements, will not be available to manage land as if it were a category of marine reserve.
Section 26B(5)(b) will also be deleted but its effect will be incorporated into section 26B(4) [see clause 14(2) above].

Clause 14(4) will amend section 26B(7) for the purpose of alignment with LA Act processes and terminology.
See also the explanation provided for the revised definition of ***associated body*** in clause 4(2).

**Clause 15. Section 26D amended**

Clause 15 will amend section 26D which provides for membership of the Marine Authority.
Clause 15 will amend section 26D(6) for the purpose of alignment with LA Act processes and terminology.
See also the explanation provided for the revised definition of ***associated body*** in clause 4(2).

**Clause 16. Section 33 amended**

Clause 16 will amend section 33 which provides functions of the CEO.

Clause 16(1)(a) will delete paragraph (a) from section 33(1) and provide a new paragraph (a).

New paragraph (a) of section 33(1) is similar in its application to the existing provision and will identify land that is to be managed by the CEO:

(i) land to which the Act applies (replaces existing subparagraph (i) in the same terms);

(ii) section 8A land, under the terms of a section 8A agreement (a new provision consistent with the application of new section 8A which enables the CEO to manage land under an agreement);

(iii) section 8C land, under a section 8C order (replaces existing subparagraph (ii) which refers to land subject to the CEO's management under section 33(2) which is a provision that will be replaced by new section 8C – see clause 8 and opening words of clause 16(2)).

Clause 16(1)(b) will delete subparagraph (iii) from section 33(1)(cb) and provide a new subparagraph (iii).

New subparagraph (iii) of section 33(1)(cb) is in similar terms to the existing provisions but the reference to "section 56" in subparagraph (iii) will be changed to a reference to "section 56(1)".
This renumbering will be made as a consequence of insertion of new provisions, i.e. sections 56(2) and (3), under clause 21(3).
The new provision is aligned with LA Act processes and terminology.
See also the explanation provided for the revised definition of ***associated body*** in clause 4(2).

Clause 16(2) will delete existing section 33(2), which will be replaced by an amended provision in clause 8 (see new section 8C), and it will provide a new provision that re-uses the subsection designation "(2)".
Clause 16(2) will also insert another new provision, i.e. section 33(3A).

New section 33(2) will provide that in the absence of an approved management plan for reserves vested in or placed with the Conservation Commission or the Marine Authority, or section 8A land, management must be carried out in a manner that protection and conservation of the value of land or waters to the culture and heritage of Aboriginal persons from any material adverse effect is achieved; and, in doing so, there is no adverse effect on the protection and conservation of the land's fauna and flora.

This requirement similarly applies if such land is being managed under an approved management plan that was not prepared in accordance with new section 56(2) because it is the subject of an exemption given under section 57A(2) (clause 22).
These additional requirements are consistent with the new objectives for management plans provided in new section 56(2) in clause 21(3).

New section 33(3A) will provide that management of land, such as unallocated Crown land or an unmanaged reserve, placed by order under section 8C with the CEO for its management, must be carried out in a manner that protection and conservation of the value of land or waters to the culture and heritage of Aboriginal persons from any material adverse effect is achieved; and there is no adverse effect on the protection and conservation of the land's fauna and flora.
This additional requirement is consistent with the new objectives for management plans provided in new section 56(2) in clause 21(3).

Clause 16(3) will change the reference to "section 56" in section 33(3)(b)(iii) to a reference to "section 56(1)".
This renumbering will be made as a consequence of insertion of new provisions, i.e. sections 56(2) and (3), under clause 21(3).

**Clause 17. Section 33A amended**

Clause 17 will delete and replace section 33A(1) which provides a definition for the term ***necessary operations***.
Necessary operations are specified management operations that may be carried out in the absence of a management plan for the relevant land.
The recast definition of ***necessary operations*** is in similar terms to the existing one but will now include in new section 33A(1)(c) a requirement to protect and conserve the value of land or waters to the culture and heritage of Aboriginal persons (see also clause 16(2)).
This additional requirement is consistent with the new objectives for management plans provided in new section 56(2) in clause 21(3).

**Clause 18. Section 53 amended**

Clause 18 will amend section 53 which provides definitions for certain terms used in CALM Act Part V, Division 1 - Management plans.

Clause 18(1) will insert a definition for the term ***responsible body*** in section 53.
It is a term used to collectively describe each of the bodies that may be responsible for the preparation of a management plan, depending on the vesting and other arrangements put in place for the holding or management of the relevant land.

(a) If the Conservation Commission or the Marine Authority (***controlling body***) has sole vesting, or a reserve is solely placed under their care,

control and management, then those bodies would be responsible for preparing and reviewing management plans for those reserves, e.g. plans for Rudall River National Park, Karijini National Park, or Ningaloo Marine Park, as the case requires.

(b) If the Conservation Commission or the Marine Authority has vesting or care, control and management jointly with another body, the management plan would be produced and reviewed jointly.
There is a potential for this to occur with native title parties.

(c) If under a section 8A agreement the agreed area will be managed by the CEO alone as if it were either State forest, timber reserve, national park, conservation park, or nature reserve, then the Conservation Commission will be responsible for preparing and reviewing the management plan.
Currently the Conservation Commission does not have a statutory role for preparation of management plans for section 16 or 16A agreement lands managed by the CEO (sections 16 and 16A will be replaced by new section 8A – see clauses 8 and 10).

(d) If under a section 8A agreement the land will be managed by the CEO alone for a public purpose consistent with the CALM Act then the CEO will be responsible for preparing and reviewing the management plan.
The Conservation Commission would have no role as there is no directly corresponding category of land under this body's care, control and management.
An example of such land would be an agreement for private land to be managed by the CEO for the purpose of conservation and recreation.

(e) If section 8A land is to be managed jointly, the joint management body established under a section 8A agreement will be responsible for preparing and reviewing the management plan.
Under new section 54(4), if the agreed area is to be managed as either State forest, timber reserve, national park, conservation park, or nature reserve, then the Conservation Commission will be consulted (see clause 19(3)).
A section 8A agreement to manage land jointly is relevant, for example, to land to be owned by the Murujuga Aboriginal Corporation under the Burrup and Maitland Industrial Estates Agreement, and land to be owned by the Miriuwung Gajerrong people and jointly managed under the Ord Final Agreement.

Note: the Conservation Commission may be required to assess the implementation of a management plan for section 8A land (cf. paragraphs (c), (d) and (e) above; and see clause 8, sections 8A(7) and (8)(d), and clause 12(1)(d), new paragraph (ha) for section 19(1)).

Clause 18(2) provides an amendment to punctuation as a consequence of the insertion of a definition for ***responsible body*** in section 53.

**Clause 19. Section 54 amended**

Clause 19 will amend section 54 which sets out responsibilities for the preparation of management plans.

Clause 19(1) will delete and replace sections 54(1) and (2).

New section 54(1) is similar to the existing provision, but it will now include section 8A land in its application.
Other changes will be made for the purposes of alignment with LA Act processes and terminology.
See also the explanation provided for the revised definition of ***associated body*** in clause 4(2).

New section 54(2) will provide a more concise description of the management plan preparation and review responsibilities of a responsible body (see also ***responsible body*** in clause 18(1)).

Clause 19(2)(a) will amend subparagraph (i) of section 54(3)(a) to change the reference to "controlling body" (the Conservation Commission or the Marine Authority) to "responsible body", a term of wider application which includes a "controlling body", and any other body, or bodies, responsible for preparation of a proposed management plan for land or waters the subject of a section 8A agreement to manage the land or waters (see also ***responsible body*** in clause 18(1)).

Clause 19(2)(b) and (c) will amend subparagraphs (ii) and (iii) of section 54(3)(a) to change the references to "Conservation Commission" to "responsible body for that land", as "responsible body" is a term of wider application which includes a "controlling body" such as the Conservation Commission, and any other body, or bodies, responsible for preparation of a proposed management plan for land or waters (see also ***responsible body*** in clause 18(1)).

Clause 19(3) will insert new section 54(4) after section 54(3).

New section 54(4) provides, that for jointly managed section 8A agreement land that is to be managed as State forest, timber reserve, national park, conservation park, or nature reserve, the Conservation Commission will be consulted by the responsible body about the preparation of a proposed management plan through the agency of the CEO.
In this case the responsible body is the joint management body established under the relevant section 8A agreement (see clause 8, new section 8A(13); and clause 18(1) ***responsible body*** paragraph (e)).

**Clause 20. Section 56A inserted**

Clause 20 will insert new section 56A after section 55.

Section 56A provides that the means of achieving any joint management by the CEO for land or waters vested in or under the care, control and management of the Conservation Commission or the Marine Authority will be through a requirement for joint management prescribed under the relevant management plan.
The relevant management plan must also have a joint management agreement attached to it which amongst other terms provides for a joint management body, its membership and procedures.
Joint management of reserves vested in or placed with the Conservation Commission or the Marine Authority cannot occur without the written approval of the Conservation Commission or the Marine Authority, as the case requires, as well as any associated body, and the CALM Act Minister.
A proposed management plan also requires the approval of the CALM Act Minister before it can have effect (CALM Act sections 60(2), (3) and (4)).
Joint management by the CEO may be with one or more parties e.g. a native title party and a conservation organization or mining company.

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

Section 56A(1) provides that a management plan may require the CEO to manage the land jointly with others specified in the plan.
This provision will not apply to section 8A land because joint management for such land would be established under the relevant section 8A agreement.

Section 56A(2) provides that the provision for joint management can apply even if the relevant land is solely vested in or under the care, control and management of the Conservation Commission or the Marine Authority.

Section 56A(3) provides that if a management plan requires joint management it must have attached to it an agreement for the joint management of the land.
Such an agreement is to be known as a ***section 56A agreement***.
A joint management agreement must be signed as soon as practicable after the relevant management plan is approved by the CALM Act Minister in accordance with section 60.

Section 56A(4) describes who would be a party to a section 56A agreement.
It would include the CEO and whoever is to be a joint manager, e.g. a native title party.

Section 56A(5) will enable a joint vestee or a body that has joint care, control and management to be a joint manager through a section 56A agreement and a

provision of the management plan, e.g. an associated body under a LA Act management order applicable to a section 5(1)(h) reserve.

Section 56A(6) specifies the requirements for a joint management body, including its membership and procedures, that must be included in a section 56A agreement. A joint management body may be referred to as a "park council" where the section 56A agreement provides for joint management with an Aboriginal party.

Section 56A(7) will require that a proposal for joint management under a section 56A agreement must have the written approval of:

(a) the Conservation Commission or the Marine Authority (controlling body), as the case requires; and

(b) any joint vestee or a body that has joint care, control and management of the land (associated body); and

(c) the CALM Act Minister.

If written approval has not been given in accordance with this provision and a section 56A agreement is entered into it will be of no effect.

**Clause 21. Section 56 amended**

Clause 21 will amend section 56 which sets out the objectives of management plans for each category of land specified in CALM Act section 5(1).

Clause 21(1) provides section 56(1) with a new introduction which is a recast of the existing provision, including replacement of the term "controlling body" with the wider term "responsible body" (see ***responsible body*** in clause 18(1)).

Clause 21(2) will amend section 56(1)(e) for the purpose of alignment with LA Act processes and terminology.
See also the explanation provided for the revised definition of ***associated body*** in clause 4(2).

Clause 21(3) will insert new sections 56(2) and (3) after section 56(1).
New section 56(2) provides a new management plan objective of protecting and conserving the value of the land to the culture and heritage of Aboriginal persons.
Managing land under this objective is complementary to the continued practice of Aboriginal culture.
Implementation of this objective will not affect the protection afforded places and objects under the *Aboriginal Heritage Act 1972*, or otherwise affect the administration of that Act (see also new section 4(5) in clause 5).

> New section 56(2) provides a proposed management plan objective of protecting and conserving the value of the land to the culture and heritage of Aboriginal persons from material adverse effects that may be caused by entry and use of the land by other persons, and the taking or removal of fauna, flora or forest produce from the land; but this is not to have an

adverse effect on the protection or conservation of the land's flora or fauna.

New section 56(3) provides that the section 56(2) management plan objective of protecting and conserving the value of land to Aboriginal culture and heritage from material adverse effect, while not adversely affecting protection or conservation of the land's flora or fauna, will prevail over the management plan objectives set out in section 56(1) if any conflicts or inconsistencies arise between them.

**Clause 22. Section 57A inserted**

Clause 22 provides new section 57A which sets out the processes applying to ascertaining the value of land to Aboriginal persons in respect of its cultural and heritage values, including circumstances when an exemption to this process may be given, and compliance with section 56(2).

These values will be ascertained for the purposes of preparing a management plan in accordance with the management planning objectives set out in new section 56(2) (see clause 21(3)).

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

Section 57A(1) will enable a responsible body to consult any person in order to determine the value of the relevant land to the culture and heritage of Aboriginal persons.

Section 57A(2) will empower the CALM Act Minister to exempt, in writing, the responsible body from determining the value of the relevant land to the culture and heritage of Aboriginal persons and complying with section 56(2) if this would unreasonably delay the management planning process and subsequent approval of the relevant plan.

This provision will enable preparation of proposed management plans to be completed if this has been unreasonably delayed by the compilation of information about Aboriginal heritage and culture.

The exemption may operate for a specified period but, ultimately, compliance with section 56(2) will be required (see section 57A(4)).

Section 57A(3) provides that any exemption from complying with section 56(2) must be stated in the management plan.

Section 57A(4) sets out what a responsible body must do to comply with section 56(2) if it has been granted a section 57A(2) exemption.

If the CALM Act Minister has set a specified period for an exemption to operate, the requirements must be met in that period.

If an exemption does not have an operational period specified, the requirements must be met as soon as practicable subsequent to the exemption being granted.

The requirements pertaining to complying with section 56(2) subsequent to the grant of an exemption are:

(a) that the proposed management plan is to be amended; or

(b) that steps are to be taken to amend an approved management plan or have it revoked and replaced with a new plan under section 61,

for this purpose.

Section 57A(5) will empower the CALM Act Minister to vary or cancel a section 57A(2) exemption.

**Clause 23. Section 57 amended**

Clause 23 will amend section 57 which sets out the public notification requirements applicable to proposed management plans.

This amendment is consequential to the introduction of the defined term ***responsible body*** to collectively describe each of the bodies that may be responsible for the preparation of a management plan, depending on the vesting and other arrangements put in place for the management of the relevant land.

**Clause 24. Section 59 amended**

Clause 24 will amend section 59 which provides for the referral (submission) of proposed management plans to other bodies for their consideration.

Clauses 24(1) and (2) will amend sections 59(1) and (2) respectively, to change the reference to "controlling body" to "responsible body", a term of wider application which includes a "controlling body" and any other the body, or bodies, responsible for preparation of a proposed management plan for land or waters (see also ***responsible body*** in clause 18(1)).

Clause 24(3) will delete and replace section 59(3) as it will no longer be required because an associated body will become jointly responsible for preparation and review of management plans with the relevant controlling body (see clauses 18(1) and 19(1)).

New section 59(3) will provide that a proposed management plan for land subject to a section 8A agreement must be referred to:

(a) any other parties to the agreement who are not involved in managing the land, e.g. the Land Administration Minister may be a party to an agreement but not involved in day to day management of the section 8A land; and

(b) the Minister for Fisheries if the land is or includes the intertidal zone (see ***intertidal zone*** in clause 4(2)); and

(c) the Minister for Indigenous Affairs if the land includes an Aboriginal site, as defined under the *Aboriginal Heritage Act 1972* (see ***Minister for Indigenous Affairs*** in clause 4(2)).

Clause 24(4) will delete and replace section 59(4) with a recast provision which includes changing the reference to "controlling body" to "responsible body", a term of wider application which includes the Conservation Commission and the Marine Authority, and any other body, or bodies, responsible for preparation of a proposed management plan for land or waters (see also ***responsible body*** in clause 18(1)).

Clauses 24(5) to (8) will amend sections 59(5) to (8) respectively, to change references to "Marine Authority" (section 59(5)), "Conservation Commission" (sections 59(6) and (7)), and "controlling body" (section 59(8)) to "responsible body", a term of wider application which includes these bodies and any other body, or bodies, responsible for preparation of a proposed management plan for land or waters (see also ***responsible body*** in clause 18(1)).

**Clause 25. Section 59A inserted**

Clause 25 provides new section 59A which addresses the submission of proposed management plans to the CALM Act Minister for approval.

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

Section 59A(1) will replace section 60(1) (see also clause 26(1)).
This provision is in similar terms to the existing section 60(1) and has been updated to refer to a responsible body instead of a controlling body (see also ***responsible body*** in clause 18(1)).

Section 59A(2) provides that the Minister may refer to the Conservation Commission and request a report about, proposed management plans submitted for land or waters subject to a section 8A agreement with the CEO that are to be managed jointly as if they were State forest, timber reserve, national park, conservation park, or nature reserve (see clause 8, new section 8A(5)(a)).
This will provide the Conservation Commission an opportunity to comment prior to the Minister's approval of such a proposed management plan, although this body will have already been consulted during the development of the proposed management plan in accordance with the new section 54(4) (see clause 19(3)).

**Clause 26. Section 60 amended**

Clause 26 will amend section 60 which sets out process for the approval of proposed management plans, and the Minister's power to amend and approve management plans submitted.

Clause 26(1) will delete section 60(1) which will be replaced by new section 59A(1) (see clause 25).

Clause 26(2) will amend section 60(2) to identify that a plan that the Minister may approve is a proposed management plan submitted to the Minister under new section 59A (see clause 25).

Clauses 26(3) will amend section 60(2a) which presently applies to consideration of the Minister for Fisheries' submissions about proposed management plans for marine parks and marine management areas.
As section 8A agreements can apply to the intertidal zone and management plans for section 8A land that is or includes the intertidal zone will be required to be referred to the Minister for Fisheries (see clause 24(3), new section 59(3)(b)), section 60(2a) will be amended so that the Minister for Fisheries' submissions about a proposed management plan for such section 8A land will have to be considered by the CALM Act Minister before the relevant plan is approved, in a similar manner to that applying to proposed management plans for marine parks and marine management areas.
Note: the term ***intertidal zone*** is defined in clause 4(2).

Clause 26(3)(a) will change the section 60(2a) reference to "controlling body" to "relevant responsible body", a term of wider application which includes the Marine Authority, and any other body, or bodies, responsible for preparation of a proposed management plan for land or waters, i.e. the intertidal zone (also ***responsible body*** in clause 18(1)).

Clauses 26(3)(b) and (c) will amend section 60(2a) to include reference to section 8A land that is in or includes the intertidal zone in its application.

Clause 26(4) will amend section 60(2b) to change the reference to "controlling body" to "Marine Authority" because the only relevant controlling body for a marine park or a marine management area is the Marine Parks and Reserves Authority (Marine Authority).

**Clause 27. Section 62 amended**

Clause 27 will amend section 62 which provides for areas of land or waters to be made classified areas (commonly referred to as management zones).

Clause 27(1) will provide a revised introduction to section 62(1) so that it enables the relevant responsible body for a reserve or section 8A land to recommend to the Minister that a classification be made, whereas the existing provision only enables the Conservation Commission to make such a recommendation about land vested in it.
See also ***responsible body*** in clause 18(1).
As a consequence of the revision made it has been necessary to identify the land that classifications made under section 62(1) may apply to (see clause 27(2), new section 62(1aaa)).

Clause 27(2) provides new section 62(1aaa) which identifies the land that may be classified under section 62(1).
For example, in respect of new section 62(1aaa)(c), section 62(1) can be applied to classify an area in a national park, or an area of section 8A land agreed to be

managed as if it were a national park under a section 8A agreement (see clause 4(2) definition of ***national park***).

Clause 27(3) will delete section 62(2) and insert a revised section 62(2) which is in similar terms to the existing one but will now include, in section 62(2)(a)(iii), a new provision enabling protection of the value of land or waters to the culture and heritage of Aboriginal persons by way of classifying an area as a temporary control area.
It is an offence to enter a temporary control area without lawful authority (*Conservation and Land Management Regulations 2002* regulation 41(b)).

Clause 27(4)(a) will replace the reference to "section 56" in section 62(3)(a) with a reference to "section 56(1)" because clause 21(3) will amend section 56 to provide two new provisions, sections 56(2) and (3), and section 56(1) is the provision relevant to the operation of section 62(3)(a).

Clause 27(4)(b) will amend section 62(3) by inserting a new provision, section 62(3)(ba), which will require that any classification of an area, or amendment to a classified area, must be in conformity with new section 56(2) which provides for management plan objectives applicable to protection and conservation of the value of land to the culture and heritage of Aboriginal persons (see clause 21(3)).

Clause 27(4)(c) will amend section 62(3) by deleting section 62(3)(b) and replacing it with a revised provision because agreements to manage land under section 16 will be replaced by agreements to manage land under new section 8A (see clause 8 and 10).
Land subject to a section 8A agreement cannot be classified under section 62 unless each person responsible has given written approval to the classification (see also ***person responsible*** in clause 8, section 8A(1)).

Clause 27(4)(d) provides a grammatical change to section 62(3).

**Clause 28. Section 64 amended**

Clause 28 will amend section 64 which identifies financial resources to be credited to the Department's operating account.

Clause 28(a) will amend section 64(1)(d) for the purpose of alignment with LA Act processes and terminology.
See also the explanation provided for the revised definition of ***associated body*** in clause 4(2).

Clause 28(b) will amend section 64(1)(da) for the purpose of alignment with LA Act processes and terminology.
See also the explanation provided for the revised definition of ***associated body*** in clause 4(2).

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

Clause 29 provides a new division (**Division 1A — General matters**) in CALM Act Part VIII – Permits, licences, contracts, leases, etc., comprising the new division heading and new section 86A.

The new provision is applicable to protecting and conserving the value of land or waters to the culture and heritage of Aboriginal persons, in the absence of a management plan for the relevant land.

**Division 1A — General matters**

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

Section 86A(1) provides that section 86A(2) does not apply to land subject to an approved management plan prepared in accordance with section 56(2) because new section 56(2) [see clause 21(3)] sets out the management objectives to be met in a management plan to protect and conserve the value of land or waters to the culture and heritage of Aboriginal persons.

The powers to grant licences, etc. are subject to conformity with section 33(3) which requires management to be carried out in accordance with a management plan if there is one (see CALM Act Part VIII, sections 87A(1)(e) and 99(1)(c)).

Section 86A(2) will constrain the grant of licences, etc in the absence of an approved management plan so that the licence may only be granted if protection and conservation of the value of land or waters to the culture and heritage of Aboriginal persons from material adverse effect is achieved; and there is no adverse effect on the protection and conservation of the land's fauna and flora.

The constraint will also apply to certain land that isn't subject to CALM Act management plans such as Crown land within the meaning of section 11 (see paragraph (a) of ***Crown land*** in CALM Act section 87(1)).

See also new section 56(2) in clause 21(3).

**Clause 30. Section 87 amended**

Clause 30 will amend section 87 which provides definitions in section 87(1) for certain terms used in CALM Act Part VIII Division 1, and, in section 87(2), empowers the Governor to bring certain land under the meaning of "Crown land".

Clause 30 will delete and replace section 87(2) as a result of the deletion of existing section 33(2) and its replacement with new section 8C (clause 8).

The new section 87(2) enables the Governor to declare that section 8C land, which may include unallocated Crown land or unmanaged reserves as defined in the LA Act section 3(1), is "Crown land" for the purposes of CALM Act Part VIII Division 1 which includes provision for the grant of permits and licences in respect of "forest produce" as defined in section 87(1).

**Clause 31. Section 87A amended**

Clause 31 will amend section 87A(1) which sets out restrictions on the exercise of the powers conferred on the CEO under CALM Act Part VIII Division 1 to grant licences, permits and leases.

Clause 31(a) will insert new paragraphs (da) and (db) in section 87A(1).

New paragraph (da) of section 87A(1) is a new provision to the effect that for section 8A land the powers of Part VIII Division 1 can only be exercised consistently with the relevant section 8A agreement (see clause 8).

New paragraph (db) of section 87A(1) is a new provision to the effect that for section 8C land the powers of Part VIII Division 1 can only be exercised consistently with the relevant section 8C order (see clause 8).

Clause 31(b) provides grammatical changes to section 87A(1) by inserting "and" after paragraphs (a), (b) and (c).

**Clause 32. Section 97 amended**

Clause 32 will insert new section 97(2A) in section 97 which presently enables leases to be granted over State forests and timber reserves (forest leases).
A section 8A agreement may provide for section 8A land to be managed as if it were a State forest or a timber reserve (clause 8).

Section 97(2A) will prevent the CEO from granting a forest lease under section 97(1) over any section 8A land because it is inappropriate for the CALM Act leasing powers to apply to land that is not vested in or placed with the Conservation Commission.
A section 8A agreement can provide for land to be managed as if it were State forest or a timber reserve, e.g. private land, as well as land already subject to some form of lease, or power to lease.

**Clause 33. Section 97A amended**

Clause 33 will amend section 97A which presently provides for the grant of licences for the use of, and permits for carrying out activities on, land subject to CALM Act Part VIII Division 1.
The amendments to be made to section 97A will make section 97A applicable to State forest and timber reserves, and where relevant, section 8A land that is to be managed as if it were State forest or a timber reserve under a section 8A agreement.

Clauses 33(1) and (2) will delete "to which this Division applies." in sections 97A(1) and (2) respectively, and replace it with "within State forest or a timber reserve.".

Clause 33(3) will delete "to which this Division applies," in section 97A(4) and replace it with "within State forest or a timber reserve,".

Clause 33(4) will delete "to which this Division applies — " in section 97A(6) and replace it with "within State forest or a timber reserve — ".

**Clause 34. Section 98 amended**

Clause 34 will amend section 98 which identifies the land to which CALM Act Part VIII Division 2 applies.

Clause 34 will delete and replace section 98(1)(b) because the existing section 33(2) will be deleted and be replaced by section 8C (see clause 8), i.e. the land presently referred to in section 33(2) will become the land referred to in new section 8C.

**Clause 35. Section 99 amended**

Clause 35 will amend section 99(1) which sets out restrictions on the exercise of the powers conferred on the CEO under CALM Act Part VIII Division 2 to grant licences, permits and leases.

Clause 35(a) will amend section 99(1)(aa) for the purpose of alignment with LA Act processes and terminology.

See also the explanation provided for the revised definition of ***associated body*** in clause 4(2).

Clause 35(b) will delete and replace section 99(1)(ab) for the purpose of alignment with LA Act processes and terminology.

See also the explanation provided for the revised definition of ***associated body*** in clause 4(2).

Clause 35(c) will delete the existing paragraph (b) of section 99(1) and insert new paragraphs (b) and (baa).

New paragraph (b) of section 99(1) will replace the existing paragraph (b) because section 16 agreements will be replaced by section 8A agreements (see clauses 8 and 10).

New paragraph (baa) of section 99(1) is a new provision to the effect that for section 8C land the powers of Part VIII Division 2 can only be exercised consistently with the relevant section 8C order (see clause 8).

Clause 35(d) provides grammatical changes to section 99(1) by inserting "and" after paragraphs (a), (aa) and (ac).

**Clause 36. Section 99A amended**

Clause 36 will amend section 99A which provides restrictions on certain operations in national parks and other reserves vested in the Conservation

Commission, e.g. restrictions on the removal of "forest produce" as defined in CALM Act section 3.

Clause 36(1) will amend section 99A(1) for the purpose of alignment with LA Act processes and terminology.
See also the explanation provided for the revised definition of ***associated body*** in clause 4(2).

Clause 36(2) will amend section 99A(3) to change the reference to "section 56" to a reference to "section 56(1)".
This renumbering will be made as a consequence of insertion of new provisions, i.e. sections 56(2) and (3) under clause 21(3).

Clause 36(3) will amend section 99A(6) for the purpose of alignment with LA Act processes and terminology.
See also the explanation provided for the revised definition of ***associated body*** in clause 4(2).

**Clause 37. Section 100 amended**

Clause 37 will insert new sections 100(2A) and (2B) in section 100 which enables leases to be granted over the land subject to CALM Act Part VIII Division 2.
Land subject to Part VIII Division 2 will include certain section 8A land [see ***land to which this Act applies*** in clause 4(2) and section 98(1)(a)]; and section 8C land (see clause 34).

Section 100(2A) will prevent the CEO from granting a lease of any section 8A land because it is inappropriate for the CALM Act leasing powers to apply to land that is not vested in or placed with the Conservation Commission, and is managed subject to a section 8A agreement to manage the land.
Section 8A land can include private land as well as land already subject to some form of lease, or power to lease.

Section 100(2B) will prevent the CEO from granting a lease of any section 8C land because the appropriate legislation applicable to the leasing of unallocated Crown land or an unmanaged reserve is the LA Act.

**Clause 38. Section 101 amended**

Clause 38 will amend section 101 which provides for the grant of licences for the use of, and permits for carrying out activities on, land subject to CALM Act Part VIII Division 2.
Clause 38 will amend section 101(1e)(b) for the purpose of alignment with LA Act processes and terminology.
See also the explanation provided for the revised definition of ***associated body*** in clause 4(2).

**Clause 39. Section 102 amended**

Clause 39 will amend section 102(1) which provides definitions for certain terms used in CALM Act Part IX – Offences and enforcement.
The amendments will be made to the definition of ***land to which this Part applies*** in section 102(1).

Clause 39(a) will replace paragraph (b) of the definition of ***land to which this Part applies*** because existing section 33(2) will be replaced by section 8C (clauses 8 and 16(2)).
Section 8C land will be managed subject to the relevant section 8C order which places management of unallocated Crown land or an unmanaged reserve with the CEO for specified management functions.
Regulations made under the CALM Act may apply to section 8C land subject to the relevant section 8C order [see also clauses 43 (new section 128A) and 45 (new section 130B) regarding the application of regulations to section 8C land].

Clause 39(a) will also provide a new paragraph, paragraph (ca), for the definition of ***land to which this Part applies***, to include land owned or otherwise held by the CALM Act body corporate, the Conservation and Land Management Executive Body (the Executive Body), established under section 36.
Such land can include private land purchased for conservation purposes which is held by the Executive Body pending resolution of land administration matters prior to its reservation under the LA Act, as well as reserves vested in or placed with the Executive Body, whether solely or jointly with another body.

Clause 39(b) provides a grammatical change by the insertion of "and" after paragraph (a) of ***land to which this Part applies*** in section 102(1).

The amended definition will be:

> ***land to which this Part applies*** means —
>
> (a) land to which this Act applies; and
> (b) section 8C land; and
> (ca) land owned by, vested in or under the care, control and management of the Executive Body, whether solely or jointly with another body; and
> (c) land to which section 131 applies.

A definition for the term ***land to which this Act applies*** (see paragraph (a) of the above definition) has been provided under clause 4(2).
It encompasses State forest, timber reserves, national parks, conservation parks, nature reserves, marine nature reserves, marine parks, marine management areas, and section 5(1)(g) and (h) reserves, as well as land agreed to be managed as if it were a State forest, timber reserve, national park, conservation park, or nature reserve, or for a public purpose, under a section 8A agreement (clause 8).

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

Clause 40 will insert new sections 103A and 103B in CALM Act Part IX - Offences and enforcement, Division 1 - Preliminary.

New section 103A includes a description of an entitlement to carry out activities for Aboriginal customary purposes in relation to land to which CALM Act Part IX applies, within a defence to an allegation that the Act has been breached.

New section 103B provides a defence in relation to matters provided for in a section 8A agreement which would otherwise constitute an offence (clause 8).

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

Section 103A(1) provides definitions for certain terms used in section 103A:

***Aboriginal customary purpose*** — this definition is derived from a recommendation made by the Law Reform Commission of Western Australia in its report *Aboriginal Customary Laws, The interaction of Western Australian law with Aboriginal law and culture*., Final Report, Project 94, 2006 (recommendation 99 [p. 307]);

An Aboriginal customary purpose comprises:

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

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

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

(d) engaging in activities incidental to the purposes in (a), (b) or (c) above;

***exclusive native title holder*** — is the relevant NT Act registered native title body corporate; or each person holding the exclusive native title rights and interests or a person acting with their authority;

***managed land*** — is land, or land and waters, that is the subject of a management plan that has been approved by the Minister under section 60 or an indicative management plan that has been approved under section 14;

A definition for ***management plan*** is provided in CALM Act section 3;

***protected thing*** — a thing is a protected thing if it is flora, fauna, forest produce, or another naturally occurring thing, that has a prohibition or restriction under this Act or regulations on its taking or removal from the land to which CALM Act Part IX applies;

Definitions for the terms ***flora***, ***fauna*** and ***forest produce*** are provided in CALM Act section 3;

The land to which CALM Act Part IX applies is defined as ***land to which this Part applies*** in section 102(1) (see clause 39);

***relevant act***, on land to which CALM Act Part IX applies, is an act that an Aboriginal person may carry out on that land in connection with an Aboriginal customary purpose;
These relevant acts comprise:
(a) entering the land
(b) driving or riding a vehicle or navigating a vessel on the land;
(c) bringing an animal on to the land;
(d) camping temporarily on the land;
(e) lighting or kindling a fire on the land;
(f) taking or removing a protected thing on the land;

***take***, in relation to fauna, — self explanatory;

***take***, in relation to any protected thing other than fauna, — self explanatory;

***vehicle*** — includes wheeled vehicles, vehicles drawn on tracks other than trains, as well as animals driven or ridden such as horses.

Note: definitions for the terms ***Aboriginal person***, ***exclusive native title***, and ***NT Act*** are provided in clause 4(2).

Section 103A(2) provides that the provisions of section 103A do not affect the operation of the *Wildlife Conservation Act 1950*, which is the principal legislation applicable to the protection and conservation of flora and fauna throughout the State, i.e. on all tenures.
The new section 23 for the WC Act provided under clause 49 addresses the taking of fauna and flora for Aboriginal customary purposes and includes a complementary provision (see clause 49, WC Act new section 23(2)).

Section 103A(3) provides a defence which describes the entitlement of an Aboriginal person to perform a relevant act on the land to which CALM Act Part IX applies, for an Aboriginal customary purpose.
In effect, an Aboriginal person is entitled to perform a relevant act for an Aboriginal customary purpose (section 103A(3)(a)), and does not commit an alleged offence against the Act if they can prove:
(a) they carried out a relevant act for an Aboriginal customary purpose and in doing so complied with any regulations that restrict or exclude the entitlement to carry out a relevant act for an Aboriginal customary purpose (sections 103A(3)(b) and (c));
(b) that on exclusive native title land they held that title or they had consent of the relevant native title holders (section 103A(d)); and
(c) if the relevant land is section 8A land, the section 8A agreement permitted them to carry out the relevant act (section 103A(e)).
Provision for making regulations that can restrict or exclude the practice of Aboriginal customary purpose, or the taking or removal of protected things, is made under section 103A(6).

The section 103A(3) defence does not affect the application and operation of other written laws such as the *Bush Fires Act 1954* and the *Firearms Act 1973*.

Section 103A(4) provides that the defence to carrying out activities for Aboriginal customary purposes, as described in section 103A(3), is of no effect to the extent it may be found to be inconsistent with the continued existence, enjoyment or exercise of any native title rights and interests held by another Aboriginal person under the NT Act.
For example, an Aboriginal person may hold a non-exclusive native title right or interest under the NT Act, and an Aboriginal person that does not hold the same right or interest cannot rely on the defence provided in section 103A(3) if they carry out a relevant act that is inconsistent with that non-exclusive native title right or interest.

Section 103A(5) provides an offence in relation to unauthorized sale of a protected thing taken or removed for an Aboriginal customary purpose.
Lawful sale of a protected thing taken or removed for an Aboriginal customary purpose can be made if its sale is excepted, authorised, or licensed under the regulations.
A definition of ***protected thing*** is provided in section 103A(1).
The penalty of a fine of $4 000 (maximum) is consistent with the penalty for the corresponding offence in the WC Act (clause 49, new section 23(5)).
The tradition of bartering things taken or removed for Aboriginal customary purposes can be excepted or authorised under regulations as the term ***sell***, as defined under the *Interpretation Act 1984* section 5, includes barter and exchange.

Section 103A(6) provides regulation headpowers to enable regulations to be made that:
(a) restrict or exclude activities carried out for Aboriginal customary purposes; and
(b) restrict or exclude the taking or removal of a protected thing.
Regulations to restrict or exclude Aboriginal customary purpose cannot be made for land that is the subject of an approved management plan unless this is consistent with the relevant plan.
Other CALM Act regulation headpowers are included in Part X of the Act.

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

Section 103B provides that if a person is charged with an offence against the CALM Act or regulations in relation to section 8A land the accused will have a defence under section 103B to the alleged offence if the person can prove that they were a party to the section 8A agreement or they were acting with the authority of a party to such an agreement, and that the relevant agreement authorised the act or omission constituting the alleged offence.

**Clause 41. Section 103 amended**

Clause 41 will amend section 103 which provides an offence applicable to the unlawful taking of forest produce, and related provisions.
The amendments will be made to section 103(2b) which sets out constraints on the CEO's power to grant an authority to take forest produce from a forest conservation area.

Clause 41(a) will delete and replace the existing paragraph (c) in section 103(2b) because section 16 agreements will be replaced by section 8A agreements (see clauses 8 and 10).

Clause 41(b) will delete and replace the existing paragraph (d) in section 103(2b).

New paragraph (d) of section 103(2b) is in similar terms to the existing provision but adds reference to the new section 33(2) because that section sets out requirements for the protection and conservation of the values of section 8A land to the culture and heritage of Aboriginal people in the absence of a management plan for the relevant land (clause 16(2)).
New paragraph (d) continues to refer to section 33(3).

Clause 41(c) provides grammatical changes to section 103(2b).

**Clause 42. Section 126 amended**

Clause 42 will amend section 126 which provides a general regulation headpower.
Clause 42 will insert new section 126(2A) after section 126(1).

Section 126(2A) describes the land to which the regulations may be applied to:

(a) land to which this Act applies (which is defined under clause 4(2), and includes section 5(1) land, such as national parks, and land subject to a section 8A agreement to manage the land as if it were section 5(1) land or land to be managed for a public purpose);
(b) section 8C land (which is defined under clause 4(2), and may comprise LA Act unallocated Crown land or unmanaged reserves);
(c) land owned by or reserves vested in or under the care, control and management of the Executive Body whether solely or jointly with another body (the Conservation and Land Management Executive Body (Executive Body) is a body corporate established under section 36);
(d) public land as defined in section 81 (this is the land that the forest diseases provisions in CALM Act Part VII may be applied to);
(e) Crown land as defined in section 87(1) (this includes the land that the forest produce provision in CALM Act Part VIII Division 1 may be applied to);
(f) land to which section 131 applies (this is freehold land vested in the CEO under section 131).

**Clause 43. Section 128A inserted**

Clause 43 provides new section 128A which is a headpower enabling regulations to be made applicable to section 8C land (LA Act unallocated Crown land or unmanaged reserves).

**128A. Regulations as to section 8C land**

A regulation made under this headpower will be applicable to section 8C land and it must be consistent with the functions given to the CEO under a relevant section 8C order (see clause 8).

See also clause 42, new section 126(2A)(b); and clause 45, new section 130B.

**Clause 44. Section 130 amended**

Clause 44 will amend section 130 which provides certain regulation headpowers.

Section 130(2), which applies to the application of regulations to land that is under a section 16 management agreement, will be deleted and replaced.

This amendment will be made because section 16 agreements to manage land will be replaced by section 8A agreements to manage land (see clauses 8 and 10).

The extent to which regulations made under section 130 can apply to section 8A land will be subject to the relevant section 8A agreement.

**Clause 45. Section 130B inserted**

Clause 45 provides new section 130B which will address the application of regulations made under the CALM Act and regulations made under the LA Act when land is subject to management under a section 8A agreement or a section 8C order (see also clauses 8, 42, 43 and 44).

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

Section 130B will establish that, in relation to section 8A land or section 8C land, if an inconsistency between regulations made under the LA Act and regulations made under the CALM Act should arise then the CALM Act regulations apply to the extent of the inconsistency.

CALM Act regulations could only apply to section 8A land to the extent provided for in the relevant section 8A agreement (see clauses 8 and 44).

CALM Act regulations could only apply to section 8C land to the extent specified in the relevant section 8C order (see clauses 8 and 43).

**Clause 46. Section 143 inserted**

Clause 46 provides new section 143 which provides a requirement to review the amendments made by the *Conservation Legislation Amendment Act 2010.*

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

Section 143 will establish a requirement that the Minister must review the operation of the amendments made under the *Conservation Legislation Amendment Act 2010* (the ***amendment Act***).
The review is to occur as soon as practicable after 5 years after the date the amendment Act receives the Royal assent.
The Minister's review has to consider whether the policy objectives of the amendments made to the CALM Act by the amendment Act remain valid, and whether the amendments remain appropriate to achieve those policy objectives.
A report based on the review has to be prepared by the Minister.
The report will have to be laid before each House of the Parliament as soon as practicable after it has been prepared, but in any event it must be laid before each House not more than 2 years after the fifth anniversary of the amendment Act receiving the Royal assent.

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

**Clause 47. Act amended**

Clause 47 provides that Part 3 of the Bill amends the *Wildlife Conservation Act 1950*.

**Clause 48. Section 6 amended**

Clause 48 will amend WC Act section 6(1), which provides definitions for certain terms used in that Act.

Clause 48(1) will delete the definition of ***nature reserve*** from WC Act section 6(1) because the replacement provision for section 23 does not use the term nature reserve (clause 49).
It will also delete the definition of ***wildlife sanctuary*** from WC Act section 6(1) as a consequence of the replacement of CALM Act section 16 agreements with section 8A agreements (clauses 8 and 10); and because this term is no longer in use, and a similar definition was deleted from CALM Act section 3 by the *Statutes (Repeals and Minor Amendments) Act 2003* section 39(2).
The replacement provision for section 23 does not use the term wildlife sanctuary (clause 49).

Clause 48(2) will amend punctuation as a consequence of the deletion of the definition of ***wildlife sanctuary*** provided for under clause 48(1).

**Clause 49. Section 23 replaced**

Clause 49 will delete and replace WC Act section 23 which confers an exemption on Aboriginal people which entitles them take fauna and flora for food sufficient for themselves and their family without a licence or compliance with other

provisions of the WC Act, but not for sale, subject to consent of an occupier of land, and any suspension of the provision that has been made.
The new section 23 includes a description of an entitlement to take fauna and flora for Aboriginal customary purposes, not just for food purposes, within a defence to an allegation that the WC Act has been breached.
The entitlement to take fauna and flora for Aboriginal customary purposes may be subject to regulation.

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

Section 23(1) provides definitions for certain terms used in new section 23:

***Aboriginal customary purpose*** — this definition is derived from a recommendation made by the Law Reform Commission of Western Australia in its report *Aboriginal Customary Laws, The interaction of Western Australian law with Aboriginal law and culture*., Final Report, Project 94, 2006 (recommendation 99 [p. 307]);
An Aboriginal customary purpose comprises:

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

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

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

(d) engaging in activities incidental to the purposes in (a), (b) or (c) above;

A similar definition is provided for the CALM Act under clause 40, new section 103A(1);

***Aboriginal person*** — this definition is derived from a recommendation made by the Law Reform Commission of Western Australia in its report *Aboriginal Customary Laws, The interaction of Western Australian law with Aboriginal law and culture*., Final Report, Project 94, 2006 (recommendation 4 [p. 63]);
An Aboriginal person is a person wholly or partly descended from the original inhabitants of Australia.
A similar definition is provided for the CALM Act under clause 4(2);

***CALM Act*** — is an abbreviation for the *Conservation and Land Management Act 1984*;

***CALM Act land*** — comprises:

(a) State forest, timber reserves, national parks, conservation parks, nature reserves, marine parks, marine nature reserves, marine management areas, and CALM Act section 5(1)(g) and (h) reserves;

(b) unallocated Crown land or unmanaged reserves that have been placed under the management of the CEO by an order made under CALM Act section 8C (clause 8);
(c) freehold land vested in the CEO under CALM Act section 131;

***exclusive native title*** — this definition is derived from the *Native Title Act 1993* (Cth) (NT Act) sections 223 and 225;
A similar definition is provided for the CALM Act under clause 4(2);

***exclusive native title holder*** — is the relevant NT Act registered native title body corporate; or each person holding the exclusive native title rights and interests or a person acting with their authority;
A similar definition is provided for the CALM Act under clause 40, new section 103A(1);

***NT Act*** — is an abbreviation for the *Native Title Act 1993* (Commonwealth).
A similar definition is provided for the CALM Act under clause 4(2).

Note: WC Act section 6(1) includes definitions for the following terms: ***fauna***; ***flora***; ***to sell***; ***to take*** (in relation to any fauna); and ***to take*** (in relation to any flora).

Section 23(2) provides that the provisions of section 23 do not affect the operation of the CALM Act.
Under the Bill amendments to the CALM Act will apply to activities for Aboriginal customary purposes in respect of certain land, including the taking of protected things such as fauna and flora (see clause 40, section 103A).
The CALM Act also includes a complementary provision (see clause 40, section 103A(2)).

Section 23(3) provides a defence which describes the entitlement of an Aboriginal person to take fauna or flora for an Aboriginal customary purpose.
In effect, an Aboriginal person is entitled to take fauna or flora for an Aboriginal customary purpose (section 23(3)(a)), and does not commit an alleged offence against the Act if they can prove:
(a) they took fauna or flora for an Aboriginal customary purpose and in doing so complied with any regulations that restrict or exclude the entitlement to take fauna or flora for an Aboriginal customary purpose (sections 23(3)(b) and (c));
(b) that on land other than CALM Act land they had consent of the person in control or management of the land (section 23(3)(d)); and
(c) that on exclusive native title land they held that title or they had consent of the relevant native title holders (section 23(3)(e)).
Provision for making regulations that can restrict or exclude the taking fauna or flora for Aboriginal customary purposes is made under section 23(6).

The section 23(3) defence is only applicable to offences against the WC Act and does not affect the application and operation of other written laws.

Section 23(4) provides that if the defence applicable to an Aboriginal person exercising the entitlement to take fauna or flora for Aboriginal customary purposes, as described in section 23(3), is found to be inconsistent with the continued existence, enjoyment or exercise of any native title rights and interests held by another Aboriginal person under the NT Act, the defence does not apply if it is proved that fauna or flora was taken for food sufficient only for themselves and their family, without a licence or compliance with other provisions of the WC Act, but not for sale.
This provision preserves the general exemption provided in the WC Act existing section 23(1) that entitles Aboriginal persons to take fauna or flora for food sufficient only for themselves and their family, but not for sale.
Preservation of the existing entitlement needs to be included because the new section 23 has had to take into account the standing of native title holders under the NT Act, and to remove the effect of the existing general entitlement would be in conflict with the *Racial Discrimination Act 1975* (Cth).

Section 23(5) provides an offence in relation to unauthorized sale of fauna or flora taken for an Aboriginal customary purpose.
Lawful sale of fauna or flora taken for an Aboriginal customary purpose can be made if its sale is excepted, authorised, or licensed under the regulations.
The penalty of a fine of $4 000 (maximum) is consistent with the penalty for the corresponding offence in the CALM Act (clause 40, new section 103A(5)).
The tradition of bartering fauna or flora taken for Aboriginal customary purposes can be excepted or authorised under regulations as the term ***to sell***, as defined under WC Act section 6(1), includes barter and exchange.

Section 23(6) provides regulation headpowers to enable regulations to be made that restrict or exclude the taking of fauna or flora for Aboriginal customary purposes.
Other WC Act regulation headpowers are found in section 28 of the Act.

Note: under the *Wildlife Conservation Regulations 1970* regulation 63, the existing section 23 exemption has been suspended in respect of all declared rare flora, and except for nine species, all specially protected fauna.

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