

## **Biodiversity Conservation Bill 2015**

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**Schedule 1 — Matters for which  
regulations may be made**

**Defined terms**

Western Australia

LEGISLATIVE ASSEMBLY

*(As amended during consideration in detail)*

**Biodiversity Conservation Bill 2015**

**A Bill for**

**An Act to provide for —**

- **the conservation and protection of biodiversity and biodiversity components in Western Australia; and**
- **the ecologically sustainable use of biodiversity components in Western Australia; and**
- **the repeal of the *Wildlife Conservation Act 1950* and the *Sandalwood Act 1929*; and**
- **consequential amendments to other Acts,**  
**and for related purposes.**

The Parliament of Western Australia enacts as follows:

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## Part 1 — Preliminary

### 1. Short title

This is the *Biodiversity Conservation Act 2015*.

### 2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

### 3. Objects of Act

(1) The objects of this Act are —

- (a) to conserve and protect biodiversity and biodiversity components in the State; and
- (b) to promote the ecologically sustainable use of biodiversity components in the State.

(2) In the pursuit of the objects of this Act, regard must be had to the principles of ecologically sustainable development set out in section 4.

### 4. Principles of ecologically sustainable development

The principles of ecologically sustainable development are as follows —

- (a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;
- (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;



- 1 (c) the present generation should ensure that the health,  
2 diversity and productivity of the environment is  
3 maintained or enhanced for the benefit of future  
4 generations;
- 5 (d) the conservation of biodiversity and ecological integrity  
6 should be a fundamental consideration in  
7 decision-making;
- 8 (e) improved valuation, pricing and incentive mechanisms  
9 should be promoted.

10 **5. Terms used**

11 (1) In this Act, unless the contrary intention appears —

12 ***abandoned fauna*** means fauna that —

- 13 (a) belongs to a species the juveniles of which are normally  
14 cared for by a parent; and
- 15 (b) is of an age at which it would normally be cared for by a  
16 parent; and
- 17 (c) has been abandoned by its parents;

18 ***animal*** means any member, alive or dead, of the animal  
19 kingdom (other than a human being) and includes the  
20 following —

- 21 (a) any viable or non-viable progeny, larva, embryo, egg,  
22 ovum or sperm of an animal;
- 23 (b) any part, product or genetic material of an animal from  
24 which another animal could be produced;
- 25 (c) any other part of an animal;
- 26 (d) the carcass of an animal;

27 ***annual report***, in relation to the Department, means the annual  
28 report submitted by the accountable authority of the Department  
29 under the *Financial Management Act 2006* Part 5;

30 ***apply***, in relation to an identifier, includes to affix, to attach, to  
31 implant and to insert;

**s. 5**

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- 1           **biodiversity** means the variability among living organisms and  
2           the ecosystems of which those organisms are a part and includes  
3           the following —
- 4           (a) diversity within native species and between native  
5           species;
- 6           (b) diversity of ecosystems;
- 7           (c) diversity of other biodiversity components;
- 8           **biodiversity components** includes native species, habitats,  
9           ecological communities, genes, ecosystems and ecological  
10          processes;
- 11          **biodiversity conservation** means the conservation and  
12          protection of biodiversity and biodiversity components;
- 13          **biodiversity conservation agreement** has the meaning given in  
14          section 114(1);
- 15          **biodiversity conservation covenant** has the meaning given in  
16          section 122(1);
- 17          **biodiversity conservation measures** includes the following —
- 18          (a) penalties for offences under this Act;
- 19          (b) biodiversity management programmes;
- 20          (c) recovery plans and interim recovery plans;
- 21          (d) biodiversity conservation agreements;
- 22          (e) biodiversity conservation covenants;
- 23          (f) measures in place under Part 9 for the control of  
24          environmental pests;
- 25          (g) measures in place under any other written law that have  
26          the effect, whether directly or indirectly, of conserving  
27          or protecting biodiversity or biodiversity components,  
28          including the following —
- 29                  (i) biosecurity measures;
- 30                  (ii) regulations under the CALM Act or the  
31                  *Environmental Protection Act 1986*;
- 32                  (iii) environmental protection policies;

- 1 (iv) conditions agreed or decided under the  
2 *Environmental Protection Act 1986* Part IV  
3 Division 3;
- 4 (v) management plans under the *Fish Resources*  
5 *Management Act 1994* and measures under that  
6 Act relating to the control or management of  
7 exotic fish, noxious fish or biological threats;
- 8 (vi) State planning policies under the *Planning and*  
9 *Development Act 2005*;

10 ***biodiversity management programme*** means a biodiversity  
11 management programme approved under section 73(1);

12 ***biological resources*** includes biochemical substances, genetic  
13 resources, organisms, populations and any other biotic  
14 component of an ecosystem with actual or potential use or value  
15 for humanity;

16 ***bioprospecting activity*** means an activity involving or related to  
17 the taking of fauna or flora for the purposes of identifying,  
18 extracting or recovering biological resources;

19 ***biosecurity measures*** means measures under the *Biosecurity*  
20 *and Agriculture Management Act 2007* for the control of  
21 declared pests including the following —

- 22 (a) requirements or restrictions imposed by Part 2 of  
23 that Act;
- 24 (b) pest control notices, pest exclusion notices and pest  
25 keeping notices under Part 2 of that Act;
- 26 (c) management plans under Part 2 of that Act;
- 27 (d) regulations under that Act relating to the keeping,  
28 breeding, cultivation or supply of declared pests;
- 29 (e) the terms and conditions of authorisations under that Act  
30 relating to the keeping, breeding, cultivation or supply  
31 of declared pests;

32 ***business day*** means a day that is not a Saturday, Sunday or  
33 public holiday;

**s. 5**

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1 **CALM Act** means the *Conservation and Land Management*  
2 *Act 1984*;

3 **CALM Act land** means each of the following categories of  
4 land —

- 5 (a) land, or land and waters, to which the CALM Act  
6 applies under the CALM Act section 5;
- 7 (b) section 8A land as defined in the CALM Act section 3;
- 8 (c) section 8C land as defined in the CALM Act section 3;
- 9 (d) land owned by, vested in, or under the care, control and  
10 management of, the Executive Body as defined in the  
11 CALM Act section 3, whether solely or jointly with  
12 another body;
- 13 (e) land to which the CALM Act section 131 applies;

14 **CALM Act officer** means —

- 15 (a) a wildlife officer; or
- 16 (b) a forest officer as defined in the CALM Act section 3; or
- 17 (c) a ranger as defined in the CALM Act section 3; or
- 18 (d) a conservation and land management officer as defined  
19 in the CALM Act section 3;

20 **capture**, in relation to fauna, includes to catch, to gather, to trap,  
21 to restrain and to remove;

22 **carcass** includes part of a carcass;

23 **CEO** has the meaning given in the CALM Act section 3;

24 **cetacean** means a member of the sub-order Mysticeti or  
25 Odontoceti of the Order Cetacea;

26 **CI Act** means the *Criminal Investigation Act 2006*;

27 **class** —

- 28 (a) in relation to animals, means any grouping of animals;  
29 and
- 30 (b) in relation to plants, means any grouping of plants;

- 
- 1            ***collapsed ecological community*** means an ecological  
2            community that is listed as a collapsed ecological community  
3            under section 31(1);
- 4            ***commercial purpose*** means the purpose of sale or any other  
5            purpose that is directed to financial gain or reward;
- 6            ***Commission*** has the meaning given in the CALM Act section 3;
- 7            ***condition*** includes a limitation or restriction;
- 8            ***conserve*** includes to maintain and to restore;
- 9            ***container*** includes the following —
- 10           (a) a case, box, bag, wrapper or material of any kind used or  
11           intended to be used to cover, contain or package  
12           something;
- 13           (b) a bulk container, or any means of bulk transport, used or  
14           intended to be used to cover, contain or package  
15           something;
- 16           ***contravene*** includes to fail to comply with;
- 17           ***control***, in relation to an environmental pest or other organism,  
18           includes the following —
- 19           (a) to eradicate;
- 20           (b) to destroy;
- 21           (c) to prevent the presence or spread of;
- 22           (d) to manage;
- 23           (e) to examine or test for;
- 24           (f) to survey for or monitor the presence or spread of;
- 25           (g) to treat;
- 26           ***critical habitat*** means habitat that is listed as critical habitat  
27           under section 54(1);
- 28           ***critically endangered ecological community*** means a  
29           threatened ecological community that is listed in the category of  
30           critically endangered ecological community under  
31           section 27(1)(a);

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1 ***critically endangered species*** means a threatened species that is  
2 listed in the category of critically endangered species under  
3 section 19(1)(a);

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

6 ***cultivated flora*** means flora that has been intentionally sown,  
7 planted or propagated unless —

- 8 (a) it has been sown, planted or propagated as required  
9 under this Act or another written law; or  
10 (b) it is of a class declared by the regulations to be excluded  
11 from this definition;

12 ***declared pest*** has the meaning given in the *Biosecurity and*  
13 *Agriculture Management Act 2007* section 6;

14 ***Department*** has the meaning given in the CALM Act section 3;  
15 ***disturb*** —

- 16 (a) in relation to fauna, includes the following —  
17 (i) to chase, drive, follow, harass, herd or hunt fauna  
18 by any means;  
19 (ii) to apply an identifier to fauna by any means;  
20 (iii) to engage in an activity that has the effect,  
21 whether directly or indirectly, of altering the  
22 natural behaviour of fauna to its detriment;  
23 (iv) to cause or permit anything referred to in  
24 subparagraph (i), (ii) or (iii) to be done;  
25 (b) in relation to flora, includes the following —  
26 (i) to engage in an activity that has the effect,  
27 whether directly or indirectly, of altering the long  
28 term persistence of the flora in its habitat;  
29 (ii) to cause or permit an activity referred to in  
30 subparagraph (i) to be engaged in;

31 ***ecological community*** means a naturally occurring assemblage  
32 of organisms that occurs in a particular habitat;

- 1 ***ecologically sustainable use***, in relation to biodiversity  
2 components, means use of the biodiversity components in a way  
3 and at a rate that does not lead to the long-term decline of  
4 biodiversity, thereby maintaining the potential of the  
5 biodiversity components to meet the needs of present and future  
6 generations;
- 7 ***ecosystem*** means a dynamic complex of ecological communities  
8 and the non-living chemical and physical parts of their  
9 environment interacting as a functional unit;
- 10 ***endangered ecological community*** means a threatened  
11 ecological community that is listed in the category of  
12 endangered ecological community under section 27(1)(b);
- 13 ***endangered species*** means a threatened species that is listed in  
14 the category of endangered species under section 19(1)(b);
- 15 ***environmental pest*** means a species in respect of which an  
16 order under section 132(1) is in force;
- 17 ***environmental pest notice*** has the meaning given in  
18 section 135(2);
- 19 ***environmental protection policy*** means an approved policy as  
20 defined in the *Environmental Protection Act 1986* section 3(1);
- 21 ***EPBC Act*** means the *Environment Protection and Biodiversity*  
22 *Conservation Act 1999* (Commonwealth);
- 23 ***exclusive economic zone*** has the meaning given in the *Seas and*  
24 *Submerged Lands Act 1973* (Commonwealth) section 3;
- 25 ***export*** means to take out of the State and includes the  
26 following —
- 27 (a) to offer to export;
- 28 (b) to send or deliver for export;
- 29 (c) to receive, or have in possession, for export;
- 30 ***external Territory*** has the meaning given in the *Acts*  
31 *Interpretation Act 1901* (Commonwealth) section 17;
- 32 ***extinct species*** means a native species that is listed as an extinct  
33 species under section 23(1);

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- 1 ***fauna*** means —
- 2 (a) an animal that —
- 3 (i) belongs to a native species unless the animal is
- 4 determined by order under section 9(2) not to be
- 5 fauna for the purposes of this Act; or
- 6 (ii) is determined by order under section 9(1) to be
- 7 fauna for the purposes of this Act;
- 8 or
- 9 (b) a native species or taxonomic grouping of native species
- 10 that is determined by order under section 10(1) or (2) to
- 11 be fauna for the purposes of this Act;
- 12 ***fauna processing establishment*** means a place used to process
- 13 fauna, other than fish or pearl oyster, for a commercial purpose;
- 14 ***fish*** has the meaning given in the *Fish Resources Management*
- 15 *Act 1994* section 4(1);
- 16 ***flora*** means —
- 17 (a) a plant that —
- 18 (i) belongs to a native species and is indigenous to
- 19 the State unless the plant is determined by order
- 20 under section 9(4) not to be flora for the
- 21 purposes of this Act; or
- 22 (ii) is determined by order under section 9(3) to be
- 23 flora for the purposes of this Act;
- 24 or
- 25 (b) a native species or taxonomic grouping of native species
- 26 that is determined by order under section 10(1) or (2) to
- 27 be flora for the purposes of this Act;
- 28 ***flora processing establishment*** means a place used to process
- 29 flora for a commercial purpose but does not include a place used
- 30 solely to process forest products taken under a contract to which
- 31 the *Forest Products Act 2000* Part 8 applies unless those forest
- 32 products are sandalwood;



- 1           **genetic resources** means any material of plant, animal,  
2           microbial or other origin that contains functional units of  
3           heredity and that has actual or potential value to humanity;
- 4           **habitat** means the biophysical medium or media —
- 5           (a) occupied (continuously, periodically or occasionally) by  
6           an organism or group of organisms; or
- 7           (b) once occupied (continuously, periodically or  
8           occasionally) by an organism, or group of organisms,  
9           and into which organisms of that kind have the potential  
10          to be reintroduced;
- 11          **habitat conservation notice** has the meaning given in  
12          section 59(1);
- 13          **identifier** means a tag, mark, brand, electronic device, or other  
14          thing of a prescribed kind, designed or used to identify, track or  
15          trace an organism;
- 16          **import** means to bring into the State;
- 17          **injured fauna** means fauna that is injured, sick or diseased;
- 18          **interim recovery plan** means an interim recovery plan made  
19          under section 105;
- 20          **key threatening process** means a threatening process that is  
21          listed as a key threatening process under section 34(1);
- 22          **label** means to mark a package, container or other thing to  
23          identify it or its contents by attaching to it or inserting in it a tag,  
24          mark, stamp or written statement;
- 25          **land** has the meaning given in the *Land Administration*  
26          *Act 1997* section 3(1);
- 27          **lawful activity** has the meaning given in section 6;
- 28          **lawful authority** has the meaning given in section 7(2);
- 29          **licence** means a licence granted under the regulations;
- 30          **managed fauna** means fauna prescribed or of a class prescribed  
31          by regulations referred to in section 163(1) as managed fauna  
32          for the purposes of the section in which the term is used;

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- 1           **ministerial guidelines** means guidelines issued under  
2           section 260;
- 3           **mobile home** means a vehicle that —
- 4           (a) is ordinarily used for human habitation; and
- 5           (b) is permanently or semi-permanently stationary in a  
6           single location;
- 7           **native species** has the meaning given in section 8(2);
- 8           **obstruct** includes to delay, to hinder and to resist;
- 9           **occupier**, in relation to land, means a person who is in  
10          occupation or control of the land, or is entitled to be in  
11          occupation or control of the land, whether or not the person  
12          owns the land;
- 13          **organism** means a life form, other than a human being, whether  
14          alive or not and includes part of such a life form and the genetic  
15          material of such a life form;
- 16          **owner** —
- 17          (a) in relation to private land, means —
- 18               (i) a person who is for the time being registered  
19               under the *Transfer of Land Act 1893* as  
20               proprietor of an estate in fee simple in the land;  
21               or
- 22               (ii) a person who is for the time being the holder of  
23               the freehold in the land as evidenced by a  
24               memorial that is registered under the  
25               *Registration of Deeds Act 1856*; or
- 26               (iii) an executor or administrator of, or a person  
27               appointed under a written law to act on behalf of,  
28               a person referred to in subparagraph (i) or (ii); or
- 29               (iv) an agent or attorney of a person referred to in  
30               subparagraph (i) or (ii); or
- 31               (v) a mortgagee in possession of the land;

- 1 (b) in relation to Crown land, means the public authority  
2 that has the care, control or management of the land or,  
3 if there is no such public authority, the State;
- 4 **part**, in relation to an animal or carcass, includes the bodily  
5 fluid, bone, chitin, exoskeleton, feathers, flesh, fur, hide, organs,  
6 pelage, scale, shell, skin, teeth, tissue and viscera of the animal  
7 or carcass;
- 8 **pearl oyster** has the meaning given in the *Pearling Act 1990*  
9 section 3(1);
- 10 **place** means any land, building, structure, tent or mobile home  
11 or a part of any land, building, structure, tent or mobile home;
- 12 **plant** means any member, alive or dead, of the plant kingdom or  
13 the fungus kingdom and includes the following —
- 14 (a) any viable or non-viable ovule, seed, pollen or spore of a  
15 plant;
- 16 (b) any part, product or genetic material of a plant from  
17 which another plant could be produced;
- 18 (c) any other part of a plant;
- 19 **potential carrier** means —
- 20 (a) any thing that is capable of carrying an environmental  
21 pest; or
- 22 (b) any thing that is capable of carrying anything else that is  
23 capable of carrying an environmental pest;
- 24 **prescribed** means prescribed by regulations made under this  
25 Act;
- 26 **private land** means alienated land as defined in the *Land*  
27 *Administration Act 1997* section 3(1);
- 28 **process** —
- 29 (a) in relation to fauna, means to cut, skin, treat, freeze,  
30 chill, can, cure, pack or preserve;
- 31 (b) in relation to flora, means to obtain or produce a thing or  
32 substance of a prescribed kind from flora using a  
33 prescribed method;

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- 1            ***prohibited device*** means —
- 2            (a) a thing or substance of a kind prescribed as a prohibited
- 3            device; or
- 4            (b) a thing or substance that is used in a manner other than
- 5            that prescribed for its use;
- 6            ***prohibited method*** means —
- 7            (a) a method of a kind prescribed as a prohibited method; or
- 8            (b) a method that is used in a manner other than that
- 9            prescribed for its use;
- 10          ***public authority*** means —
- 11          (a) a Minister of the State; or
- 12          (b) an agency or an organisation as those terms are defined
- 13          in the *Public Sector Management Act 1994* section 3(1);
- 14          or
- 15          (c) a local government or a regional local government; or
- 16          (d) a body, whether incorporated or not, or the holder of an
- 17          office, that is established or continued for a public
- 18          purpose under a written law and that, under the authority
- 19          of a written law, performs a statutory function on behalf
- 20          of the State;
- 21          ***record*** means any record of information, irrespective of how the
- 22          information is recorded or stored or able to be recovered and
- 23          includes the following —
- 24          (a) any thing from which images, sounds or writings can be
- 25          reproduced, with or without the aid of anything else;
- 26          (b) any thing on which information is recorded or stored,
- 27          whether electronically, magnetically, mechanically or by
- 28          some other means;
- 29          ***recovery plan*** means —
- 30          (a) a recovery plan approved under section 89(1); or
- 31          (b) a plan adopted as a recovery plan under section 92(1);

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- 1           **Registrar** —
- 2           (a) in relation to land that is under the operation of the
- 3                 *Transfer of Land Act 1893*, means the Registrar of Titles
- 4                 under that Act;
- 5           (b) in relation to land that is alienated from the Crown but is
- 6                 not under the operation of the *Transfer of Land*
- 7                 *Act 1893*, means the Registrar of Deeds and Transfers
- 8                 under the *Registration of Deeds Act 1856*;
- 9           **remedial action** has the meaning given in section 217(1);
- 10          **sandalwood** means a plant that belongs to the species *Santalum*
- 11          *spicatum* or to another species of flora prescribed for the
- 12          purposes of this definition;
- 13          **self-governing Territory** has the meaning given in the
- 14          EPBC Act section 528;
- 15          **specially protected fauna** means fauna that belongs to a
- 16          specially protected species;
- 17          **specially protected flora** means flora that belongs to a specially
- 18          protected species;
- 19          **specially protected species** means a native species that is listed
- 20          as a specially protected species under section 13(1);
- 21          **species** —
- 22          (a) means a group of organisms that —
- 23                 (i) interbreed to produce fertile offspring; or
- 24                 (ii) possess common characteristics derived from a
- 25                 common gene pool,
- 26                 and
- 27          (b) includes —
- 28                 (i) a taxonomically separate population of a species,
- 29                 being a population that is characterised by
- 30                 morphological or other biological differences
- 31                 from other populations of that species; and

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- 1 (ii) a distinct population of organisms that the  
2 Minister has determined by order under  
3 section 9(5) to be a species for the purposes of  
4 this Act;

5 **State agreement** means an agreement to which the State is a  
6 party and which is authorised, ratified or approved by a written  
7 law;

8 **supply** includes the following —

- 9 (a) to sell;  
10 (b) to send or deliver for the purpose of sale or on sale;  
11 (c) to receive, or have in possession, for the purpose of sale;  
12 (d) to dispose of under a hire-purchase agreement;  
13 (e) to give;  
14 (f) to send or deliver for the purpose of giving;  
15 (g) to receive, or have in possession, for the purpose of  
16 giving;  
17 (h) to cause or permit anything referred to in  
18 paragraph (a), (b), (c), (d), (e), (f) or (g) to be done;  
19 (i) to offer to do anything referred to in  
20 paragraph (a), (b), (c), (d), (e), (f) or (g);

21 **take** —

- 22 (a) in relation to fauna, includes the following —  
23 (i) to kill, injure, harvest or capture fauna by any  
24 means;  
25 (ii) to cause or permit anything referred to in  
26 subparagraph (i) to be done;  
27 (b) in relation to flora, includes the following —  
28 (i) to gather, pluck, cut, pull up, destroy, dig up,  
29 remove, harvest or damage flora by any means;  
30 (ii) to cause or permit anything referred to in  
31 subparagraph (i) to be done;

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- 1           **threatened ecological community** means an ecological  
2           community that —
- 3           (a) is listed as a threatened ecological community under  
4           section 27(1); or
- 5           (b) is to be regarded as a threatened ecological community  
6           under section 33;
- 7           **threatened fauna** means fauna that belongs to a threatened  
8           species;
- 9           **threatened flora** means flora that belongs to a threatened  
10          species;
- 11          **threatened species** means a native species that —
- 12          (a) is listed as a threatened species under section 19(1); or
- 13          (b) is to be regarded as a threatened species under  
14          section 26(2);
- 15          **threatening process** means a process that threatens, or may  
16          threaten, the survival, abundance or evolutionary development  
17          of a native species or ecological community;
- 18          **treat** includes to disinfect, to disinfest, to clean, to vaccinate or  
19          apply other prophylactic measures, and to isolate;
- 20          **vehicle** means any thing capable of transporting people or things  
21          by air, road, rail or water, and it does not matter how the thing is  
22          moved or propelled;
- 23          **vulnerable ecological community** means a threatened  
24          ecological community that is listed in the category of vulnerable  
25          ecological community under section 27(1)(c);
- 26          **vulnerable species** means a threatened species that is listed in  
27          the category of vulnerable species under section 19(1)(c);
- 28          **wildlife officer** has the meaning given in the CALM Act  
29          section 3.
- 30          (2) Despite the definitions of **occupier** and **owner** in subsection (1),  
31          neither the CEO nor the Executive Body (as defined in the  
32          CALM Act section 3) is to be regarded as an occupier or owner  
33          of land for the purposes of this Act.

1 **6. Lawful activity**

2 For the purposes of this Act, but without limiting what may  
3 constitute a lawful activity, a reference in this Act to a lawful  
4 activity includes —

- 5 (a) clearing that does not involve an offence under the  
6 *Environmental Protection Act 1986* section 51C; and  
7 (b) an activity prescribed or of a class prescribed for the  
8 purposes of this section.

9 **7. Lawful authority**

10 (1) In this section —

11 ***relevant authorisation*** means a licence, permit, approval,  
12 consent, registration, exemption or other authority issued,  
13 granted, conferred or given under —

- 14 (a) this Act; or  
15 (b) the CALM Act; or  
16 (c) the *Environmental Protection Act 1986*; or  
17 (d) the *Fish Resources Management Act 1994*; or  
18 (e) the *Pearling Act 1990*; or  
19 (f) an enactment prescribed for the purposes of this  
20 definition.

21 (2) For the purposes of this Act, but without limiting what may  
22 constitute lawful authority, there is lawful authority for an  
23 activity if —

- 24 (a) the activity —  
25 (i) is authorised by a relevant authorisation; or  
26 (ii) is otherwise authorised or required under a  
27 written law or State agreement;  
28 and  
29 (b) all requirements and conditions that apply to or in  
30 relation to the activity are complied with, whether those  
31 requirements and conditions are imposed under the



1 relevant authorisation, written law or State agreement  
2 referred to in paragraph (a) or otherwise.

3 **8. Native species**

4 (1) In this section —

5 *coastal sea* of Australia or an external Territory has the meaning  
6 given in the *Acts Interpretation Act 1901* (Commonwealth)  
7 section 15B(4);

8 *continental shelf* means the continental shelf (as defined in the  
9 *Seas and Submerged Lands Act 1973* (Commonwealth)  
10 section 3) of Australia including its external Territories.

11 (2) For the purposes of this Act, a native species is a species —

12 (a) that is indigenous to Australia or an external Territory;  
13 or

14 (b) that is indigenous to the sea-bed of the coastal sea of  
15 Australia or an external Territory; or

16 (c) that is indigenous to the continental shelf; or

17 (d) that is indigenous to the exclusive economic zone; or

18 (e) members of which periodically or occasionally visit —

19 (i) Australia or an external Territory; or

20 (ii) the exclusive economic zone;

21 or

22 (f) that was present in Australia or an external Territory  
23 before 1400.

24 **9. Determination as to fauna, flora or species**

25 (1) The Minister may, by order, determine that an animal, other  
26 than an animal that belongs to a native species, is fauna for the  
27 purposes of this Act.

28 (2) The Minister may, by order, determine that an animal that  
29 belongs to a native species is not fauna for the purposes of  
30 this Act.

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- 1 (3) The Minister may, by order, determine that a plant, other than a  
2 plant that belongs to a native species and is indigenous to the  
3 State, is flora for the purposes of this Act.
- 4 (4) The Minister may, by order, determine that a plant that belongs  
5 to a native species and is indigenous to the State is not flora for  
6 the purposes of this Act.
- 7 (5) The Minister may, by order, determine that a distinct population  
8 of organisms is a species for the purposes of this Act.
- 9 (6) An order made under this section may provide that it applies to  
10 the whole of the State, a specified part of the State or specified  
11 parts of the State.
- 12 (7) Section 258 applies to an order made under this section.

13 **10. Determination of certain native species or taxonomic**  
14 **groupings as fauna or flora**

- 15 (1) The Minister may, by order, determine that a particular native  
16 species, or taxonomic grouping of native species, that is  
17 classified as belonging to a kingdom other than the animal  
18 kingdom, the plant kingdom or the fungus kingdom is either  
19 fauna or flora for the purposes of this Act.
- 20 (2) If it appears to the Minister that according to scientific opinion a  
21 particular native species or taxonomic grouping of native  
22 species is not classified as belonging to the animal kingdom, the  
23 plant kingdom, the fungus kingdom or another kingdom, the  
24 Minister may, by order, determine that the species or taxonomic  
25 grouping is either fauna or flora for the purposes of this Act.
- 26 (3) Section 258 applies to an order made under this section.

27 **11. Crown bound**

- 28 (1) This Act binds the State and, so far as the legislative power of  
29 the State permits, the Crown in all its other capacities.

1 (2) Nothing in this Act makes the State, or the Crown in any of its  
2 other capacities, liable to be prosecuted for an offence.

3 **12. Application of Act in relation to aquatic matters**

4 (1) This Act, other than Part 9, does not apply to or in relation to  
5 any fish or pearl oyster that is the subject of —

6 (a) aquaculture, as defined in the *Fish Resources*  
7 *Management Act 1994* section 4(1); or

8 (b) commercial fishing, as defined in the *Fish Resources*  
9 *Management Act 1994* section 4(1); or

10 (c) recreational fishing, as defined in the *Fish Resources*  
11 *Management Act 1994* section 4(1); or

12 (d) hatchery activities, as defined in the *Pearling Act 1990*  
13 section 3(1); or

14 (e) pearling, as defined in the *Pearling Act 1990*  
15 section 3(1).

16 (2) Nothing in subsection (1) affects the application of the  
17 CALM Act Part II Division 3.

1 **Part 2 — Listing of native species, ecological**  
2 **communities and threatening processes**

3 **Division 1 — Native species**

4 **Subdivision 1 — Specially protected species**

5 **13. Listing of specially protected species**

6 (1) The Minister may, by order, list a native species as a specially  
7 protected species in —

8 (a) any one or more of the following categories —

9 (i) species of special conservation interest;

10 (ii) migratory species;

11 (iii) cetaceans;

12 (iv) species subject to international agreement;

13 or

14 (b) the category of species otherwise in need of special  
15 protection.

16 (2) A native species is not eligible for listing as a specially  
17 protected species if it is a threatened species or an extinct  
18 species.

19 (3) Section 258 applies to an order made under subsection (1).

20 **14. Criteria for categorisation as species of special conservation**  
21 **interest**

22 A native species is eligible for listing in the category of species  
23 of special conservation interest at a particular time if, at that  
24 time —

25 (a) it is of special conservation interest because it —

26 (i) has a naturally low population; or

27 (ii) has a restricted natural range; or

- 1 (iii) is subject to or recovering from a significant  
2 population decline or reduction in natural range;  
3 or  
4 (iv) is of special interest to science;  
5 and  
6 (b) in the opinion of the Minister —  
7 (i) the penalty for an offence under this Act  
8 involving the taking of the species is not likely to  
9 effectively deter its taking; and  
10 (ii) taking of the species may result in undue  
11 depletion of the species;  
12 and  
13 (c) listing in that category is otherwise in accordance with  
14 the ministerial guidelines.

15 **15. Criteria for categorisation as migratory species**

- 16 (1) A native species is eligible for listing in the category of  
17 migratory species at a particular time if, at that time —  
18 (a) either —  
19 (i) members of the species periodically or  
20 occasionally visit Australia or an external  
21 Territory or the exclusive economic zone; or  
22 (ii) the species is the subject of an international  
23 agreement that relates to the protection of  
24 migratory species and that binds the  
25 Commonwealth;  
26 and  
27 (b) listing in that category is otherwise in accordance with  
28 the ministerial guidelines.  
29 (2) If a native species is listed in the category of migratory species  
30 on the basis of subsection (1)(a)(ii), the listing must specify the  
31 relevant international agreement.

1 **16. Criteria for categorisation as cetaceans**

2 A native species is eligible for listing in the category of  
3 cetaceans at a particular time if, at that time —

- 4 (a) it is a cetacean; and  
5 (b) listing in that category is otherwise in accordance with  
6 the ministerial guidelines.

7 **17. Criteria for categorisation as species subject to international**  
8 **agreement**

9 (1) A native species is eligible for listing in the category of species  
10 subject to international agreement at a particular time if, at that  
11 time —

- 12 (a) the species is the subject of an international agreement  
13 that relates to the provision, coordination or  
14 encouragement of special protective measures for the  
15 species and that binds the Commonwealth; and  
16 (b) listing in that category is otherwise in accordance with  
17 the ministerial guidelines.

18 (2) If a native species is listed in the category of species subject to  
19 international agreement, the listing must specify the relevant  
20 international agreement.

21 **18. Criteria for categorisation as species otherwise in need of**  
22 **special protection**

23 A native species is eligible for listing in the category of species  
24 otherwise in need of special protection at a particular time if, at  
25 that time —

- 26 (a) it is a species for which a need for special protection  
27 exists; and  
28 (b) it is not eligible for listing in any of the categories  
29 referred to in section 13(1)(a); and  
30 (c) listing in that category is otherwise in accordance with  
31 the ministerial guidelines.

1 **Subdivision 2 — Threatened species**

2 **19. Listing of threatened species**

3 (1) The Minister may, by order, list a native species as a threatened  
4 species in one of the following categories —

- 5 (a) critically endangered species;  
6 (b) endangered species;  
7 (c) vulnerable species.

8 (2) A native species is not eligible for listing as a threatened species  
9 if it is an extinct species.

10 (3) When deciding whether or not to list a native species as a  
11 threatened species or to amend or repeal such a listing, the  
12 Minister must have regard only to matters relating to the  
13 survival of the species.

14 (4) Section 258 applies to an order made under subsection (1).

15 **20. Criteria for categorisation as critically endangered species**

16 A native species is eligible for listing in the category of  
17 critically endangered species at a particular time if, at that  
18 time —

- 19 (a) it is facing an extremely high risk of extinction in the  
20 wild in the immediate future, as determined in  
21 accordance with criteria set out in the ministerial  
22 guidelines; and  
23 (b) listing in that category is otherwise in accordance with  
24 the ministerial guidelines.

25 **21. Criteria for categorisation as endangered species**

26 A native species is eligible for listing in the category of  
27 endangered species at a particular time if, at that time —

- 28 (a) it is not a critically endangered species; and

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**Division 1** Native species

**s. 22**

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- 1 (b) it is facing a very high risk of extinction in the wild in  
2 the near future, as determined in accordance with criteria  
3 set out in the ministerial guidelines; and  
4 (c) listing in that category is otherwise in accordance with  
5 the ministerial guidelines.

6 **22. Criteria for categorisation as vulnerable species**

7 A native species is eligible for listing in the category of  
8 vulnerable species at a particular time if, at that time —

- 9 (a) it is not a critically endangered species or an endangered  
10 species; and  
11 (b) it is facing a high risk of extinction in the wild in the  
12 medium-term future, as determined in accordance with  
13 criteria set out in the ministerial guidelines; and  
14 (c) listing in that category is otherwise in accordance with  
15 the ministerial guidelines.

16 **Subdivision 3 — Extinct species**

17 **23. Listing of extinct species**

- 18 (1) The Minister may, by order, list a native species as an extinct  
19 species in one of the following categories —  
20 (a) extinct species;  
21 (b) extinct in the wild species.  
22 (2) Section 258 applies to an order made under subsection (1).

23 **24. Criteria for categorisation as extinct species**

24 A native species is eligible for listing in the category of extinct  
25 species at a particular time if, at that time —

- 26 (a) there is no reasonable doubt that the last member of the  
27 species has died; and  
28 (b) listing in that category is otherwise in accordance with  
29 the ministerial guidelines.



1   **25.   Criteria for categorisation as extinct in the wild species**

2       A native species is eligible for listing in the category of extinct  
3       in the wild species at a particular time if, at that time —

- 4           (a)   it is known only to survive in cultivation, in captivity or  
5                as a naturalised population well outside its past range;  
6                and  
7           (b)   it has not been recorded in its known habitat or expected  
8                habitat, at appropriate seasons, anywhere in its past  
9                range, despite surveys over a time frame appropriate to  
10              its life cycle and form; and  
11           (c)   listing in that category is otherwise in accordance with  
12                the ministerial guidelines.

13   **26.   Rediscovered species**

14       (1)   This section applies to a native species if —

- 15           (a)   it is listed in the category of extinct species and is  
16                discovered to be extant; or  
17           (b)   it is listed in the category of extinct in the wild species  
18                and is discovered to be extant in the wild.

19       (2)   A native species to which this section applies is to be regarded  
20       as a threatened species for the purposes of this Act until —

- 21           (a)   it is listed as a threatened species or a specially protected  
22                species; or  
23           (b)   the Minister declares, by instrument published in the  
24                *Gazette*, that it is not to be so listed.

1

**Division 2 — Ecological communities**

2

**Subdivision 1 — Threatened ecological communities**

3

**27. Listing of threatened ecological communities**

4

(1) The Minister may, by order, list an ecological community as a threatened ecological community in one of the following categories —

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6

7

(a) critically endangered ecological community;

8

(b) endangered ecological community;

9

(c) vulnerable ecological community.

10

(2) An ecological community is not eligible for listing as a threatened ecological community if it is a collapsed ecological community.

11

12

13

(3) When deciding whether or not to list an ecological community as a threatened ecological community or to amend or repeal such a listing, the Minister must have regard only to matters relating to the survival of the ecological community.

14

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(4) An order made under subsection (1) may describe or identify an ecological community by reference to a map or plan held in the Department.

18

19

20

(5) Section 258 applies to an order made under subsection (1).

21

**28. Criteria for categorisation as critically endangered ecological community**

22

23

An ecological community is eligible for listing in the category of critically endangered ecological community at a particular time if, at that time —

24

25

26

(a) it is facing an extremely high risk of becoming eligible for listing as a collapsed ecological community in the immediate future, as determined in accordance with criteria set out in the ministerial guidelines; and

27

28

29

- 1 (b) listing in that category is otherwise in accordance with  
2 the ministerial guidelines.

3 **29. Criteria for categorisation as endangered ecological**  
4 **community**

5 An ecological community is eligible for listing in the category  
6 of endangered ecological community at a particular time if, at  
7 that time —

- 8 (a) it is not a critically endangered ecological community;  
9 and  
10 (b) it is facing a very high risk of becoming eligible for  
11 listing as a collapsed ecological community in the near  
12 future, as determined in accordance with criteria set out  
13 in the ministerial guidelines; and  
14 (c) listing in that category is otherwise in accordance with  
15 the ministerial guidelines.

16 **30. Criteria for categorisation as vulnerable ecological**  
17 **community**

18 An ecological community is eligible for listing in the category  
19 of vulnerable ecological community at a particular time if, at  
20 that time —

- 21 (a) it is not a critically endangered ecological community or  
22 an endangered ecological community; and  
23 (b) it is facing a high risk of becoming eligible for listing as  
24 a collapsed ecological community in the medium-term  
25 future, as determined in accordance with criteria set out  
26 in the ministerial guidelines; and  
27 (c) listing in that category is otherwise in accordance with  
28 the ministerial guidelines.

1                   **Subdivision 2 — Collapsed ecological communities**

2   **31. Listing of collapsed ecological communities**

3       (1) The Minister may, by order, list an ecological community as a  
4       collapsed ecological community.

5       (2) Section 258 applies to an order made under subsection (1).

6   **32. Criteria for listing as collapsed ecological community**

7       An ecological community is eligible for listing as a collapsed  
8       ecological community at a particular time if, at that time —

9           (a) there is no reasonable doubt that the last occurrence of  
10          the ecological community has collapsed; or

11          (b) the ecological community has been so extensively  
12          modified throughout its range that no occurrence of it is  
13          likely to recover —

14               (i) its species composition or structure; or

15               (ii) its species composition and structure.

16   **33. Rediscovered ecological communities**

17       If a collapsed ecological community is discovered in a state that  
18       no longer makes it eligible for listing as a collapsed ecological  
19       community, it is to be regarded as a threatened ecological  
20       community for the purposes of this Act until —

21          (a) it is listed as a threatened ecological community; or

22          (b) the Minister declares, by instrument published in the  
23          *Gazette*, that it is not to be so listed.

24                   **Division 3 — Threatening processes**

25   **34. Listing of key threatening processes**

26       (1) The Minister may, by order, list a threatening process as a key  
27       threatening process.

28       (2) Section 258 applies to an order made under subsection (1).

1   **35.   Criteria for listing as key threatening process**

2   A threatening process is eligible for listing as a key threatening  
3   process if —

- 4       (a)   the threatening process —
- 5           (i)   could cause a native species to become eligible  
6               for listing as a threatened species; or
  - 7           (ii)  could cause an ecological community to become  
8               eligible for listing as a threatened ecological  
9               community; or
  - 10          (iii) could cause a threatened species or a threatened  
11               ecological community to become eligible for  
12               listing in another category representing a higher  
13               degree of endangerment; or
  - 14          (iv)  significantly contributes to the continuing  
15               decline of 2 or more threatened species or 2 or  
16               more threatened communities; or
  - 17          (v)   significantly contributes to a native species  
18               becoming eligible for listing as a threatened  
19               species in the category of critically endangered  
20               species; or
  - 21          (vi)  significantly contributes to an ecological  
22               community becoming eligible for listing as a  
23               threatened ecological community in the category  
24               of critically endangered ecological community;  
25               or
  - 26          (vii) significantly contributes to the continuing  
27               decline of a critically endangered species or a  
28               critically endangered ecological community; or
  - 29          (viii) significantly contributes to the degradation of a  
30               critical habitat;
- 31       and
- 32       (b)   listing is otherwise in accordance with the ministerial  
33       guidelines.

1

**Division 4 — Listing process**

2

**36. Terms used**

3

In this Division —

4

**listing decision** means a decision to do any of the following, whether or not the decision results from a nomination —

5

6

(a) list a native species as a threatened species;

7

(b) list a native species as an extinct species;

8

(c) list an ecological community as a threatened ecological community;

9

10

(d) list an ecological community as a collapsed community;

11

(e) list a threatening process as a key threatening process;

12

(f) amend or repeal a listing referred to in any of paragraphs (a) to (e);

13

14

(g) amend or repeal criteria referred to in

15

section 20(a), 21(b), 22(b), 28(a), 29(b) or 30(b);

16

**nomination** means a nomination under section 38(1).

17

**37. Minister may obtain advice on listing decision**

18

(1) Before making a listing decision the Minister may obtain advice from any person considered by the Minister to have expertise relevant to the matter to which the decision relates.

19

20

21

(2) The Minister is not bound to accept advice obtained under subsection (1).

22

23

**38. Nominations in respect of certain listings**

24

(1) A person may nominate to the Minister —

25

(a) a native species for listing as a threatened species in a particular category; or

26

27

(b) an amendment to or repeal of the listing of a threatened species; or

28

- 1 (c) an ecological community for listing as a threatened  
2 ecological community in a particular category; or  
3 (d) an amendment to or repeal of the listing of a threatened  
4 ecological community; or  
5 (e) a threatening process for listing as a key threatening  
6 process; or  
7 (f) an amendment to or repeal of the listing of a key  
8 threatening process.
- 9 (2) A nomination may be made at any time and whether or not  
10 nominations have been sought under subsection (4).
- 11 (3) The Minister may, by written notice given to the person who  
12 makes a nomination, reject the nomination if the Minister is  
13 satisfied that —  
14 (a) it is vexatious, frivolous or not made in good faith; or  
15 (b) it has not been made in accordance with any prescribed  
16 requirement.
- 17 (4) The Minister may, by notice published in accordance with the  
18 regulations, seek nominations.
- 19 (5) The regulations may regulate the way in which nominations are  
20 made and the form in which they are made.
- 21 **39. Notification of Minister's decision**
- 22 (1) In this section —  
23 ***nomination*** does not include a nomination rejected under  
24 section 38(3).
- 25 (2) The Minister must give a person who makes a nomination  
26 written notice of the Minister's decision on the listing,  
27 amendment or repeal the subject of the nomination.
- 28 (3) If the Minister's decision is that the listing, amendment or  
29 repeal is not to be made, the notice must include the reasons for  
30 the decision.

1 **Part 3 — Threatened species and threatened**  
2 **ecological communities**

3 **Division 1 — Threatened species**

4 **40. Minister may authorise taking or disturbance of threatened**  
5 **species**

- 6 (1) The Minister may, by instrument, authorise a person (including  
7 a public authority) to take or disturb a threatened species.
- 8 (2) An application for an authorisation must be in a form approved  
9 by the CEO.
- 10 (3) The Minister may, by instrument, amend or revoke an  
11 authorisation given under this section.

12 **41. Conditions of authorisation**

- 13 (1) In this section —  
14 **authorisation** means an authorisation given under section 40;  
15 **land of conservation value** means land on which there are  
16 either or both of the following —  
17 (a) a population of the relevant species;  
18 (b) relevant habitat;  
19 **relevant habitat**, in relation to an authorisation, means habitat  
20 listed as critical habitat under section 54(1) because it is critical  
21 to the survival of the threatened species to which the  
22 authorisation relates;  
23 **relevant species**, in relation to an authorisation, means the  
24 threatened species to which the authorisation relates.
- 25 (2) The Minister may impose conditions on an authorisation.



- 1 (3) Without limiting subsection (2) but subject to subsection (4), the  
2 Minister may impose a condition that requires the holder of the  
3 authorisation to do one or more of the following —
- 4 (a) make a monetary contribution towards the purchase of  
5 land of conservation value;
- 6 (b) transfer, lease or otherwise dispose of land of  
7 conservation value to a specified person (including the  
8 CEO);
- 9 (c) exchange land of conservation value for other land;
- 10 (d) enter into an agreement in respect of land of  
11 conservation value for the purpose of conserving and  
12 protecting the relevant species or relevant habitat;
- 13 (e) take specified measures on land of conservation value  
14 for the purpose of conserving and protecting the relevant  
15 species or relevant habitat;
- 16 (f) provide equipment, facilities, resources or services to  
17 assist in the conservation and protection of the relevant  
18 species or relevant habitat;
- 19 (g) conduct or fund surveys, studies or research in relation  
20 to the relevant species or relevant habitat;
- 21 (h) prepare and implement, or fund the preparation and  
22 implementation of, plans or schemes for the  
23 conservation and protection of the relevant species or  
24 relevant habitat;
- 25 (i) do anything else that is prescribed for the purposes of  
26 this subsection.
- 27 (4) The Minister must not impose a condition described in  
28 subsection (3) unless the Minister considers that the condition is  
29 necessary for the purpose of mitigating or offsetting the impact  
30 that activity carried out under the authorisation is likely to have  
31 on the total known population of the relevant species in the  
32 State and on relevant habitat.

1 (5) If a condition requires the transfer, lease or other disposal of  
2 land of conservation value to the CEO, it is a function of the  
3 CEO to acquire, hold, manage and otherwise deal with that land  
4 for the purpose of conserving and protecting the relevant species  
5 or relevant habitat.

6 (6) An authorisation must set out any conditions imposed on it  
7 under this section.

8 **42. Governor's approval required in certain cases**

9 (1) The Minister must obtain the approval of the Governor before  
10 giving an authorisation under section 40 if, in the opinion of the  
11 Minister, the proposed taking or disturbance could be expected  
12 to result in the threatened species becoming eligible for listing  
13 as an extinct species in the near future.

14 (2) Subsection (1) does not apply if the purpose of the proposed  
15 taking or disturbance is to establish a breeding colony or a  
16 population in cultivation so that the threatened species can be  
17 reintroduced into the wild at a later time.

18 (3) If the Governor gives an approval for the purposes of  
19 subsection (1) —

20 (a) the Minister must cause a copy of the approval to be laid  
21 before each House of Parliament as soon as is  
22 practicable after the approval is given; and

23 (b) the Department's annual report must include details of  
24 the approval.

25 **43. Duty of certain people to report occurrence of threatened**  
26 **species**

27 (1) This section applies to a person who is carrying out field work  
28 for the purposes of —

29 (a) an assessment under the *Environmental Protection*  
30 *Act 1986* Part IV; or

- 1 (b) complying with a requirement under the *Environmental*  
2 *Protection Act 1986* section 51E(1)(d) in relation to an  
3 application for a clearing permit.
- 4 (2) If the person, in the course of carrying out the field work, finds  
5 an occurrence of a species that is a threatened species on land to  
6 which the work relates, the person must report its presence to  
7 the CEO.  
8 Penalty for this subsection: a fine of \$50 000.
- 9 (3) A report under subsection (2) may be made orally or in writing.
- 10 (4) It is a defence to a charge of an offence under subsection (2) to  
11 prove that the person charged did not know, and could not  
12 reasonably have known, that the occurrence found was an  
13 occurrence of a threatened species.

14 **Division 2 — Threatened ecological communities**

15 **44. Term used: modify**

16 In this Division —

17 *modify*, in relation to an occurrence of a threatened ecological  
18 community, means to take action that results in —

- 19 (a) the modification of the occurrence of the threatened  
20 ecological community to such an extent that the  
21 occurrence is unlikely to recover —  
22 (i) its species composition or structure; or  
23 (ii) its species composition and structure;  
24 or  
25 (b) the destruction of the occurrence of the threatened  
26 ecological community.

1 **45. Minister may authorise modification of occurrence of**  
2 **threatened ecological community**

- 3 (1) The Minister may, by instrument, authorise a person (including  
4 a public authority) to modify an occurrence of a threatened  
5 ecological community.
- 6 (2) An application for authorisation must be in a form approved by  
7 the CEO.
- 8 (3) The Minister may, by instrument, amend or revoke an  
9 authorisation given under this section.

10 **46. Conditions of authorisation**

- 11 (1) In this section —  
12 **authorisation** means an authorisation given under section 45;  
13 **land of conservation value** means land on which there are  
14 either or both of the following —  
15 (a) an occurrence of the relevant community;  
16 (b) relevant habitat;  
17 **relevant community**, in relation to an authorisation, means the  
18 threatened ecological community to which the authorisation  
19 relates;  
20 **relevant habitat**, in relation to an authorisation, means habitat  
21 listed as critical habitat under section 54(1) because it is critical  
22 to the survival of the threatened ecological community to which  
23 the authorisation relates.
- 24 (2) The Minister may impose conditions on an authorisation.
- 25 (3) Without limiting subsection (2) but subject to subsection (4), the  
26 Minister may impose a condition that requires the holder of the  
27 authorisation to do one or more of the following —  
28 (a) make a monetary contribution towards the purchase of  
29 land of conservation value;

- 1 (b) transfer, lease or otherwise dispose of land of  
2 conservation value to a specified person (including the  
3 CEO);
- 4 (c) exchange land of conservation value for other land;
- 5 (d) enter into an agreement in respect of land of  
6 conservation value for the purpose of conserving and  
7 protecting the relevant community or relevant habitat;
- 8 (e) take specified measures on land of conservation value  
9 for the purpose of conserving and protecting the relevant  
10 community or relevant habitat;
- 11 (f) provide equipment, facilities, resources or services to  
12 assist in the conservation and protection of the relevant  
13 community or relevant habitat;
- 14 (g) conduct or fund surveys, studies or research in relation  
15 to the relevant community or relevant habitat;
- 16 (h) prepare and implement, or fund the preparation and  
17 implementation of, plans or schemes for the  
18 conservation or protection of the relevant community or  
19 relevant habitat;
- 20 (i) do anything else that is prescribed for the purposes of  
21 this subsection.
- 22 (4) The Minister must not impose a condition described in  
23 subsection (3) unless the Minister considers that the condition is  
24 necessary for the purpose of mitigating or offsetting the impact  
25 that activity carried out under the authorisation is likely to have  
26 on the total known occurrences of the relevant community in the  
27 State and on relevant habitat.
- 28 (5) If a condition requires the transfer, lease or other disposal of  
29 land of conservation value to the CEO, it is a function of the  
30 CEO to acquire, hold, manage and otherwise deal with that land  
31 for the purpose of conserving and protecting the relevant  
32 community or relevant habitat.

- 1 (6) An authorisation must set out any conditions imposed on it  
2 under this section.

3 **47. Governor's approval required in certain cases**

- 4 (1) The Minister must obtain the approval of the Governor before  
5 giving an authorisation under section 45 if, in the opinion of the  
6 Minister, the proposed modification could be expected to result  
7 in the threatened ecological community becoming eligible for  
8 listing as a collapsed ecological community in the near future.

- 9 (2) If the Governor gives an approval for the purposes of  
10 subsection (1) —

- 11 (a) the Minister must cause a copy of the approval to be laid  
12 before each House of Parliament as soon as is  
13 practicable after the approval is given; and  
14 (b) the Department's annual report must include details of  
15 the approval.

16 **48. Modifying occurrence of threatened ecological community**

- 17 (1) A person must not modify an occurrence of a threatened  
18 ecological community unless the person is authorised under  
19 section 45 to modify it and complies with the conditions, if any,  
20 to which the authorisation is subject.

21 Penalty for this subsection:

- 22 (a) if the offence involves a critically endangered  
23 ecological community — a fine of \$500 000;  
24 (b) if the offence involves an endangered ecological  
25 community — a fine of \$400 000;  
26 (c) if the offence involves a vulnerable ecological  
27 community — a fine of \$300 000.

- 28 (2) It is a defence to a charge of an offence under subsection (1) to  
29 prove that —

- 30 (a) the modification of the occurrence of the threatened  
31 ecological community —

- 1 (i) occurred in the course of a lawful activity the  
2 sole or dominant purpose of which was not to  
3 modify an ecological community; and
- 4 (ii) could not reasonably have been avoided;  
5 and
- 6 (b) the person charged did not know, and could not  
7 reasonably have known, that the occurrence of the  
8 threatened ecological community was present.
- 9 (3) The defence in subsection (2) is not available if the modification  
10 of the occurrence of the threatened ecological community has  
11 resulted in the threatened ecological community becoming  
12 eligible for listing as a collapsed ecological community.
- 13 **49. Duty of certain people to report occurrence of threatened**  
14 **ecological community**
- 15 (1) This section applies to a person who is carrying out field work  
16 for the purposes of —
- 17 (a) an assessment under the *Environmental Protection*  
18 *Act 1986* Part IV; or
- 19 (b) complying with a requirement under the *Environmental*  
20 *Protection Act 1986* section 51E(1)(d) in relation to an  
21 application for a clearing permit.
- 22 (2) If the person, in the course of carrying out the field work, finds  
23 an occurrence of an ecological community that is a threatened  
24 ecological community on land to which the work relates, the  
25 person must report its presence to the CEO.  
26 Penalty for this subsection: a fine of \$50 000.
- 27 (3) A report under subsection (2) may be made orally or in writing.
- 28 (4) It is a defence to a charge of an offence under subsection (2) to  
29 prove that the person charged did not know, and could not  
30 reasonably have known, that the occurrence found was an  
31 occurrence of a threatened ecological community.

1

**Division 3 — General provisions**

2

**50. Notice to owner and occupier as to presence of threatened species or threatened ecological community**

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(1) Where it appears to the Minister that there is reasonable evidence that a threatened species or threatened ecological community is present on land, the Minister may give each owner and each occupier of the land a written notice that —

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8

(a) specifies the threatened species or threatened ecological community; and

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(b) contains information to assist the owner or occupier in the identification of the threatened species or threatened ecological community; and

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14

15

(c) specifies the part of the land on which the threatened species or threatened ecological community is believed to be present; and

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17

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(d) specifies the assistance that may be available to the owner or occupier for the protection of the threatened species or threatened ecological community; and

19

20

21

(e) informs the owner or occupier about the effect of section 53 and the right to apply for an exemption from that section under section 271.

22

23

(2) A notice under subsection (1) remains in force until it is cancelled under subsection (3).

24

25

26

(3) The Minister may at any time by written notice given to each owner and each occupier of the land amend or cancel a notice under subsection (1).

27

28

**51. Lodgment of notification with Registrar and withdrawal of notification**

29

(1) In this section —

30

**section 50 notice** means a notice under section 50(1).



- 1 (2) The CEO may lodge a notification in relation to a section 50  
2 notice with the Registrar.
- 3 (3) If a notification is lodged under subsection (2) and the  
4 section 50 notice to which it relates is cancelled, the CEO must  
5 apply to the Registrar for the notification to be withdrawn.
- 6 (4) The following requirements apply to a notification under  
7 subsection (2) and an application under subsection (3) —  
8 (a) it must be in a form approved by the Registrar;  
9 (b) it must be accompanied by any information the Registrar  
10 requires;  
11 (c) it must be accompanied by any relevant fee payable  
12 under the *Transfer of Land Act 1893* or another written  
13 law.
- 14 (5) On the lodgment of a notification under subsection (2) or the  
15 receipt of an application under subsection (3), the Registrar  
16 must make any endorsement or notation the Registrar considers  
17 necessary on the certificate of title or other appropriate record in  
18 respect of the land to which the notification or application, as  
19 the case requires, relates.

20 **52. Duty to notify CEO of change in ownership or occupation**

- 21 (1) If a notice is given to an owner of land under section 50(1), the  
22 owner must give written notice to the CEO in accordance with  
23 subsection (2) if —  
24 (a) that person ceases to be an owner of the land; or  
25 (b) that person or another person ceases to be an occupier of  
26 the land.

27 Penalty for this subsection: a fine of \$20 000.

- 28 (2) The notice must —  
29 (a) give details of the change in ownership or occupation of  
30 the land including the name and address of the next  
31 owner or occupier of the land (if known); and

- 1 (b) be given to the CEO within 60 days after the day on  
2 which the change in ownership or occupation of the land  
3 occurs.

4 **53. Certain visitors to be informed of threatened species or**  
5 **threatened ecological community**

- 6 (1) In this section —

7 *relevant community* means the threatened ecological  
8 community to which the notice or notification referred to in  
9 subsection (2)(a) relates;

10 *relevant species* means the threatened species to which the  
11 notice or notification referred to in subsection (2)(a) relates.

- 12 (2) This section applies to an owner or occupier of land if —

13 (a) a notice is given to the owner or occupier under  
14 section 50(1) in respect of the land or a register or  
15 record in respect of the land contains an endorsement or  
16 notation relating to a notification lodged under  
17 section 51(2); and

18 (b) the owner or occupier permits, either generally or in a  
19 particular case, another person to have access to the land  
20 or knows that another person will have access to the  
21 land; and

22 (c) the owner or occupier knows that the activities of the  
23 other person on the land are likely to result in —

24 (i) the taking of the relevant species in  
25 contravention of section 150(1) or 173(1) or (2);  
26 or

27 (ii) the modification of the relevant community in  
28 contravention of section 48(1).

- 29 (3) The owner or occupier must take all steps that are reasonably  
30 available to the owner or occupier to inform the other person of  
31 the presence of the relevant species or relevant community on  
32 the land.

33 Penalty for this subsection: a fine of \$20 000.

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**Part 4 — Critical habitat**

**Division 1 — Determination of critical habitat**

**54. Listing of critical habitat**

- (1) The Minister may, by order, list habitat as critical habitat.
- (2) The Minister must not list habitat as critical habitat or amend or repeal such a listing unless —
  - (a) the Minister has had regard to any submission made in response to a notice under section 56(1); and
  - (b) in the case of habitat in Western Australian waters, the listing, amendment or repeal is made with the concurrence of Minister responsible for the administration of the *Fish Resources Management Act 1994*.
- (3) In subsection (2)(b) —  
*Western Australian waters* means waters that —
  - (a) are within the limits of the State; or
  - (b) are coastal waters of the State as defined in the *Off-shore (Application of Laws) Act 1982* section 2.
- (4) An order made under subsection (1) may describe or identify habitat by reference to a map or plan held in the Department.
- (5) Section 258 applies to an order made under subsection (1).

**55. Criteria for listing as critical habitat**

- Habitat is eligible for listing as critical habitat if —
- (a) it is critical to the survival of a threatened species or a threatened ecological community; and
  - (b) its listing is otherwise in accordance with the ministerial guidelines.

1 **56. Consultation**

2 (1) Before the listing of habitat as critical habitat or the amendment  
3 or repeal of such a listing, the CEO must take reasonable steps  
4 to give written notice of the proposed listing, amendment or  
5 repeal to the owner or occupier of the land on which the habitat  
6 is located.

7 (2) A notice under subsection (1) must —

8 (a) contain sufficient information to enable the location and  
9 extent of the habitat to be identified; and

10 (b) in the case of a proposed listing, contain information as  
11 to the effect of the listing of habitat as critical habitat  
12 under this Act; and

13 (c) specify a period within which submissions may be made  
14 to the Minister in respect of the proposed listing,  
15 amendment or repeal.

16 **57. Register**

17 (1) The CEO must establish and maintain a register of critical  
18 habitats.

19 (2) The regulations may make provision as to the form and content  
20 of the register.

21 (3) The register must be made available for public inspection in  
22 accordance with the regulations.

23 **Division 2 — Habitat conservation notices**

24 **58. Terms used**

25 In this Division —

26 ***habitat damage*** means damage to critical habitat, including the  
27 removal or destruction of critical habitat;

28 ***specified***, in relation to a habitat conservation notice, means  
29 specified in the notice.

1   **59.   Habitat conservation notice**

- 2       (1)   The CEO may give a written notice (a *habitat conservation*  
3       *notice*) to a person requiring the person to ensure that habitat  
4       damage, or further habitat damage, does not occur on land, if  
5       the CEO reasonably believes that —
- 6           (a)   habitat damage is likely to occur on the land; or  
7           (b)   habitat damage is occurring or has occurred on the land.
- 8       (2)   A habitat conservation notice may be given to one or more of  
9       the following people —
- 10           (a)   an owner of the land;  
11           (b)   an occupier of the land;  
12           (c)   a person other than an owner or occupier of the land, if  
13           the CEO considers that it is practicable for that person to  
14           comply with and give effect to the habitat conservation  
15           notice.
- 16       (3)   A habitat conservation notice must —
- 17           (a)   specify the name and address of the person to whom it is  
18           given; and  
19           (b)   specify the reason for which it is given; and  
20           (c)   inform the person to whom it is given that contravention  
21           of it could result in a fine, the CEO taking remedial  
22           action, or both.
- 23       (4)   A habitat conservation notice may require any person bound by  
24       it to take specified measures, within or for the duration of a  
25       specified period, for one or more of the following purposes —
- 26           (a)   to repair any habitat damage that has occurred;  
27           (b)   to re-establish and maintain critical habitat in any area  
28           affected by habitat damage to a condition as near as  
29           possible to the condition of the critical habitat before the  
30           habitat damage occurred;  
31           (c)   to prevent the erosion, drift or movement of sand, soil,  
32           dust or water;

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- 1 (d) to ensure that specified land, or a specified watercourse  
2 or wetland (as those terms are defined in the *Rights in*  
3 *Water and Irrigation Act 1914*), where critical habitat is  
4 or was located will not be —  
5 (i) damaged or detrimentally affected; or  
6 (ii) further damaged or detrimentally affected.
- 7 (5) Before a habitat conservation notice containing a requirement  
8 under subsection (4) is given to a person, the CEO must, by  
9 written notice given to the person, invite the person to make  
10 submissions to the CEO within a period specified in that notice  
11 on any matter relevant to the determination of whether or not  
12 the person should have to take the measures that the CEO  
13 intends to specify in the habitat conservation notice.
- 14 (6) The CEO must consider any submissions that are received  
15 within the period specified under subsection (5).

16 **60. Persons bound by habitat conservation notice**

17 The following persons are bound by a habitat conservation  
18 notice —

- 19 (a) each person to whom the notice is given;  
20 (b) each person who is bound by the notice under  
21 section 64.

22 **61. Amendment of habitat conservation notice**

- 23 (1) The CEO may, by written notice given to each person bound by  
24 a habitat conservation notice, amend the notice by —  
25 (a) extending the period within which a requirement  
26 contained in it is to be complied with if the CEO is  
27 satisfied that the circumstances of the case justify the  
28 extension; or  
29 (b) removing or amending any requirement contained in it.
- 30 (2) The CEO must, before exercising the power conferred by  
31 subsection (1), give each person bound by the habitat

1 conservation notice a reasonable opportunity to show cause in  
2 writing why the power should not be exercised.

3 (3) An opportunity is not a reasonable opportunity for the purposes  
4 of subsection (2) if a person is given written notice of the  
5 person's right to show cause less than 21 days before the day on  
6 which the CEO exercises the power referred to in that  
7 subsection.

8 **62. Cancellation of habitat conservation notice**

9 The CEO may, by written notice given to each person bound by  
10 a habitat conservation notice, cancel the notice.

11 **63. Lodgment of notification with Registrar and withdrawal of**  
12 **notification**

13 (1) If the person, or at least one of the persons, to whom a habitat  
14 conservation notice is given under section 59 is an owner or  
15 occupier of the land to which the notice relates, the CEO may  
16 lodge a notification in relation to the notice with the Registrar.

17 (2) If a notification is lodged under subsection (1) and the habitat  
18 conservation notice to which it relates is cancelled, the CEO  
19 must apply to the Registrar for the notification to be withdrawn.

20 (3) The following requirements apply to a notification under  
21 subsection (1) and an application under subsection (2) —

22 (a) it must be in a form approved by the Registrar;

23 (b) it must be accompanied by any information the Registrar  
24 requires;

25 (c) it must be accompanied by any relevant fee payable  
26 under the *Transfer of Land Act 1893* or another written  
27 law.

28 (4) On the lodgment of a notification under subsection (1) or the  
29 receipt of an application under subsection (2), the Registrar  
30 must make any endorsement or notation the Registrar considers  
31 necessary on the certificate of title or other appropriate record in

1 respect of the land to which the notification or application, as  
2 the case requires, relates.

3 (5) If the CEO lodges a notification under subsection (1) or makes  
4 an application under subsection (2), the CEO must give a copy  
5 of the notification or application, as the case requires, to the  
6 Western Australian Planning Commission established by the  
7 *Planning and Development Act 2005* section 7(1).

8 **64. Habitat conservation notice binding on successive owners**  
9 **and occupiers**

10 If a certificate of title or other record in respect of land contains  
11 an endorsement or notation relating to a notification lodged  
12 under section 63(1), the habitat conservation notice to which the  
13 notification relates, as amended from time to time under  
14 section 61(1), binds each successive owner or occupier of the  
15 land.

16 **65. Contravention of habitat conservation notice**

17 (1) A person who is bound by a habitat conservation notice must  
18 not contravene the notice.

19 Penalty for this subsection:

- 20 (a) if the habitat conservation notice relates to habitat  
21 critical to the survival of a critically endangered  
22 species or critically endangered community — a fine  
23 of \$500 000;
- 24 (b) if the habitat conservation notice relates to habitat  
25 critical to the survival of an endangered species or  
26 endangered ecological community — a fine of  
27 \$400 000;
- 28 (c) if the habitat conservation notice relates to habitat  
29 critical to the survival of a vulnerable species or  
30 vulnerable ecological community — a fine of  
31 \$300 000.



1 (2) If an owner of land and an occupier of land are both bound by a  
2 habitat conservation notice, it is a defence to a charge against  
3 either of them of an offence under subsection (1) for the person  
4 charged to prove that the other person has complied with the  
5 notice.

6 **66. Duty to notify CEO of change in ownership or occupation**

7 (1) If a certificate of title or other record in respect of land contains  
8 an endorsement or notation relating to a notification lodged  
9 under section 63(1), an owner of the land to which the  
10 notification relates must give written notice to the CEO in  
11 accordance with subsection (2) if —  
12 (a) that person ceases to be an owner of the land; or  
13 (b) that person or another person ceases to be an occupier of  
14 the land.

15 Penalty for this subsection: a fine of \$20 000.

16 (2) The notice must —  
17 (a) give details of the change in ownership or occupation of  
18 the land, including the name and address of the next  
19 owner or occupier of the land (if known); and  
20 (b) be given to the CEO within 60 days after the day on  
21 which the change in ownership or occupation of the land  
22 occurs.

23 **67. Apportionment of costs of complying with habitat**  
24 **conservation notice**

25 (1) As between an owner and occupier, or successive owners and  
26 occupiers, of land, the costs of taking measures on the land in  
27 compliance with a habitat conservation notice are to be borne in  
28 the proportions determined by the CEO.

29 (2) Subsection (1) —  
30 (a) applies whether the measures are taken by an owner or  
31 occupier or the CEO; and

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- 1 (b) has effect subject to the provisions of any agreement  
2 between an owner or occupier or successive owners and  
3 occupiers.

1 **Part 5 — Biodiversity management programmes**

2 **68. Terms used**

3 In this Part —

4 *draft programme* means a draft biodiversity management  
5 programme prepared under section 70;

6 *minor amendment*, in relation to a biodiversity management  
7 programme, means an amendment that, in the opinion of the  
8 CEO, is necessary to correct —

- 9 (a) a clerical mistake or unintentional error or omission in  
10 the programme; or  
11 (b) a misdescription of any person, land or thing in the  
12 programme.

13 **69. Content of biodiversity management programme**

14 (1) A biodiversity management programme is a document that  
15 provides for the conservation, protection and management of —

- 16 (a) one or more native species (other than threatened  
17 species); or  
18 (b) one or more ecological communities (other than  
19 threatened ecological communities); or  
20 (c) one or more critical habitats; or  
21 (d) a combination of such species, communities and  
22 habitats.

23 (2) Without limiting subsection (1), a biodiversity management  
24 programme may deal with one or more of the following  
25 matters —

- 26 (a) threats to —  
27 (i) native species or populations of native species;  
28 or  
29 (ii) an ecological community; or  
30 (iii) a critical habitat;

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- 1 (b) the containment or eradication of species that are not  
2 indigenous to the State or the mitigation of the effect of  
3 such species;
- 4 (c) the distribution or population size of native species in  
5 the State or a part of the State;
- 6 (d) research and strategies relevant to biodiversity  
7 conservation;
- 8 (e) the ecologically sustainable use of native species;
- 9 (f) educational activities that promote an appreciation of  
10 biodiversity conservation values including the keeping,  
11 breeding and display of native species;
- 12 (g) the mitigation, containment or eradication of nuisance or  
13 damage caused by native species;
- 14 (h) the mitigation of danger posed by native species;
- 15 (i) matters that are complementary to a recovery plan,  
16 interim recovery plan or biodiversity conservation  
17 agreement;
- 18 (j) nature-based tourism and recreation as defined in  
19 section 190.

20 **70. Preparation of draft programme**

21 The CEO may prepare a draft biodiversity management  
22 programme.

23 **71. Consultation on draft programme**

24 When preparing a draft programme the CEO —

- 25 (a) must consult with the Commission if the programme  
26 relates to land vested in that body or is otherwise  
27 relevant to the functions of that body; and
- 28 (b) may consult with any other person or body who or  
29 which appears to the CEO to be likely to be affected in a  
30 material way by the programme.

1   **72.     Submission to Minister**

- 2       (1)   The CEO may submit a draft programme to the Minister for  
3       approval.
- 4       (2)   The draft programme must be accompanied by any submissions  
5       received as a result of consultation under section 71.
- 6       (3)   The Minister may require the CEO to modify the draft  
7       programme and resubmit it.

8   **73.     Approval of biodiversity management programme**

- 9       (1)   The Minister may approve a draft programme submitted under  
10       section 72 as a biodiversity management programme or refuse  
11       to approve it.
- 12       (2)   The Minister must not give approval under subsection (1) unless  
13       the Minister —
- 14           (a)   is satisfied that the draft programme is consistent with  
15           any recovery plan or interim recovery plan that relates to  
16           matters dealt with in the draft programme; and
- 17           (b)   has had regard to submissions referred to in  
18           section 72(2).

19   **74.     Notice of biodiversity management programme**

- 20       (1)   If the Minister approves a biodiversity management programme  
21       under section 73(1), the CEO must cause notice of the  
22       programme to be published in the *Gazette*.
- 23       (2)   The notice must specify where copies of the biodiversity  
24       management programme may be inspected and obtained.

25   **75.     Operation of biodiversity management programme**

- 26       A biodiversity management programme takes effect on —
- 27           (a)   the day on which the relevant notice under section 74 is  
28           published in the *Gazette*; or
- 29           (b)   if a later day is specified in the notice — that day.

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1 **76. Publication of biodiversity management programme**

2 (1) The CEO must cause each biodiversity management programme  
3 to be published on the Department's website and in any other  
4 way that the CEO considers appropriate.

5 (2) The CEO may fix and charge a fee for providing a copy of a  
6 biodiversity management programme.

7 **77. Review of biodiversity management programme**

8 (1) The CEO may, at any time, carry out a review of a biodiversity  
9 management programme.

10 (2) The CEO must carry out a review of each biodiversity  
11 management programme at intervals of not longer than 5 years  
12 calculated from the day on which the relevant programme takes  
13 effect.

14 **78. Amendment of biodiversity management programme**

15 (1) The CEO may prepare a draft amendment to a biodiversity  
16 management programme.

17 (2) Sections 71 to 76 apply, with all necessary changes, to and in  
18 relation to the amendment as if references in those provisions  
19 to —

20 (a) a draft programme were references to a draft amendment  
21 to a biodiversity management programme; and

22 (b) a biodiversity management programme were references  
23 to an amendment to a biodiversity management  
24 programme.

25 (3) Despite subsection (2), section 71 does not apply if the  
26 amendment is a minor amendment.

27 **79. Revocation of biodiversity management programme**

28 (1) The Minister may, by instrument, revoke a biodiversity  
29 management programme.

- 1 (2) The Minister must consult with the Commission before  
2 revoking a biodiversity management programme if the  
3 programme relates to land vested in that body or is otherwise  
4 relevant to the functions of that body.
- 5 (3) The CEO must cause notice of a revocation under subsection (1)  
6 to be published in the *Gazette*.
- 7 (4) A revocation under subsection (1) takes effect on —  
8 (a) the day on which the relevant notice under  
9 subsection (3) is published in the *Gazette*; or  
10 (b) if a later day is specified in the notice — that day.
- 11 (5) If a biodiversity management programme (the *new programme*)  
12 replaces another biodiversity management programme (the *old*  
13 *programme*), the old programme is to be taken to have been  
14 revoked under subsection (1) on the day on which the new  
15 programme takes effect.
- 16 **80. Public authority to have regard to biodiversity management**  
17 **programme**
- 18 To the extent that the functions of a public authority relate to  
19 matters dealt with in a biodiversity management programme, the  
20 public authority must have regard to the programme when  
21 performing those functions.

1 **Part 6 — Recovery plans and interim recovery plans**

2 **Division 1 — Preliminary**

3 **81. Terms used**

4 In this Part —

5 ***adopted plan*** means a plan adopted as a recovery plan under  
6 section 92(1);

7 ***approved plan*** means a recovery plan approved under  
8 section 89(1);

9 ***draft plan*** means a draft recovery plan prepared under  
10 section 83(1);

11 ***minor amendment***, in relation to a recovery plan or interim  
12 recovery plan, means an amendment that, in the opinion of the  
13 CEO, is necessary to correct —

14 (a) a clerical mistake or unintentional error or omission in  
15 the plan; or

16 (b) a misdescription of any person, land or thing in the plan;

17 ***proposed plan*** means a plan that the Minister proposes to adopt  
18 under section 92(1) and includes any proposed modification  
19 under section 92(2);

20 ***technical amendment***, in relation to a recovery plan or interim  
21 recovery plan, means an amendment that, in the opinion of the  
22 CEO, is necessary for one or more of the following purposes —

23 (a) to take into account new scientific findings;

24 (b) to take into account a change in the category of listing of  
25 the threatened species or threatened ecological  
26 community to which the plan relates;

27 (c) to modify or replace criteria referred to in  
28 section 82(3)(b);

29 (d) to reflect the completion of actions referred to in  
30 section 82(3)(c).



1   **82.     Content of recovery plan**

2       (1) A recovery plan is a document that provides for the  
3       conservation, protection and management of —

- 4           (a) one or more threatened species; or  
5           (b) one or more threatened ecological communities; or  
6           (c) a combination of such species and communities.

7       (2) A recovery plan must provide for research and management  
8       actions to stop the decline of, and support the recovery of, each  
9       threatened species or threatened ecological community to which  
10       the plan relates so that its chances of long-term survival in the  
11       wild are maximised.

12       (3) In particular, a recovery plan must —

- 13           (a) state the objectives to be achieved; and  
14           (b) state criteria against which achievement of those  
15           objectives is to be measured; and  
16           (c) specify actions to achieve those objectives; and  
17           (d) identify any habitat that is critical habitat, or that may be  
18           eligible for listing as critical habitat, for a threatened  
19           species or threatened ecological community to which the  
20           plan relates and actions to protect that habitat; and  
21           (e) identify any population of a threatened species to which  
22           the plan relates that is critical to the survival of that  
23           species and actions to protect that population; and  
24           (f) identify any occurrence of a threatened ecological  
25           community to which the plan relates that is critical to the  
26           survival of that community and actions to protect that  
27           occurrence; and  
28           (g) identify any key threatening process that is affecting or  
29           is likely to affect a threatened species or threatened  
30           ecological community to which the plan relates and  
31           specify the proposed means for preventing, eradicating,  
32           reducing or containing that process; and

- 1 (h) state the estimated duration of the plan; and  
2 (i) identify —  
3 (i) land that will be materially affected by the plan’s  
4 implementation; and  
5 (ii) persons or bodies who or which appear to the  
6 CEO to be likely to be involved in implementing  
7 the plan or evaluating its effectiveness.

8 **Division 2 — Approved plans**

9 **83. Preparation of draft plan**

- 10 (1) The CEO may prepare a draft recovery plan.  
11 (2) Before preparing a draft plan the CEO must have regard to —  
12 (a) the resources available for the preparation of the plan;  
13 and  
14 (b) the estimated cost of implementing the plan.

15 **84. Consultation on draft plan**

- 16 When preparing a draft plan the CEO must consult with —  
17 (a) the Commission if the plan relates to a threatened  
18 species or threatened ecological community on land  
19 vested in that body or is otherwise relevant to the  
20 functions of that body; and  
21 (b) each owner or occupier of land to be identified in the  
22 plan under section 82(3)(i)(i); and  
23 (c) each person or body to be identified in the plan under  
24 section 82(3)(i)(ii).

25 **85. CEO to publicise draft plan**

- 26 (1) The CEO must publish in the *Gazette* and on the Department’s  
27 website a notice —  
28 (a) specifying where copies of the draft plan may be  
29 inspected and obtained; and

1            (b) specifying the period for submissions under section 86  
2            and an address for those submissions.

3            (2) The CEO must cause the draft plan to be published on the  
4            Department's website and in any other way that the CEO  
5            considers appropriate.

6            (3) The CEO may fix and charge a fee for providing a copy of the  
7            draft plan.

8            **86. Public submissions**

9            Submissions in respect of a draft plan may be made by any  
10            person within a period determined by the CEO that is not less  
11            than 60 days after the day on which the notice referred to in  
12            section 85(1) is published in the *Gazette*.

13           **87. Referral of draft plan to certain persons or bodies**

14           (1) A draft plan, modified as the CEO thinks fit to give effect to any  
15           submissions made under section 86, together with a summary of  
16           those submissions —

17                (a) must be referred by the CEO to each person or body  
18                consulted under section 84; and

19                (b) may be referred by the CEO to any other person or  
20                body.

21           (2) If a person or body to which a draft plan is referred under  
22           subsection (1) considers that the CEO should modify the draft  
23           plan, the person or body may, within 28 days after receipt of the  
24           draft plan, in writing request the CEO to make the modification.

25           **88. Submission to Minister**

26           (1) The CEO may submit a draft plan, modified as the CEO thinks  
27           fit to give effect to any submissions made under section 86 or  
28           requests made under section 87(2), to the Minister for approval.

1 (2) The draft plan must be accompanied by copies of submissions  
2 made under section 86 and requests made under section 87(2) in  
3 respect of the draft plan.

4 (3) The Minister may require the CEO to modify the draft plan and  
5 resubmit it.

6 **89. Approval of plan**

7 (1) The Minister may approve a draft plan submitted under  
8 section 88 as a recovery plan or refuse to approve it.

9 (2) The Minister must not give approval under subsection (1) unless  
10 the Minister —

11 (a) is satisfied that the draft plan meets the requirements of  
12 section 82(2) and (3); and

13 (b) has had regard to —

14 (i) any submissions made under section 86 or  
15 requests made under section 87(2) in respect of  
16 the draft plan; and

17 (ii) the matters referred to in section 97.

18 **90. Amendment of approved plan**

19 (1) The CEO may prepare a draft amendment to an approved plan.

20 (2) Sections 84 to 89, 98, 99 and 100 apply, with all necessary  
21 changes, to and in relation to the amendment as if references in  
22 those provisions to —

23 (a) a draft plan were references to a draft amendment  
24 prepared under subsection (1); and

25 (b) an approved plan or a recovery plan were references to  
26 an amendment to an approved plan.

27 (3) Despite subsection (2), sections 84 to 87 do not apply if the  
28 amendment is a minor amendment or technical amendment.

1    **91.     Joint recovery plan**

- 2       (1) If a threatened species or threatened ecological community  
3       occurs in both this State and another State, a self-governing  
4       Territory or an external Territory, the Minister may seek the  
5       cooperation of —
- 6           (a) each State and self-governing Territory in which the  
7           species or community occurs; and
- 8           (b) in the case of each external Territory in which the  
9           species or community occurs — the Commonwealth,
- 10       with a view to making a recovery plan jointly with the other  
11       State, the self-governing Territory or the Commonwealth, or  
12       with their agencies (a *joint recovery plan*).
- 13       (2) Sections 84 to 89 apply, with all necessary changes, to the  
14       preparation and approval of a joint recovery plan.
- 15       (3) Sections 90, 101 and 102 do not apply to a joint recovery plan.
- 16       (4) A joint recovery plan must contain provisions that set out  
17       procedures for the amendment, review and revocation of the  
18       plan.
- 19       (5) Nothing in this Division affects the power of the State, under  
20       the EPBC Act, to make —
- 21           (a) a recovery plan jointly with the Commonwealth; or  
22           (b) a joint wildlife conservation plan with the  
23           Commonwealth.

24                            **Division 3 — Adopted plans**

25    **92.     Adoption of plan**

- 26       (1) The Minister may, by instrument, adopt as a recovery plan a  
27       plan made by any of the following, whether or not the plan is in  
28       force —
- 29           (a) another State, a self-governing Territory or the  
30           Commonwealth;

- 1 (b) an agency of another State, a self-governing Territory or  
2 the Commonwealth.
- 3 (2) The Minister may adopt a plan as a recovery plan with such  
4 modifications as are specified in the instrument.
- 5 (3) The Minister must not adopt a plan under subsection (1) unless  
6 the Minister —
- 7 (a) is satisfied that the proposed plan meets the  
8 requirements of section 82(2) and (3); and
- 9 (b) has had regard to —
- 10 (i) any submissions made under section 94 or  
11 requests made under section 95(2) in respect of  
12 the proposed plan; and
- 13 (ii) the matters referred to in section 97.

14 **93. CEO to publicise proposed plan**

- 15 (1) Before the adoption of a plan under section 92(1), the CEO  
16 must publish in the *Gazette* and on the Department's website a  
17 notice —
- 18 (a) specifying where copies of the proposed plan may be  
19 inspected and obtained; and
- 20 (b) specifying the period for submissions under section 94  
21 and an address for those submissions.
- 22 (2) The CEO must cause the proposed plan to be published on the  
23 Department's website and in any other way that the CEO  
24 considers appropriate.
- 25 (3) The CEO may fix and charge a fee for providing a copy of the  
26 proposed plan.

27 **94. Public submissions**

- 28 Submissions in respect of a proposed plan may be made by any  
29 person within a period determined by the CEO that is not less

1 than 60 days after the day on which the notice referred to in  
2 section 93(1) is published in the *Gazette*.

3 **95. Referral of proposed plan to certain persons or bodies**

4 (1) Before the adoption of a plan under section 92(1), the CEO —

5 (a) must refer the proposed plan to —

6 (i) the Commission if the plan relates to a threatened  
7 species or threatened ecological community on  
8 land vested in that body or is otherwise relevant  
9 to the functions of that body; and

10 (ii) each owner or occupier of land to be identified in  
11 the plan under section 82(3)(i)(i); and

12 (iii) each person or body to be identified in the plan  
13 under section 82(3)(i)(ii);

14 and

15 (b) may refer the proposed plan to any other person or body.

16 (2) If a person or body to which a proposed plan is referred under  
17 subsection (1) considers that a modification should be made to  
18 the proposed plan, the person or body may, within 28 days after  
19 receipt of the proposed plan, in writing request the Minister to  
20 make the modification.

21 **96. Amendment of adopted plan**

22 (1) The Minister may, by instrument, amend an adopted plan.

23 (2) Sections 92(3) to 95, 98, 99 and 100 apply, with all necessary  
24 changes, to and in relation to the amendment as if references in  
25 those provisions to —

26 (a) the adoption of a plan were references to the amendment  
27 of an adopted plan under subsection (1); and

28 (b) a proposed plan were references to a proposed  
29 amendment under subsection (1); and

30 (c) a recovery plan were references to an amendment under  
31 subsection (1).

- 1 (3) Despite subsection (2), sections 93 to 95 do not apply if the  
2 amendment is a minor amendment or technical amendment.

3 **Division 4 — General provisions for recovery plans**

4 **97. Matters relevant to approval or adoption of recovery plan**

5 The following matters are to be considered by the Minister in  
6 deciding whether to approve a recovery plan or adopt a plan as a  
7 recovery plan under this Part —

- 8 (a) the objects of this Act;
- 9 (b) the most efficient and effective use of the resources that  
10 are allocated for biodiversity conservation;
- 11 (c) the need to minimise any significant adverse social and  
12 economic impacts, consistently with the principles of  
13 ecologically sustainable development set out in  
14 section 4;
- 15 (d) Australia's obligations under international agreements  
16 relevant to the threatened species or threatened  
17 ecological community to which the plan relates;
- 18 (e) the extent to which any environmental protection policy  
19 affects the conservation, protection and management of  
20 the threatened species or threatened ecological  
21 community to which the plan relates;
- 22 (f) the extent to which the conservation, protection and  
23 management of the threatened species or threatened  
24 ecological community to which the plan relates are  
25 addressed by —
- 26 (i) any implementation conditions as defined in the  
27 *Environmental Protection Act 1986* section 3(1);  
28 or
- 29 (ii) any conditions agreed or decided under the  
30 *Environmental Protection Act 1986* Part IV  
31 Division 3; or



- 1                                    (iii) any conditions to which a clearing permit under  
2                                    the *Environmental Protection Act 1986* Part V  
3                                    Division 2 is subject.

4      **98.      Notice of recovery plan**

5            (1) If the Minister approves a recovery plan or adopts a plan as a  
6            recovery plan under this Part, the CEO must cause notice of the  
7            plan to be published in the *Gazette*.

8            (2) The notice must specify —

9                                    (a) in the case of an approved plan — whether any  
10                                    modifications were made to the draft plan under  
11                                    section 88(1); and

12                                    (b) where copies of the recovery plan may be inspected and  
13                                    obtained.

14      **99.      Operation of recovery plan**

15            A recovery plan takes effect on —

16                                    (a) the day on which the relevant notice under section 98 is  
17                                    published in the *Gazette*; or

18                                    (b) if a later day is specified in the notice — that day.

19      **100.     Publication of recovery plan**

20            (1) The CEO must cause each recovery plan to be published on the  
21            Department's website and in any other way that the CEO  
22            considers appropriate.

23            (2) The CEO may fix and charge a fee for providing a copy of a  
24            recovery plan.

25      **101.     Review of recovery plan**

26            (1) The CEO may, at any time, carry out a review of a recovery  
27            plan.

- 1 (2) The CEO must carry out a review of each recovery plan at  
2 intervals of not longer than 10 years calculated from the day on  
3 which the relevant recovery plan takes effect.

4 **102. Revocation of recovery plan**

- 5 (1) The Minister may, by instrument, revoke a recovery plan.
- 6 (2) The Minister must consult with the Commission before  
7 revoking a recovery plan if the plan relates to a threatened  
8 species or threatened ecological community on land vested in  
9 that body or is otherwise relevant to the functions of that body.
- 10 (3) The CEO must cause notice of a revocation under subsection (1)  
11 to be published in the *Gazette*.
- 12 (4) A revocation under subsection (1) takes effect on —  
13 (a) the day on which the relevant notice under  
14 subsection (3) is published in the *Gazette*; or  
15 (b) if a later day is specified in the notice — that day.
- 16 (5) If a recovery plan (the *new plan*) replaces another recovery plan  
17 (the *old plan*), the old plan is to be taken to have been revoked  
18 under subsection (1) on the day on which the new plan takes  
19 effect.

20 **103. Public authority to have regard to recovery plan**

- 21 To the extent that the functions of a public authority relate to  
22 matters dealt with in a recovery plan, the public authority must  
23 have regard to the plan when performing those functions.

**Division 5 — Interim recovery plans**

**104. Interim recovery plan**

- (1) An interim recovery plan is a document that sets out measures for the conservation, protection and management of —
- (a) one or more threatened species; or
  - (b) one or more threatened ecological communities; or
  - (c) a combination of such species and communities.
- (2) An interim recovery plan may include provisions dealing with one or more of the matters referred to in section 82(3).

**105. Making an interim recovery plan**

The CEO may, by instrument, make an interim recovery plan if the CEO is satisfied that —

- (a) it is necessary to make provision for the conservation, protection and management of a threatened species or threatened ecological community in order to stop the decline of, and support the recovery of, the species or community so that its chances of long-term survival in the wild are maximised; but
- (b) there is insufficient scientific information available to allow the preparation of a recovery plan for that threatened species or threatened ecological community.

**106. Consultation on proposed plan**

Before making an interim recovery plan the CEO —

- (a) must consult with the Commission if the proposed plan relates to a threatened species or threatened ecological community on land vested in that body or is otherwise relevant to the functions of that body; and

- 1 (b) may consult with any other person or body who or  
2 which appears to the CEO to be likely to be affected in a  
3 material way by the proposed plan.

4 **107. Notice of interim recovery plan**

5 (1) If the CEO makes an interim recovery plan, the CEO must  
6 cause notice of the plan to be published in the *Gazette*.

7 (2) The notice must specify where copies of the plan may be  
8 inspected and obtained.

9 **108. Operation of interim recovery plan**

10 An interim recovery plan takes effect on —

11 (a) the day on which the relevant notice under section 107 is  
12 published in the *Gazette*; or

13 (b) if a later day is specified in the notice — that day.

14 **109. Publication of interim recovery plan**

15 (1) The CEO must cause each interim recovery plan to be published  
16 on the Department's website and in any other way that the CEO  
17 considers appropriate.

18 (2) The CEO may fix and charge a fee for providing a copy of an  
19 interim recovery plan.

20 **110. Review of interim recovery plan**

21 (1) The CEO may, at any time, carry out a review of an interim  
22 recovery plan.

23 (2) The CEO must carry out a review of each interim recovery plan  
24 at intervals of not longer than 5 years calculated from the day on  
25 which the relevant plan takes effect.

26 **111. Amendment of interim recovery plan**

27 (1) The CEO may, by instrument, amend an interim recovery plan.

1       (2) Sections 106 to 109 apply, with all necessary changes, to and in  
2       relation to the amendment as if references in those provisions to  
3       an interim recovery plan were references to an amendment to an  
4       interim recovery plan.

5       (3) Despite subsection (2), section 106 does not apply if the  
6       amendment is a minor amendment or technical amendment.

7       **112.    Revocation of interim recovery plan**

8       (1) The CEO may, by instrument, revoke an interim recovery plan.

9       (2) The CEO must consult with the Commission before revoking an  
10       interim recovery plan if the plan relates to a threatened species  
11       or threatened ecological community on land vested in that body  
12       or is otherwise relevant to the functions of that body.

13       (3) The CEO must cause notice of a revocation under subsection (1)  
14       to be published in the *Gazette*.

15       (4) A revocation under subsection (1) takes effect on —  
16           (a) the day on which the relevant notice under  
17           subsection (3) is published in the *Gazette*; or  
18           (b) if a later day is specified in the notice — that day.

19       (5) If an interim recovery plan (the *new plan*) replaces another  
20       interim recovery plan (the *old plan*), the old plan is to be taken  
21       to have been revoked under subsection (1) on the day on which  
22       the new plan takes effect.

23       **113.    Public authority to have regard to interim recovery plan**

24       To the extent that the functions of a public authority relate to  
25       matters dealt with in an interim recovery plan, the public  
26       authority must have regard to the plan when performing those  
27       functions.

1           **Part 7 — Biodiversity conservation agreements**

2   **114. Minister may enter into biodiversity conservation**  
3   **agreement**

4       (1) The Minister may, on behalf of the State, enter into an  
5       agreement (a *biodiversity conservation agreement*) with an  
6       owner or occupier of land in relation to land specified in the  
7       agreement.

8       (2) A biodiversity conservation agreement may be entered into for  
9       one or more of the following purposes —

10           (a) to facilitate the ecologically sustainable use of  
11           biodiversity components;

12           (b) to mitigate the effect of, or prevent, activities that may  
13           have an adverse impact on biodiversity or biodiversity  
14           components;

15           (c) to otherwise promote or enhance biodiversity  
16           conservation in the State.

17       (3) The Minister must not enter into a biodiversity conservation  
18       agreement unless the Minister is satisfied that implementation  
19       of, or compliance with, the agreement will be of overall benefit  
20       to biodiversity conservation in the State.

21       (4) The Minister must not enter into a biodiversity conservation  
22       agreement with an owner of land unless the following persons  
23       have consented in writing to the agreement —

24           (a) each occupier of the land who is not an owner of the  
25           land;

26           (b) each mortgagee of the land.

27       (5) The Minister must not enter into a biodiversity conservation  
28       agreement with an occupier of land unless the following persons  
29       have consented in writing to the agreement —

30           (a) each owner of the land;

31           (b) each mortgagee of the land.

- 1       (6) Before entering into a biodiversity conservation agreement that  
2       relates to Crown land, the Minister must obtain the concurrence  
3       of the Minister responsible for the administration of the *Land*  
4       *Administration Act 1997*.

5       **115. Content of biodiversity conservation agreement**

- 6       (1) In this section —

7       *agreement land* means the land to which the biodiversity  
8       conservation agreement relates;

9       *specified* means specified in the biodiversity conservation  
10      agreement.

- 11      (2) A biodiversity conservation agreement may make provision for  
12      the Minister to do one or more of the following —

13           (a) provide financial assistance to the other party to the  
14           agreement;

15           (b) provide goods or services to the other party to the  
16           agreement;

17           (c) provide technical advice to the other party to the  
18           agreement;

19           (d) carry out, or make arrangements for the carrying out of,  
20           a specified activity;

21           (e) implement, or participate in the implementation of, a  
22           plan for the management of the agreement land;

23           (f) do anything else that is necessary or expedient to  
24           achieve any of the purposes set out in section 114(2).

- 25      (3) A biodiversity conservation agreement may make provision for  
26      the owner or occupier of land who is a party to the agreement to  
27      do one or more of the following —

28           (a) restrict the use of the agreement land;

29           (b) carry out a specified activity or do a specified thing on  
30           the agreement land;

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- 1 (c) refrain from carrying out a specified activity or doing a  
2 specified thing on the agreement land;
- 3 (d) not permit any other person to carry out a specified  
4 activity or do a specified thing on the agreement land;
- 5 (e) permit access to the agreement land by a specified  
6 person;
- 7 (f) contribute towards costs incurred in connection with  
8 biodiversity conservation on the agreement land;
- 9 (g) apply money provided by way of financial assistance  
10 under the agreement in a specified manner;
- 11 (h) repay money provided by way of financial assistance  
12 under the agreement if the party commits a specified  
13 breach of the agreement or in other specified  
14 circumstances;
- 15 (i) return goods provided under the agreement if the party  
16 commits a specified breach of the agreement or in other  
17 specified circumstances;
- 18 (j) implement, or participate in the implementation of, a  
19 plan for the management of the agreement land;
- 20 (k) do anything else that is necessary or expedient to  
21 achieve any of the purposes set out in section 114(2).

22 **116. Amendment or cancellation of biodiversity conservation**  
23 **agreement**

- 24 (1) In this section —  
25 *other party to the agreement* includes any person who is bound  
26 by the agreement under section 118.
- 27 (2) The Minister may amend a biodiversity conservation agreement  
28 with the consent in writing of the other party to the agreement.
- 29 (3) Before amending a biodiversity conservation agreement that  
30 relates to Crown land, the Minister must obtain the concurrence  
31 of the Minister responsible for the administration of the *Land*  
32 *Administration Act 1997*.



- 1       (4) The Minister may, by written notice given to the other party to  
2       the agreement, cancel a biodiversity conservation agreement if,  
3       in the opinion of the Minister, the agreement —
- 4           (a) is no longer needed to achieve a purpose for which it  
5           was entered into; or
- 6           (b) is no longer capable of being used to achieve a purpose  
7           for which it was entered into.
- 8       (5) If a biodiversity conservation agreement is cancelled under  
9       subsection (4), the other party to the agreement is not entitled to  
10      any compensation for loss resulting from the cancellation.
- 11      (6) A biodiversity conservation agreement must not exclude,  
12      modify or restrict the operation of this section and to the extent  
13      that it purports to do so it is of no effect.

14      **117. Lodgment of notification with Registrar and withdrawal of**  
15      **notification**

- 16      (1) If a biodiversity conservation agreement is entered into under  
17      section 114(1), the CEO must lodge a notification in relation to  
18      the biodiversity conservation agreement with the Registrar.
- 19      (2) If the biodiversity conservation agreement is cancelled, the CEO  
20      must apply to the Registrar for the notification lodged under  
21      subsection (1) to be withdrawn.
- 22      (3) The following requirements apply to a notification under  
23      subsection (1) and an application under subsection (2) —
- 24           (a) it must be in a form approved by the Registrar;
- 25           (b) it must be accompanied by any information the Registrar  
26           requires;
- 27           (c) it must be accompanied by any relevant fee payable  
28           under the *Transfer of Land Act 1893* or another written  
29           law.
- 30      (4) On the lodgment of a notification under subsection (1) or the  
31      receipt of an application under subsection (2), the Registrar

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1 must make any endorsement or notation the Registrar considers  
2 necessary on the certificate of title or other appropriate record in  
3 respect of the land to which the notification or application, as  
4 the case requires, relates.

5 **118. Biodiversity conservation agreement binding on owners and**  
6 **occupiers**

7 If a certificate of title or other record in respect of land contains  
8 an endorsement or notation relating to a notification lodged  
9 under section 117(1), the biodiversity conservation agreement to  
10 which the notification relates, as amended from time to time  
11 under section 116(2), binds each successive owner or occupier  
12 of the land.

13 **119. Duty to notify CEO of change in ownership or occupation**

- 14 (1) If a certificate of title or other record in respect of land contains  
15 an endorsement or notation relating to a notification lodged  
16 under section 117(1), an owner of the land to which the  
17 notification relates must give written notice to the CEO in  
18 accordance with subsection (2) if —  
19 (a) that person ceases to be an owner of the land; or  
20 (b) that person or another person ceases to be an occupier of  
21 the land.

22 Penalty for this subsection: a fine of \$20 000.

- 23 (2) The notice must —  
24 (a) give details of the change in ownership or occupation of  
25 the land, including the name and address of the next  
26 owner or occupier of the land (if known); and  
27 (b) be given to the CEO within 60 days after the day on  
28 which the change in ownership or occupation of the land  
29 occurs.

- 1   **120.    Action in respect of money, goods or services provided**  
2   **under agreement**
- 3       (1)   If the CEO is satisfied that goods provided to an owner or  
4       occupier of land under a biodiversity conservation agreement  
5       are being used for purposes other than the purposes of the  
6       agreement or have not been used, a wildlife officer may —  
7           (a)   enter land on which the goods are located; and  
8           (b)   on behalf of the CEO take possession of and remove the  
9           goods.
- 10      (2)   A wildlife officer must not enter land under subsection (1)  
11      unless —  
12          (a)   an owner or occupier of the land has consented to the  
13          entry; or  
14          (b)   an owner or occupier of the land has been given  
15          reasonable notice of the proposed entry and has not  
16          objected to the entry; or  
17          (c)   the entry is in accordance with an entry warrant.
- 18      (3)   Part 12 Division 3 applies, with all necessary changes, in  
19      relation to applications for, and the issue and execution of, entry  
20      warrants for the purposes of subsection (2)(c).
- 21      (4)   Without limiting subsection (3), references in Part 12 Division 3  
22      to inspection purposes are to be taken to include the purposes of  
23      taking action under subsection (1).
- 24      (5)   If the CEO is satisfied that an amount of money provided to an  
25      owner or occupier of land by way of financial assistance under a  
26      biodiversity conservation agreement has been used for purposes  
27      other than the purposes of the agreement, the CEO may require  
28      the owner or occupier to pay that amount to the CEO.
- 29      (6)   If the CEO is satisfied that goods or services provided to an  
30      owner or occupier of land under a biodiversity conservation  
31      agreement have been used for purposes other than the purposes  
32      of the agreement, the CEO may require the owner or occupier to

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- 1 pay to the CEO an amount determined by the CEO to be  
2 equivalent to the value of those goods or services.
- 3 (7) The CEO may recover an amount payable under subsection (5)  
4 or (6) in a court of competent jurisdiction as a debt due to the  
5 State.

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## Part 8 — Biodiversity conservation covenants

### 121. Terms used

In this Part —

*covenant land*, in relation to a biodiversity conservation covenant, means the land to which the covenant relates;

*covenantor* has the meaning given in section 122(1);

*register*, in relation to a biodiversity conservation covenant, means —

- (a) if the covenant relates to land that is under the operation of the *Transfer of Land Act 1893* — to endorse the particulars of the covenant on the certificate of title for that land; or
- (b) if the covenant relates to other land — to enter the particulars of the covenant in the appropriate record under the *Registration of Deeds Act 1856*.

### 122. Biodiversity conservation covenant

(1) An owner of land (the *covenantor*) may enter into a covenant (a *biodiversity conservation covenant*) with the CEO to set aside the land or part of the land for one or more of the following purposes —

- (a) the conservation, protection or management of biodiversity or biodiversity components on the land;
- (b) the conservation, protection or management of —
  - (i) a specially protected species that occurs on the land; or
  - (ii) a threatened species that occurs on the land; or
  - (iii) a threatened ecological community that occurs on the land;
- (c) scientific purposes consistent with a purpose referred to in paragraph (a) or (b);

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- 1 (d) public education purposes consistent with a purpose  
2 referred to in paragraph (a) or (b).
- 3 (2) A biodiversity conservation covenant may be expressed to have  
4 effect for a period of time or in perpetuity.
- 5 (3) A biodiversity conservation covenant may do one or more of the  
6 following —
- 7 (a) restrict the use of the covenant land;
- 8 (b) restrict the nature of works that may be carried out on  
9 the covenant land;
- 10 (c) require that action specified in the covenant be taken on  
11 the covenant land;
- 12 (d) require that action be taken in a manner specified in the  
13 covenant on the covenant land.
- 14 (4) Different provisions of a biodiversity conservation covenant  
15 may be expressed to apply to different parts of the covenant  
16 land.
- 17 (5) A biodiversity conservation covenant must be in a form  
18 approved by the Registrar.

19 **123. Consents required**

20 A biodiversity conservation covenant must have endorsed on it  
21 the consent of each person who has a registered interest (within  
22 the meaning of the *Transfer of Land Act 1893*) in the covenant  
23 land.

24 **124. Persons bound by biodiversity conservation covenant**

25 Each of the following persons is bound by a biodiversity  
26 conservation covenant —

- 27 (a) the covenantor while the covenantor remains the owner  
28 of the covenant land;
- 29 (b) a person who is bound by the covenant under  
30 section 129.

1   **125.   Modification of biodiversity conservation covenant**

2           A biodiversity conservation covenant may be modified by  
3           agreement in writing between the CEO and each person who is  
4           bound by the covenant.

5   **126.   Cancellation of biodiversity conservation covenant**

6       (1)   In this section —

7           *permanent covenant* means a biodiversity conservation  
8           covenant that is expressed to have effect in perpetuity.

9       (2)   A biodiversity conservation covenant that is not a permanent  
10       covenant may be cancelled —

11           (a)   by agreement in writing between the CEO and each  
12           person who is bound by the covenant; or

13           (b)   by written notice given by the CEO to each person who  
14           is bound by the covenant.

15       (3)   A permanent covenant may be cancelled by agreement in  
16       writing between the CEO and each person who is bound by the  
17       covenant.

18   **127.   Lodgment of biodiversity conservation covenant with**  
19    **Registrar**

20       (1)   If a biodiversity conservation covenant is entered into under  
21       section 122(1), the CEO must lodge the biodiversity  
22       conservation covenant with the Registrar.

23       (2)   A biodiversity conservation covenant lodged under  
24       subsection (1) must be —

25           (a)   accompanied by any information the Registrar requires;  
26           and

27           (b)   accompanied by any fee payable in respect of the  
28           covenant under the *Transfer of Land Act 1893* or  
29           another written law.

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1 (3) On the lodgment of a biodiversity conservation covenant under  
2 subsection (1), the Registrar must register the covenant.

3 (4) If a biodiversity conservation covenant is lodged under  
4 subsection (1), the CEO must give a copy of the covenant to the  
5 Commissioner of State Revenue.

6 **128. Instruments relating to modification or cancellation of**  
7 **biodiversity conservation covenant to be given to Registrar**

8 (1) If a biodiversity conservation covenant registered under  
9 section 127(3) is modified, the CEO must give the Registrar a  
10 notice setting out the modification.

11 (2) If a biodiversity conservation covenant registered under  
12 section 127(3) is cancelled, the CEO must apply to the Registrar  
13 for the covenant to be discharged.

14 (3) The following requirements apply to a notice under  
15 subsection (1) and an application under subsection (2) —

16 (a) it must be in writing in a form approved by the  
17 Registrar;

18 (b) it must be accompanied by any information the Registrar  
19 requires;

20 (c) it must be accompanied by any relevant fee payable  
21 under the *Transfer of Land Act 1893* or another written  
22 law.

23 (4) On receiving a notice under subsection (1), the Registrar must  
24 make any endorsement or notation the Registrar considers  
25 necessary on the certificate of title or other appropriate record in  
26 respect of the land to which the biodiversity conservation  
27 covenant relates.

28 (5) On receiving an application under subsection (2), the Registrar  
29 must discharge the biodiversity conservation covenant.

30 (6) If the CEO gives a notice under subsection (1) or makes an  
31 application under subsection (2), the CEO must give a copy of



1 the notice or application, as the case requires, to the  
2 Commissioner of State Revenue.

3 **129. Biodiversity conservation covenant binding on successive**  
4 **owners**

5 While a biodiversity conservation covenant remains  
6 registered —

- 7 (a) the covenant binds each successive owner of the land to  
8 which the covenant relates; and  
9 (b) if a certificate of title or other record in respect of the  
10 land to which the covenant relates contains an  
11 endorsement or notation relating to a notice given under  
12 section 128(1), the modification to the covenant referred  
13 to in the notice binds each successive owner of the land.

14 **130. Contravention of biodiversity conservation covenant**

15 A person who is bound by a biodiversity conservation covenant  
16 must not contravene the covenant.

17 Penalty: a fine of \$50 000.

18 **131. Duty to notify CEO of change in ownership or occupation**

19 (1) While a biodiversity conservation covenant remains registered  
20 under section 127(3), an owner of the land to which the  
21 covenant relates must give written notice to the CEO in  
22 accordance with subsection (2) if —

- 23 (a) that person ceases to be an owner of the land; or  
24 (b) that person or another person ceases to be an occupier of  
25 the land.

26 Penalty for this subsection: a fine of \$20 000.

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- 1           (2) The notice must —
- 2                   (a) give details of the change in ownership or occupation of
- 3                   the land, including the name and address of the next
- 4                   owner or occupier of the land (if known); and
- 5                   (b) be given to the CEO within 60 days after the day on
- 6                   which the change in ownership or occupation of the land
- 7                   occurs.

**Part 9 — Control of environmental pests**

**132. Declaration of environmental pest**

- (1) The Minister may, by order, declare that a species specified in the order or a species of a class specified in the order is an environmental pest for an area if —
- (a) there are reasonable grounds for believing that the species has, or may have, an adverse effect on biodiversity or biodiversity components in the area; and
  - (b) it is appropriate, in the opinion of the Minister, to require measures to be taken to control the species.
- (2) The area for which a species is declared to be an environmental pest may be the whole of the State or part of the State.
- (3) Before making an order under subsection (1), the Minister —
- (a) must obtain the concurrence of —
    - (i) the Minister responsible for the administration of the *Biosecurity and Agriculture Management Act 2007*; and
    - (ii) if the species to which the order relates is a species of fish — the Minister responsible for the administration of the *Fish Resources Management Act 1994*; and
    - (iii) if the species to which the order relates is a species of pearl oyster — the Minister responsible for the administration of the *Pearling Act 1990*;
  - and
  - (b) must consult with —
    - (i) the Minister responsible for the administration of the *Biological Control Act 1986*; and
    - (ii) the Minister responsible for the administration of the *Exotic Diseases of Animals Act 1993*; and

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1 (iii) if the species to which the order relates is a plant  
2 prescribed as a pest plant by local laws made  
3 under the *Biosecurity and Agriculture*  
4 *Management Act 2007* section 193(2)(a) — the  
5 Minister responsible for the administration of the  
6 *Local Government Act 1995*.

7 (4) Section 258 applies to an order made under subsection (1).

8 **133. Matters to be considered by Minister**

9 (1) In forming an opinion for the purposes of section 132(1)(b), the  
10 Minister must have regard to biodiversity conservation as the  
11 primary consideration but must also have regard to whether —

12 (a) resources are available for the control of the species in  
13 the area; and

14 (b) it is practicable to control the species in the area.

15 (2) The Minister must not make an order under section 132(1)  
16 unless the Minister is satisfied that other biodiversity  
17 conservation measures are or would be inadequate to control the  
18 species to which the order relates.

19 (3) Without limiting subsection (2), if a species is a declared pest  
20 for an area, the Minister must not make an order under  
21 section 132(1) declaring the species to be an environmental pest  
22 for that area or part of that area unless the Minister is satisfied  
23 that measures in addition to biosecurity measures in force in  
24 respect of the species are necessary to control the species.

25 **134. Environmental pest on CALM Act land**

26 (1) If CALM Act land is in an area for which a species is an  
27 environmental pest, the CEO must —

28 (a) eradicate the environmental pest on the CALM Act land  
29 if it is practicable to do so; or

30 (b) take measures to otherwise control the environmental  
31 pest on the CALM Act land.

- 1       (2) In the case of land the subject of an agreement under the CALM  
2       Act section 8A, subsection (1) does not apply to the extent that  
3       the performance of any obligation it imposes would be contrary  
4       to or inconsistent with the agreement.

5       **135. Environmental pest notice**

- 6       (1) This section does not apply in relation to CALM Act land.
- 7       (2) The CEO may give a written notice (an *environmental pest*  
8       *notice*) to an owner or occupier of land in an area for which a  
9       species is an environmental pest requiring the person to whom  
10       the notice is given to control the environmental pest on the land  
11       by taking measures specified in the notice.
- 12       (3) An environmental pest notice must —
- 13           (a) specify the land to which it relates; and
- 14           (b) specify the environmental pest to which it relates and  
15           the extent to which the environmental pest is to be  
16           controlled; and
- 17           (c) specify the period within which the measures specified  
18           in it are to be taken; and
- 19           (d) inform the person to whom it is given that failure to  
20           comply with it could result in a fine, the CEO taking  
21           remedial action, or both.

22       **136. Matters relevant to giving environmental pest notice**

- 23       (1) In this section each of the following terms has the meaning  
24       given in the *Biosecurity and Agriculture Management Act 2007*  
25       section 6 —
- 26       *agricultural activity*
- 27       *Director General*
- 28       *pest control notice*

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- 1 (2) The CEO must not give an environmental pest notice to a  
2 person unless —
- 3 (a) the CEO is of the opinion that other biodiversity  
4 conservation measures are or would be inadequate to  
5 control the environmental pest to which the notice  
6 relates; and
- 7 (b) if the land to which the notice relates is land used solely  
8 or principally for agricultural activity, the CEO has  
9 complied with section 137(1); and
- 10 (c) if the environmental pest to which the notice relates is a  
11 species to which this paragraph applies, the CEO has  
12 consulted with the Director General on the proposed  
13 notice.
- 14 (3) Subsection (2)(c) applies to a species if —
- 15 (a) the species is a declared pest for the land to which the  
16 proposed notice relates; and
- 17 (b) a pest control notice is in force in respect of the species  
18 on that land.

19 **137. Consultation on proposed measures: land used solely or**  
20 **principally for agricultural activity**

- 21 (1) If the CEO proposes to give an environmental pest notice (the  
22 ***proposed notice***) to a person in respect of land used solely or  
23 principally for agricultural activity, the CEO must give the  
24 person —
- 25 (a) details of the measures required under the proposed  
26 notice and the land to which it relates; and
- 27 (b) a reasonable opportunity to make submissions in  
28 relation to those measures.
- 29 (2) It is sufficient compliance with subsection (1) if the CEO causes  
30 a notice to be published in the prescribed way —
- 31 (a) setting out details of the measures required under the  
32 proposed notice and the land to which it relates; and

- 1 (b) specifying a reasonable period within which  
2 submissions in relation to those measures may be made  
3 to the CEO.

4 **138. Persons bound by environmental pest notice**

5 A person to whom an environmental pest notice is given is  
6 bound by the notice.

7 **139. Amendment or cancellation of environmental pest notice**

- 8 (1) The CEO may, by written notice given to each person bound by  
9 an environmental pest notice, amend or cancel the notice.
- 10 (2) Before the CEO amends an environmental pest notice that  
11 relates to land used solely or principally for agricultural activity,  
12 the CEO must give each person bound by the notice —
- 13 (a) details of the proposed amendment; and  
14 (b) a reasonable opportunity to make submissions in  
15 relation to the proposed amendment.
- 16 (3) Subsection (2) does not apply if the proposed amendment is, in  
17 the opinion of the CEO, necessary to correct —
- 18 (a) a clerical mistake or unintentional error or omission in  
19 the environmental pest notice; or  
20 (b) a misdescription of any person, land or thing in the  
21 environmental pest notice.
- 22 (4) It is sufficient compliance with subsection (2) if the CEO causes  
23 a notice to be published in the prescribed way —
- 24 (a) setting out details of the proposed amendment and the  
25 land to which it relates; and  
26 (b) specifying a reasonable period within which  
27 submissions in relation to the proposed amendment may  
28 be made to the CEO.

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1 **140. Contravention of environmental pest notice**

2 (1) A person who is bound by an environmental pest notice must  
3 not contravene the notice.

4 Penalty for this subsection: a fine of \$50 000.

5 (2) If an owner of land and an occupier of land are both bound by  
6 an environmental pest notice, it is a defence to a charge against  
7 either of them of an offence under subsection (1) for the person  
8 charged to prove that the other person has controlled the  
9 environmental pest as required by the notice.

10 (3) It is a defence to a charge of an offence under subsection (1) to  
11 prove that —

12 (a) the direction in the environmental pest notice was, to the  
13 extent to which it applied to the land to which the  
14 proceedings relate, unnecessary or inappropriate; or

15 (b) the person charged has controlled the environmental  
16 pest as required by the notice even though the person  
17 has not taken some or all of the measures specified in  
18 the notice.

19 **141. Duty to notify CEO of change in ownership or occupation**

20 (1) A person who is bound by an environmental pest notice must  
21 give written notice to the CEO in accordance with  
22 subsection (2) if —

23 (a) that person ceases to be an owner of the land to which  
24 the environmental pest notice relates; or

25 (b) that person or another person ceases to be an occupier of  
26 that land.

27 Penalty for this subsection: a fine of \$20 000.

28 (2) The notice must —

29 (a) give details of the change in ownership or occupation of  
30 the land, including the name and address of the next  
31 owner or occupier of the land (if known); and



- 1           (b) be given to the CEO within 60 days after the day on  
2           which the change in ownership or occupation of the land  
3           occurs.

4   **142. Review by CEO**

- 5       (1) A person who is bound by an environmental pest notice may, in  
6       writing, request the CEO to review it.
- 7       (2) On receiving a request the CEO may suspend the notice pending  
8       the making of a decision under subsection (3).
- 9       (3) On receiving a request the CEO may —
- 10           (a) review the notice and amend, suspend, cancel or confirm  
11           it; or
- 12           (b) refuse to review the notice.
- 13       (4) If the CEO amends the notice it has effect accordingly.
- 14       (5) The CEO must give the person who requested the review  
15       written notice of the decision under subsection (3) and the  
16       reasons for that decision.
- 17       (6) Nothing in this section prejudices any right of review that a  
18       person might have under section 143 but, if a request has been  
19       made under this section, that right of review must not be  
20       exercised until a decision under subsection (3) has been made.

21   **143. Review by State Administrative Tribunal**

- 22       (1) Subject to section 142(6) and regulations referred to in  
23       subsection (2), a person who is bound by an environmental pest  
24       notice may apply to the State Administrative Tribunal for a  
25       review of —
- 26           (a) a decision of the CEO to give the notice; or
- 27           (b) a decision of the CEO under section 142(3) in respect of  
28           the notice.

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- 1 (2) The regulations may prescribe circumstances relating to a  
2 matter of emergency or urgent need in which subsection (1)  
3 does not apply.

4 **144. Compliance statements**

- 5 (1) In this section —

6 *compliance statement* means a statement setting out details  
7 of —

- 8 (a) any contravention by a public authority of an  
9 environmental pest notice during the period for which  
10 the statement is prepared; and  
11 (b) any measures taken to remedy the contravention.

- 12 (2) The CEO must prepare —

- 13 (a) a compliance statement for the period 1 January to  
14 30 June in each year; and  
15 (b) a compliance statement for the period 1 July to  
16 30 December in each year.

- 17 (3) Before preparing a compliance statement, the CEO must consult  
18 with each public authority that is to be referred to in the  
19 statement.

- 20 (4) Each compliance statement must be included in the  
21 Department's next annual report after the end of the period for  
22 which the statement is prepared.

- 23 (5) Each compliance statement must be given to the Minister not  
24 later than 3 months after the end of the period for which the  
25 statement is prepared.

- 26 (6) The Minister must cause a copy of each compliance statement  
27 to be laid before each House of Parliament as soon as is  
28 practicable after receiving it.

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**Part 10 — Fauna and flora**

**Division 1 — Protection of fauna**

**Subdivision 1 — Property in fauna**

**145. Term used: fauna**

In this Subdivision —  
*fauna* does not include fish or pearl oyster.

**146. Property in fauna**

- (1) The property in fauna is vested in the State.
- (2) The property in fauna ceases to be vested in the State when it is taken by a person who has lawful authority to take it.
- (3) Subsection (4) applies to fauna that —
  - (a) has been taken without lawful authority; or
  - (b) is the property of the State under subsection (1).
- (4) The property in the progeny of fauna to which this subsection applies is vested in the State.

**147. Property remains vested in the State in certain cases**

- (1) This section applies to the following classes of fauna —
  - (a) fauna taken in accordance with a licence or authorisation under this Act that authorises the capture of live fauna;
  - (b) injured fauna or abandoned fauna captured, rescued, received or temporarily cared for under section 161 or regulations referred to in that section.
- (2) Despite section 146(2), the property in fauna of a class to which this section applies continues to be vested in the State unless the Minister makes an order under subsection (3).

1 (3) The Minister may, by order, declare that the property in fauna of  
2 a class to which this section applies ceases to be vested in the  
3 State.

4 (4) An order made under subsection (3) must specify the time at  
5 which property ceases to be vested in the State.

6 (5) Section 258 applies to an order made under subsection (3).

7 **148. No compensation**

8 The provisions of this Subdivision do not entitle any person to  
9 compensation.

10 **Subdivision 2 — Protection provisions**

11 **149. Taking fauna other than threatened fauna or managed**  
12 **fauna**

13 (1) A person must not take fauna unless the person has lawful  
14 authority to take it.

15 Penalty for this subsection:

16 (a) if the offence involves a cetacean — a fine of  
17 \$500 000;

18 (b) if the offence involves specially protected fauna that  
19 is not a cetacean — a fine of \$200 000;

20 (c) in any other case — a fine of \$50 000.

21 (2) Subsection (1) does not apply if the fauna is —

22 (a) threatened fauna; or

23 (b) managed fauna.

24 (3) Subsection (1) does not apply if the fauna is taken by —

25 (a) a CALM Act officer, or a person assisting a CALM Act  
26 officer, in exercise of the power in section 165; or

27 (b) an inspector under the *Animal Welfare Act 2002*, or a  
28 person assisting an inspector under that Act, in exercise  
29 of the power in section 41(1) of that Act.

1    **150.    Taking threatened fauna**

2       (1) A person must not take threatened fauna unless the person is  
3       authorised under section 40 to take it and complies with the  
4       conditions, if any, to which the authorisation is subject.

5       Penalty for this subsection:

- 6           (a) if the offence involves a cetacean — a fine of  
7           \$500 000;
- 8           (b) if the offence involves a critically endangered species  
9           that is not a cetacean — a fine of \$500 000;
- 10          (c) if the offence involves an endangered species that is  
11          not a cetacean — a fine of \$400 000;
- 12          (d) if the offence involves a vulnerable species that is not  
13          a cetacean — a fine of \$300 000.

14       (2) Subsection (1) does not apply if the threatened fauna is taken  
15       by —

- 16           (a) a CALM Act officer, or a person assisting a CALM Act  
17           officer, in exercise of the power in section 165; or
- 18           (b) an inspector under the *Animal Welfare Act 2002*, or a  
19           person assisting an inspector under that Act, in exercise  
20           of the power in section 41(1) of that Act.

21    **151.    Defences to charges under s. 149 and 150**

22       (1) It is a defence to a charge of an offence under section 149(1),  
23       other than an offence involving specially protected fauna, to  
24       prove that the taking —

- 25           (a) occurred in the course of a lawful activity the sole or  
26           dominant purpose of which was not to take fauna; and
- 27           (b) could not reasonably have been avoided.

28       (2) It is a defence to a charge of an offence under section 149(1)  
29       involving specially protected fauna or an offence under  
30       section 150(1) to prove that —

- 31           (a) the taking —

- 1 (i) occurred in the course of a lawful activity the  
2 sole or dominant purpose of which was not to  
3 take fauna; and  
4 (ii) could not reasonably have been avoided;  
5 and  
6 (b) the person charged did not know, and could not  
7 reasonably have known, that the specially protected  
8 fauna or threatened fauna concerned was present.
- 9 (3) The defence in subsection (2) is not available in relation to a  
10 charge of an offence under section 150(1) if the taking has  
11 resulted in the threatened fauna becoming eligible for listing as  
12 an extinct species.

13 **152. Possessing fauna**

- 14 (1) A person must not possess fauna unless the person has lawful  
15 authority to possess it.  
16 Penalty for this subsection:
- 17 (a) if the offence involves a cetacean — a fine of  
18 \$500 000;  
19 (b) if the offence involves a critically endangered species  
20 that is not a cetacean — a fine of \$500 000;  
21 (c) if the offence involves an endangered species that is  
22 not a cetacean — a fine of \$400 000;  
23 (d) if the offence involves a vulnerable species that is not  
24 a cetacean — a fine of \$300 000;  
25 (e) if the offence involves specially protected fauna that  
26 is not a cetacean — a fine of \$200 000;  
27 (f) in any other case — a fine of \$50 000.
- 28 (2) Subsection (1) does not apply if the fauna is managed fauna.

- 1 (3) It is a defence to a charge of an offence under subsection (1) to  
2 prove that —
- 3 (a) the fauna had been taken in circumstances giving rise to  
4 a defence under section 151(1) or (2) or in  
5 circumstances beyond the control of the person charged;  
6 and
- 7 (b) the person charged had possession of the fauna for no  
8 longer than the period reasonably required to release it  
9 or deliver it to a person who had lawful authority to  
10 possess it.
- 11 (4) It is a defence to a charge of an offence under subsection (1)  
12 involving possession of a carcass to prove that —
- 13 (a) the fauna had been killed in circumstances giving rise to  
14 a defence under section 151(1) or (2) or in  
15 circumstances beyond the control of the person charged;  
16 and
- 17 (b) the carcass, because of its condition or location, was  
18 likely to endanger the health or safety of the public; and
- 19 (c) the person charged had possession of the carcass for no  
20 longer than the period reasonably required to move or  
21 dispose of it.
- 22 (5) For the purposes of subsection (1), an inspector under the  
23 *Animal Welfare Act 2002*, or a person assisting an inspector  
24 under that Act, has lawful authority to possess fauna seized  
25 under that Act for the period reasonably required to comply  
26 with section 45 of that Act.

27 **153. Disturbing fauna**

- 28 (1) A person must not disturb fauna unless the person has lawful  
29 authority to disturb it.
- 30 Penalty for this subsection:
- 31 (a) if the offence involves a cetacean — a fine of  
32 \$500 000;

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- 1 (b) if the offence involves a critically endangered species  
2 that is not a cetacean — a fine of \$500 000;
- 3 (c) if the offence involves an endangered species that is  
4 not a cetacean — a fine of \$400 000;
- 5 (d) if the offence involves a vulnerable species that is not  
6 a cetacean — a fine of \$300 000;
- 7 (e) if the offence involves specially protected fauna that  
8 is not a cetacean — a fine of \$200 000;
- 9 (f) in any other case — a fine of \$50 000.
- 10 (2) Subsection (1) does not apply if the fauna is managed fauna.
- 11 (3) It is a defence to a charge of an offence under subsection (1)  
12 involving fauna that is not a specially protected species or a  
13 threatened species to prove that the disturbance —
- 14 (a) occurred in the course of a lawful activity the sole or  
15 dominant purpose of which was not to disturb fauna;  
16 and
- 17 (b) could not reasonably have been avoided.
- 18 (4) It is a defence to a charge of an offence under subsection (1)  
19 involving a specially protected species or a threatened species to  
20 prove that —
- 21 (a) the disturbance —
- 22 (i) occurred in the course of a lawful activity the  
23 sole or dominant purpose of which was not to  
24 disturb fauna; and
- 25 (ii) could not reasonably have been avoided;
- 26 and
- 27 (b) the person charged did not know, and could not  
28 reasonably have known, that the species was present.



1 **154. Offender liable to punishment for certain offences despite**  
2 ***The Criminal Code* s. 11**

3 Despite *The Criminal Code* section 11, a person convicted of an  
4 offence under section 149(1), 152(1) or 153(1) may be punished  
5 for the offence even if the fauna became managed fauna after  
6 the offence was committed.

7 **155. Feeding fauna**

8 A person must not feed fauna unless the person has lawful  
9 authority to feed it.

10 Penalty: a fine of \$20 000.

11 **156. Use of prohibited device or prohibited method when taking**  
12 **or disturbing fauna**

13 (1) A person must not use any prohibited device or prohibited  
14 method in the taking or disturbance of fauna.

15 Penalty for this subsection: a fine of \$50 000.

16 (2) An occupier of land must not allow any prohibited device or  
17 prohibited method to be used in the taking or disturbance of  
18 fauna on the land.

19 Penalty for this subsection: a fine of \$50 000.

20 (3) An occupier of land must not allow any prohibited device to be  
21 on the land if the occupier knows or ought reasonably to know  
22 that it is to be used in the taking or disturbance of fauna.

23 Penalty for this subsection: a fine of \$50 000.

24 **157. Dealing in fauna**

25 (1) A person must not deal in fauna except under the authority of a  
26 licence.

27 Penalty for this subsection:

28 (a) if the offence involves a cetacean — a fine of  
29 \$500 000;

- 1 (b) if the offence involves a critically endangered species  
2 that is not a cetacean — a fine of \$500 000;
- 3 (c) if the offence involves an endangered species that is  
4 not a cetacean — a fine of \$400 000;
- 5 (d) if the offence involves a vulnerable species that is not  
6 a cetacean — a fine of \$300 000;
- 7 (e) if the offence involves specially protected fauna that  
8 is not a cetacean — a fine of \$200 000;
- 9 (f) in any other case — a fine of \$50 000.
- 10 (2) For the purposes of subsection (1), a person deals in fauna if the  
11 person conducts a business that involves the purchase or supply  
12 of fauna.

13 **158. Processing fauna**

- 14 (1) In this section —  
15 *fauna* does not include fish or pearl oyster.
- 16 (2) A person must not process fauna for a commercial purpose  
17 except under the authority of a licence.
- 18 Penalty for this subsection:
- 19 (a) if the offence involves a cetacean — a fine of  
20 \$500 000;
- 21 (b) if the offence involves a critically endangered species  
22 that is not a cetacean — a fine of \$500 000;
- 23 (c) if the offence involves an endangered species that is  
24 not a cetacean — a fine of \$400 000;
- 25 (d) if the offence involves a vulnerable species that is not  
26 a cetacean — a fine of \$300 000;
- 27 (e) if the offence involves specially protected fauna that  
28 is not a cetacean — a fine of \$200 000;
- 29 (f) in any other case — a fine of \$50 000.

1       (3) A person must not operate a fauna processing establishment  
2       except under the authority of a licence.

3       Penalty for this subsection: a fine of \$50 000.

4       **159. Importing fauna**

5       A person must not import fauna unless the person has lawful  
6       authority to import it.

7       Penalty:

- 8           (a) if the offence involves a cetacean — a fine of  
9           \$500 000;
- 10          (b) if the offence involves a critically endangered species  
11          that is not a cetacean — a fine of \$500 000;
- 12          (c) if the offence involves an endangered species that is  
13          not a cetacean — a fine of \$400 000;
- 14          (d) if the offence involves a vulnerable species that is not  
15          a cetacean — a fine of \$300 000;
- 16          (e) if the offence involves specially protected fauna that  
17          is not a cetacean — a fine of \$200 000;
- 18          (f) in any other case — a fine of \$50 000.

19       **160. Exporting fauna**

20       A person must not export fauna unless the person has lawful  
21       authority to export it.

22       Penalty:

- 23           (a) if the offence involves a cetacean — a fine of  
24           \$500 000;
- 25          (b) if the offence involves a critically endangered species  
26          that is not a cetacean — a fine of \$500 000;
- 27          (c) if the offence involves an endangered species that is  
28          not a cetacean — a fine of \$400 000;
- 29          (d) if the offence involves a vulnerable species that is not  
30          a cetacean — a fine of \$300 000;

1 (e) if the offence involves specially protected fauna that  
2 is not a cetacean — a fine of \$200 000;

3 (f) in any other case — a fine of \$50 000.

4 **161. Injured or abandoned fauna**

5 (1) In this section —

6 *temporarily care for* means —

7 (a) in the case of injured fauna — to care for the fauna until  
8 it recovers from injury, sickness or disease; or

9 (b) in the case of abandoned fauna — to care for the fauna  
10 until it is able to fend for itself.

11 (2) Sections 149(1), 152(1) and 153(1) do not operate to prohibit a  
12 person from —

13 (a) capturing, rescuing or receiving injured fauna or  
14 abandoned fauna; or

15 (b) temporarily caring for injured fauna or abandoned  
16 fauna; or

17 (c) delivering injured fauna or abandoned fauna to another  
18 person who has lawful authority to temporarily care for  
19 it; or

20 (d) doing a combination of the things mentioned in  
21 paragraphs (a) to (c).

22 (3) The regulations may —

23 (a) exclude prescribed fauna or fauna of a prescribed class  
24 from the operation of subsection (2); and

25 (b) prohibit a person from temporarily caring for injured  
26 fauna, or abandoned fauna, of a prescribed species  
27 except under the authority of a licence; and

28 (c) require a person to notify the CEO within a prescribed  
29 period if the person possesses —

30 (i) injured fauna, or abandoned fauna, of a  
31 prescribed species; or

- 1 (ii) injured fauna or abandoned fauna in  
2 circumstances where the person knows or  
3 reasonably suspects that the fauna was taken  
4 without lawful authority;  
5 and  
6 (d) confer power on a wildlife officer to require a person  
7 who possesses injured fauna or abandoned fauna to give  
8 the fauna to the officer or to another person specified by  
9 the officer within a period specified by the officer; and  
10 (e) prohibit, control or regulate the release of injured fauna  
11 or abandoned fauna and for that purpose may confer  
12 power on the CEO to determine places in the State  
13 where such fauna can or cannot be released; and  
14 (f) prohibit, control or regulate any other matter relating to  
15 the keeping or possession of injured fauna or abandoned  
16 fauna.  
17 (4) This section does not limit or otherwise affect the operation of  
18 section 255(2) or (4).

19 **162. Releasing fauna**

- 20 (1) A person must not release fauna in any part of the State unless  
21 the person has lawful authority to release it.  
22 Penalty for this subsection: a fine of \$20 000.  
23 (2) It is a defence to a charge of an offence under subsection (1) to  
24 prove that —  
25 (a) the fauna had been taken in circumstances giving rise to  
26 a defence under section 151(1) or (2) or in  
27 circumstances beyond the control of the person charged;  
28 and  
29 (b) the release occurred in circumstances in which it was  
30 reasonable to expect the fauna to be able to fend for  
31 itself.

1 **163. Managed fauna**

2 (1) The regulations may provide that prescribed fauna or fauna of a  
3 prescribed class is managed fauna for the purposes of any one or  
4 more of sections 149, 152 and 153.

5 (2) Regulations made for the purposes of subsection (1) may —

6 (a) provide that prescribed fauna or fauna of a prescribed  
7 class is managed fauna throughout the State or in a  
8 prescribed part of the State; and

9 (b) prohibit, impose requirements or conditions in relation  
10 to, or otherwise control or regulate, the taking,  
11 disturbance, possession or disposal of managed fauna;  
12 and

13 (c) confer power on wildlife officers to give directions, in  
14 prescribed circumstances, prohibiting the taking,  
15 disturbance, possession or disposal of managed fauna.

16 (3) Without limiting subsection (2)(b), regulations relating to the  
17 disturbance of managed fauna may regulate the conduct of  
18 people in the vicinity of managed fauna including the distance  
19 to be kept between those people and managed fauna.

20 (4) This section does not authorise the making of regulations that  
21 would allow the taking or disturbance of any native species of  
22 duck, goose or quail for the purposes of sport or recreation.

23 (5) In subsection (4) —

24 *purposes of sport or recreation* includes either or both of those  
25 purposes whether or not combined with the objective of taking  
26 ducks, geese or quail for food.

27 (6) This section does not limit or otherwise affect the operation of  
28 section 255(2) or (4).

1 **164. Regulations: stranded or distressed fauna**

2 (1) In this section —

3 *closed area* means an area of land that is closed in accordance  
4 with the regulations;

5 *responsible authority* means a public authority that has the care,  
6 control and management of land within a closed area.

7 (2) The regulations may —

8 (a) provide for the protection of fauna that is, or appears to  
9 be, stranded or distressed; and

10 (b) regulate, control or prohibit the carrying out of any  
11 activity in relation to such fauna; and

12 (c) provide for the closure of areas of land where such fauna  
13 is, or is likely to be, located.

14 (3) Regulations made for the purposes of subsection (2)(c) —

15 (a) may, in the case of an area of land that is or includes  
16 private land, require the consent of an owner or occupier  
17 of the land to be obtained before the area is closed; and

18 (b) must provide for notification of the closure of an area of  
19 land to be given to any relevant responsible authority as  
20 soon as is practicable after the closure.

21 (4) Regulations made for the purposes of subsection (2)(c) may —

22 (a) confer power on the CEO to authorise the closure of  
23 areas of land; and

24 (b) provide for the designation of closed areas by means of  
25 notices, signs, barriers or other prescribed devices; and

26 (c) confer power on CALM Act officers to direct persons to  
27 leave, or not to enter, a closed area; and

28 (d) prohibit persons from being in a closed area except with  
29 the permission of a CALM Act officer.

30 (5) This section does not limit or otherwise affect the operation of  
31 section 255(2) or (4).

1 **165. Humane destruction of fauna**

2 A CALM Act officer who reasonably believes that any fauna is  
3 suffering so severely that destroying it would be a humane thing  
4 to do, may destroy the fauna in a humane manner.

5 **Division 2 — Protection of flora**

6 **Subdivision 1 — Property in flora**

7 **166. Term used: flora**

8 In this Subdivision —  
9 *flora* does not include fish.

10 **167. Property in flora**

- 11 (1) The property in flora on Crown land is vested in the State.  
12 (2) Subsection (1) does not apply to cultivated flora.  
13 (3) The property in flora on Crown land ceases to be vested in the  
14 State when it is taken by a person who has lawful authority to  
15 take it.

16 **168. Property remains vested in the State in certain cases**

- 17 (1) Despite section 167(3), the property in flora taken under a  
18 licence to take flora, or an authorisation under section 40, on  
19 condition that flora propagated from the flora taken is to be  
20 re-established on Crown land continues to be vested in the State  
21 unless the Minister makes an order under subsection (3).  
22 (2) Despite section 167(3), the property in flora taken under a  
23 contract to which the *Forest Products Act 2000* Part 8 applies  
24 continues to be vested in the State until the flora is sold, and  
25 payment for it is received by the Forest Products Commission,  
26 under that Act.



1 (3) The Minister may, by order, declare that the property in flora of  
2 a kind referred to in subsection (1) ceases to be vested in the  
3 State.

4 (4) An order made under subsection (3) must specify the time at  
5 which property ceases to be vested in the State.

6 (5) Section 258 applies to an order made under subsection (3).

7 **169. Flora propagated from taken flora**

8 Flora propagated from other flora that has been taken is the  
9 property of the State if the other flora —

- 10 (a) was taken without lawful authority; or  
11 (b) is the property of the State under section 168.

12 **170. No compensation**

13 The provisions of this Subdivision do not entitle any person to  
14 compensation.

15 **Subdivision 2 — Protection provisions**

16 **171. Taking flora**

17 (1) A person must not take flora on Crown land unless the  
18 person —

- 19 (a) is engaged in clearing that does not involve the  
20 commission of an offence under the *Environmental*  
21 *Protection Act 1986* section 51C; or  
22 (b) otherwise has lawful authority to take it.

23 Penalty for this subsection:

- 24 (a) if the offence involves specially protected flora — a  
25 fine of \$200 000;  
26 (b) in any other case — a fine of \$50 000.

1 (2) A person must not take flora on private land unless the person is  
2 an owner or occupier of the land or is authorised in the  
3 prescribed way to take it by an owner or occupier of the land.

4 Penalty for this subsection:

5 (a) if the offence involves specially protected flora — a  
6 fine of \$200 000;

7 (b) in any other case — a fine of \$50 000.

8 (3) Subsections (1) and (2) do not apply if the flora is —

9 (a) threatened flora; or

10 (b) cultivated flora; or

11 (c) sandalwood.

12 **172. Taking sandalwood**

13 (1) A person must not take sandalwood on Crown land or private  
14 land unless the person —

15 (a) is engaged in clearing that does not involve the  
16 commission of an offence under the *Environmental*  
17 *Protection Act 1986* section 51C; or

18 (b) otherwise has lawful authority to take it.

19 Penalty for this subsection: a fine of \$200 000.

20 (2) For the purposes of subsection (1), a person does not have  
21 lawful authority to take sandalwood on private land by reason  
22 only of being —

23 (a) an owner or occupier of the land; or

24 (b) a person authorised by an owner or occupier of the land  
25 to take the sandalwood.

1   **173.   Taking threatened flora**

2       (1) A person must not take threatened flora on Crown land unless  
3       the person is authorised under section 40 to take it and complies  
4       with the conditions, if any, to which the authorisation is subject.

5       Penalty for this subsection:

6           (a) if the offence involves a critically endangered  
7           species — a fine of \$500 000;

8           (b) if the offence involves an endangered species — a  
9           fine of \$400 000;

10          (c) if the offence involves a vulnerable species — a fine  
11          of \$300 000.

12       (2) A person must not take threatened flora on private land unless  
13       the person —

14           (a) is an owner or occupier of the land or is authorised in  
15           the prescribed way to take it by an owner or occupier of  
16           the land; and

17           (b) is authorised under section 40 to take it and complies  
18           with the conditions, if any, to which the authorisation is  
19           subject.

20       Penalty for this subsection:

21           (a) if the offence involves a critically endangered  
22           species — a fine of \$500 000;

23           (b) if the offence involves an endangered species — a  
24           fine of \$400 000;

25           (c) if the offence involves a vulnerable species — a fine  
26           of \$300 000.

27       (3) Subsections (1) and (2) do not apply if the threatened flora is  
28       cultivated flora.

1 **174. Defences to charges under s. 171, 172 and 173**

2 (1) It is a defence to a charge of an offence under section 171(1)  
3 or (2), other than an offence involving specially protected flora,  
4 to prove that the taking —

5 (a) occurred in the course of a lawful activity the sole or  
6 dominant purpose of which was not to take flora; and

7 (b) could not reasonably have been avoided.

8 (2) It is a defence to a charge of an offence under section 171(1)  
9 or (2) involving specially protected flora or an offence under  
10 section 172(1) or 173(1) or (2) to prove that —

11 (a) the taking —

12 (i) occurred in the course of a lawful activity the  
13 sole or dominant purpose of which was not to  
14 take flora; and

15 (ii) could not reasonably have been avoided;

16 and

17 (b) the person charged did not know, and could not  
18 reasonably have known, that the specially protected  
19 flora, sandalwood or threatened flora concerned was  
20 present.

21 (3) The defence in subsection (2) is not available in relation to a  
22 charge of an offence under section 173(1) or (2) if the taking  
23 has resulted in the threatened flora becoming eligible for listing  
24 as an extinct species.

25 **175. Use of prohibited device or prohibited method when taking**  
26 **flora**

27 (1) A person must not use any prohibited device or prohibited  
28 method in the taking of flora.

29 Penalty for this subsection: a fine of \$50 000.

- 1       (2) An occupier of land must not allow any prohibited device or  
2       prohibited method to be used in the taking of flora on the land.  
3       Penalty for this subsection: a fine of \$50 000.

4       **176. Supplying flora**

- 5       (1) A person must not supply flora except under the authority of a  
6       licence.

7       Penalty for this subsection:

- 8           (a) if the offence involves a critically endangered  
9           species — a fine of \$500 000;  
10          (b) if the offence involves an endangered species — a  
11          fine of \$400 000;  
12          (c) if the offence involves a vulnerable species — a fine  
13          of \$300 000;  
14          (d) if the offence involves specially protected flora or  
15          sandalwood — a fine of \$200 000;  
16          (e) in any other case — a fine of \$50 000.

- 17       (2) It is a defence to a charge of an offence under subsection (1) to  
18       prove that the person charged lawfully acquired the flora and  
19       supplied it as a gift.

20       **177. Dealing in flora**

- 21       (1) A person must not deal in flora except under the authority of a  
22       licence.

23       Penalty for this subsection:

- 24           (a) if the offence involves a critically endangered  
25           species — a fine of \$500 000;  
26           (b) if the offence involves an endangered species — a  
27           fine of \$400 000;  
28           (c) if the offence involves a vulnerable species — a fine  
29           of \$300 000;

1 (d) if the offence involves specially protected flora or  
2 sandalwood — a fine of \$200 000;

3 (e) in any other case — a fine of \$50 000.

4 (2) For the purposes of subsection (1), a person deals in flora if the  
5 person conducts a business that involves the purchase or supply  
6 of flora.

7 **178. Processing flora**

8 (1) In this section —

9 *flora* does not include forest products taken under a contract to  
10 which the *Forest Products Act 2000* Part 8 applies unless those  
11 forest products are sandalwood.

12 (2) A person must not process flora for a commercial purpose  
13 except under the authority of a licence.

14 Penalty for this subsection:

15 (a) if the offence involves a critically endangered  
16 species — a fine of \$500 000;

17 (b) if the offence involves an endangered species — a  
18 fine of \$400 000;

19 (c) if the offence involves a vulnerable species — a fine  
20 of \$300 000;

21 (d) if the offence involves specially protected flora or  
22 sandalwood — a fine of \$200 000;

23 (e) in any other case — a fine of \$50 000.

24 (3) A person must not operate a flora processing establishment  
25 except under the authority of a licence.

26 Penalty for this subsection: a fine of \$50 000.

27 **179. Exporting flora**

28 A person must not export flora unless the flora —

29 (a) was taken by a person who had lawful authority to take  
30 it; or

1 (b) was supplied to the person by another person who had  
2 lawful authority to supply it.

3 Penalty:

- 4 (a) if the offence involves a critically endangered  
5 species — a fine of \$500 000;
- 6 (b) if the offence involves an endangered species — a  
7 fine of \$400 000;
- 8 (c) if the offence involves a vulnerable species — a fine  
9 of \$300 000;
- 10 (d) if the offence involves specially protected flora or  
11 sandalwood — a fine of \$200 000;
- 12 (e) in any other case — a fine of \$50 000.

13 **180. Additional penalty for offence involving sandalwood**

- 14 (1) If a court convicts a person of an offence under this Division or  
15 the regulations that involves sandalwood, the court may order  
16 the offender to pay an additional penalty of an amount  
17 calculated at the rate of the prescribed amount per tonne, or part  
18 of a tonne, of sandalwood involved in the offence.
- 19 (2) The court must not make an order under subsection (1) unless  
20 the prosecutor applies for the order.
- 21 (3) The amount prescribed by the regulations for the purposes of  
22 subsection (1) cannot exceed \$20 000.

23 **Division 3 — Taking or disturbance by Aboriginal people**

24 **181. Terms used**

25 In this Division —

26 *Aboriginal customary purpose* means —

- 27 (a) preparing or consuming food customarily eaten by  
28 Aboriginal persons; or
- 29 (b) preparing or using medicine customarily used by  
30 Aboriginal persons; or

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

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

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

8 **CALM Act land** means —

9 (a) land, or land and waters, listed in the CALM Act  
10 section 5; and

11 (b) land that, under the CALM Act section 8C, is under the  
12 management of the CEO; and

13 (c) land to which the CALM Act section 131 applies;

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

17 (a) that exist in relation to the area, whether or not they  
18 have been determined under the NT Act to exist; and

19 (b) that confer possession, occupation, use and enjoyment  
20 of the area on the holders of the native title rights and  
21 interests to the exclusion of all others;

22 **exclusive native title holder**, for an area in relation to which  
23 exclusive native title exists, means —

24 (a) the registered native title body corporate (as defined in  
25 the NT Act section 253) in respect of the native title  
26 rights and interests concerned; or

27 (b) if there is no such body corporate, each person who  
28 holds the native title rights and interests concerned or a  
29 person acting with the authority of each such person;

30 **NT Act** means the *Native Title Act 1993* (Commonwealth).

31 **182. Taking or disturbance for Aboriginal customary purposes**

32 (1) This section does not affect the operation of the CALM Act.



- 1 (2) It is a defence to a charge of an offence under this Act of taking  
2 fauna or flora to prove —
- 3 (a) the accused is an Aboriginal person; and  
4 (b) the accused took the fauna or flora for an Aboriginal  
5 customary purpose; and  
6 (c) in taking the fauna or flora the accused complied  
7 with —
- 8 (i) section 156(1) or 175(1), as the case requires;  
9 and  
10 (ii) any regulations that restrict or exclude the  
11 operation of this subsection;
- 12 and
- 13 (d) if the offence is alleged to have been committed on land  
14 other than CALM Act land, the person who has control  
15 or management of the land consented to the taking of the  
16 fauna or flora; and  
17 (e) if the offence is alleged to have been committed in an  
18 area in relation to which exclusive native title exists, the  
19 accused either —
- 20 (i) held the exclusive native title alone or with other  
21 persons; or  
22 (ii) took the fauna or flora with the permission of the  
23 exclusive native title holder for the area.
- 24 (3) It is a defence to a charge of an offence under this Act of  
25 disturbing fauna to prove —
- 26 (a) the accused is an Aboriginal person; and  
27 (b) the accused disturbed the fauna for an Aboriginal  
28 customary purpose; and  
29 (c) in disturbing the fauna the accused complied with —
- 30 (i) section 156(1); and  
31 (ii) any regulations that restrict or exclude the  
32 operation of this subsection; and

- 1 (d) if the offence is alleged to have been committed on land  
2 other than CALM Act land, the person who has control  
3 or management of the land consented to the disturbance  
4 of the fauna; and
- 5 (e) if the offence is alleged to have been committed in an  
6 area in relation to which exclusive native title exists, the  
7 accused either —
- 8 (i) held the exclusive native title alone or with other  
9 persons; or
- 10 (ii) disturbed the fauna with the permission of the  
11 exclusive native title holder for the area.
- 12 (4) If, but for this subsection, the defence provided by  
13 subsection (2) or (3) would entitle an Aboriginal person to do an  
14 act that is inconsistent with the continued existence, enjoyment  
15 or exercise of any native title rights and interests (as defined in  
16 the NT Act section 223) held by another Aboriginal person, the  
17 defence does not apply to that act unless it is proved the accused  
18 did the act in order to obtain fauna or flora sufficient only for  
19 food for the accused and the accused's family, but not for sale.
- 20 (5) The defences provided by subsections (2) and (3) are in addition  
21 to the defences provided by sections 151(1) and (2), 153(3)  
22 and (4) and 174(1) and (2).

23 **183. Possessing fauna taken for Aboriginal customary purposes**

24 If fauna is taken in circumstances giving rise to a defence under  
25 section 182(2), an Aboriginal person is authorised to possess the  
26 fauna for an Aboriginal customary purpose.

27 **184. Selling fauna or flora taken for Aboriginal customary  
28 purposes**

29 An Aboriginal person who takes fauna or flora for an  
30 Aboriginal customary purpose must not sell the fauna or flora,  
31 or any part of it, unless, under the regulations, the sale is  
32 excepted or the person is authorised or licensed to do so.

33 Penalty: a fine of \$10 000.

- 1 **185. Permission given by exclusive native title holder to take or**  
2 **disturb fauna**
- 3 (1) In this section —
- 4 *disturbance* means the doing of anything referred to in  
5 paragraph (a)(i), (ii) or (iii) of the definition of *disturb* in  
6 section 5(1);
- 7 *taking* means the doing of anything referred to in  
8 paragraph (a)(i) of the definition of *take* in section 5(1).
- 9 (2) If the exclusive native title holder for an area in relation to  
10 which exclusive native title exists permits the taking or  
11 disturbance of fauna in the area, the exclusive native title holder  
12 does not commit an offence under this Act by reason of giving  
13 the permission.
- 14 (3) Subsection (2) applies despite any other provision of this Act.
- 15 **186. Regulations: restriction or exclusion of s. 182(2) or (3)**
- 16 (1) The regulations may restrict or exclude the operation of  
17 section 182(2) by reference to any of, or a combination of, the  
18 following —
- 19 (a) the fauna or flora taken;
- 20 (b) the class of person taking the fauna or flora;
- 21 (c) the time of taking;
- 22 (d) the place of taking;
- 23 (e) the manner of taking;
- 24 (f) the quantity of fauna or flora taken;
- 25 (g) the circumstances of the taking.
- 26 (2) The regulations may restrict or exclude the operation of  
27 section 182(3) by reference to any of, or a combination of, the  
28 following —
- 29 (a) the fauna disturbed;
- 30 (b) the class of person disturbing the fauna;

- 1 (c) the time of disturbance;  
2 (d) the place of disturbance;  
3 (e) the manner of disturbance;  
4 (f) the quantity of fauna disturbed;  
5 (g) the circumstances of the disturbance.

6 **Division 4 — Other matters**

7 **187. Orders limiting quantity of sandalwood taken**

- 8 (1) In this section —  
9 *sandalwood* does not include sandalwood that is cultivated  
10 flora;  
11 *specified*, in relation to an order made under subsection (2),  
12 means specified in the order;  
13 *taken* means taken in the State, whether on Crown land or  
14 private land.
- 15 (2) The Minister may, by order —  
16 (a) fix the maximum quantity of sandalwood that can be  
17 taken in a specified period; and  
18 (b) fix the maximum quantity of sandalwood that can be  
19 taken in a specified part of the specified period.
- 20 (3) An order made under subsection (2) may provide that it applies,  
21 or does not apply, to —  
22 (a) sandalwood of a specified kind; or  
23 (b) sandalwood taken in specified circumstances.
- 24 (4) Before making an order under subsection (2), or amending or  
25 repealing such an order, the Minister must consult with the  
26 Minister responsible for the administration of the *Forest*  
27 *Products Act 2000*.

- 1 (5) If an order under subsection (2) is in force, the CEO must  
2 ensure that —
- 3 (a) the total quantity of sandalwood that is authorised by  
4 licence under this Act to be taken in the specified period  
5 does not exceed the maximum quantity fixed in the  
6 order for that period; and
- 7 (b) the total quantity of sandalwood that is authorised by  
8 licence under this Act to be taken in a specified part of  
9 the specified period does not exceed the maximum  
10 quantity fixed in the order for that part of that period.
- 11 (6) In subsection (5) —  
12 *sandalwood* means sandalwood to which the order applies.
- 13 (7) Section 258 applies to an order made under subsection (2).
- 14 **188. Regulations: charges for fauna and flora**
- 15 (1) The regulations may impose charges in respect of —
- 16 (a) prescribed fauna taken for a commercial purpose on any  
17 land; and
- 18 (b) prescribed flora taken for a commercial purpose on  
19 Crown land.
- 20 (2) Regulations made for the purposes of subsection (1) are to —
- 21 (a) prescribe the amount of the charges or the method to be  
22 used to calculate them; and
- 23 (b) prescribe the persons liable to pay the charges; and
- 24 (c) make provision for the collection of the charges.
- 25 (3) Regulations made for the purposes of subsection (1) may  
26 provide that charges are payable irrespective of whether or not  
27 there was lawful authority for the taking of the fauna or flora to  
28 which the charges relate.

- 1 (4) Without limiting the *Interpretation Act 1984* section 43(8)(d)  
2 or 45, regulations made for the purposes of subsection (1)  
3 may —
- 4 (a) impose different charges for different fauna or flora or  
5 different categories or classes of fauna or flora; and
- 6 (b) specify circumstances in which charges are not payable;  
7 and
- 8 (c) provide for the issue by the CEO of identifiers for  
9 application to fauna or flora to indicate that charges  
10 have been paid or are not payable; and
- 11 (d) provide for the circumstances in which, and by whom,  
12 identifiers mentioned in paragraph (c) are to be applied  
13 to fauna or flora; and
- 14 (e) provide for the recovery of unpaid charges and prohibit  
15 conduct by which the payment of charges might be  
16 evaded; and
- 17 (f) confer powers on wildlife officers to seize and sell,  
18 dispose of or otherwise deal with fauna or flora in  
19 circumstances where a charge payable in respect of the  
20 fauna or flora has not been paid.

21 **189. Operation of *The Criminal Code* s. 417 not affected**

22 This Act does not prevent *The Criminal Code* section 417  
23 operating in respect of fauna or flora reasonably suspected of  
24 having been taken otherwise than as authorised by or under this  
25 Act.

1           **Part 11 — Nature-based tourism and recreation**

2   **190.    Terms used**

3           In this Part —

4           *aquatic eco-tourism* has the meaning given in the *Fish*  
5           *Resources Management Act 1994* section 4(1);

6           *commercial operator* means a person who conducts an activity  
7           or provides a service for a commercial purpose;

8           *nature-based tourism and recreation* means activities or  
9           services relating to the enjoyment or viewing of, or interaction  
10          with, native species and their habitats.

11   **191.    Issue of codes of practice**

12          (1) The Minister may issue a code of practice for the purpose of  
13          providing guidance in relation to nature-based tourism and  
14          recreation on land that is not CALM Act land.

15          (2) A code of practice issued under this section may incorporate by  
16          reference any other code or subsidiary legislation as existing or  
17          in force from time to time or as existing or in force at a  
18          particular time.

19          (3) The Minister may amend or revoke a code of practice issued  
20          under this section.

21          (4) The CEO must publish a notice in the *Gazette* giving details of  
22          the issue, amendment or revocation of a code of practice under  
23          this section.

24          (5) A code of practice issued under this section is not subsidiary  
25          legislation for the purposes of the *Interpretation Act 1984*.

26   **192.    Approval of codes of practice**

27          (1) The Minister may approve a code of practice issued under  
28          another written law, or issued by a tourism industry body or  
29          other person, if the Minister considers that the code is  
30          appropriate for the purpose mentioned in section 191(1).

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- 1 (2) A code of practice may be approved as existing or in force from  
2 time to time or as existing or in force at a particular time.
- 3 (3) A code of practice approved under this section may consist of  
4 any code, standard, rule, specification or provision relating to  
5 the purpose mentioned in section 191(1).
- 6 (4) The Minister may approve a revision of the whole or any part of  
7 a code of practice approved under this section.
- 8 (5) The Minister may revoke the approval of a code of practice.
- 9 (6) The CEO must publish a notice in the *Gazette* giving details of  
10 the approval, revision, or revocation of approval, of a code of  
11 practice under this section.
- 12 (7) A code of practice approved under this section is not subsidiary  
13 legislation for the purposes of the *Interpretation Act 1984*.

14 **193. Regulations: nature-based tourism and recreation**

- 15 (1) The regulations may provide for the control and management of  
16 nature-based tourism and recreation on land that is not CALM  
17 Act land.
- 18 (2) Subsection (1) does not extend to the control and management  
19 of aquatic eco-tourism.
- 20 (3) Regulations made for the purposes of subsection (1) may —
- 21 (a) limit, or provide for the limitation of, the number of  
22 persons who may visit or use a particular place for the  
23 purposes of nature-based tourism and recreation if the  
24 visit or use is, or is likely to be, detrimental to native  
25 species or their habitats; and
- 26 (b) regulate commercial operators involved in nature-based  
27 tourism and recreation; and
- 28 (c) regulate the activities or services that commercial  
29 operators referred to in paragraph (b) conduct or  
30 provide; and



- 1           (d) place restrictions on the number of licences that may be  
2           issued under this Act in respect of nature-based tourism  
3           and recreation —  
4                 (i) of a particular kind; or  
5                 (ii) at a particular place.
- 6       (4) This section does not limit or otherwise affect the operation of  
7       section 255(2) or (4).

8       **194. Consultation**

- 9       (1) In this section —  
10       *code of practice* means a code of practice referred to in  
11       section 191 or 192.
- 12       (2) Before a code of practice is issued or approved, or regulations  
13       referred to in section 193 are made, the Minister must consult  
14       with the following —  
15           (a) the Minister responsible for the administration of the  
16                 *Western Australian Tourism Commission Act 1983*;  
17           (b) tourism industry bodies;  
18           (c) any other person or body who or which appears to the  
19                 Minister to be likely to be affected by, or interested in,  
20                 the code of practice or regulations, as the case requires.
- 21       (3) Without limiting subsection (2), if a code of practice is to  
22       contain provisions relating to aquatic eco-tourism, the Minister  
23       must consult with the Minister responsible for the  
24       administration of the *Fish Resources Management Act 1994*  
25       before the code of practice is issued or approved.

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## **Part 12 — Inspection and compliance**

### **Division 1 — Preliminary**

#### **195. Terms used**

In this Part, unless the contrary intention appears —

***dwelling*** means a place or a part of a place that is ordinarily used for human habitation and it does not matter that it is from time to time uninhabited;

***entry warrant*** means an entry warrant issued under Division 3;

***inspection purposes*** means the purposes referred to in section 198;

***instrument*** includes any of the following —

- (a) a biodiversity conservation covenant;
- (b) an environmental pest notice;
- (c) a habitat conservation notice;
- (d) a licence;
- (e) an exemption under this Act;

***licensed premises*** means any place or vehicle in respect of which a licence or exemption is in force under this Act;

***occupier*** —

- (a) in relation to a place — includes any person who has or appears to have the control or management of the place; and
- (b) in relation to a vehicle — includes any person who is or appears to be in charge of the vehicle;

***offence*** means an offence under this Act;

***photograph*** includes to make a digital image or a moving visual record;

***reasonably suspects*** has the meaning given in section 196;

***thing relevant to an offence*** has the meaning given in section 197.

1 **196. Reasonably suspects: meaning**

2 For the purposes of this Part, a person reasonably suspects  
3 something at a relevant time if the person personally has  
4 grounds at the time for suspecting the thing and those grounds  
5 (even if they are subsequently found to be false or non-existent),  
6 when judged objectively, are reasonable.

7 **197. Thing relevant to an offence: meaning**

- 8 (1) For the purposes of this Part, a thing is a thing relevant to an  
9 offence if it is reasonably suspected that —
- 10 (a) the thing has been, is being, or is intended to be used for  
11 the purpose of committing an offence; or
  - 12 (b) the thing has been obtained by the commission of an  
13 offence; or
  - 14 (c) an offence has been, is being, or may be committed in  
15 respect of the thing; or
  - 16 (d) the thing is or may afford —
    - 17 (i) evidence relevant to proving the commission of  
18 an offence or who committed an offence; or
    - 19 (ii) evidence that tends to rebut an alibi.
- 20 (2) For the purposes of this Part, a thing relevant to an offence may  
21 be material or non-material, animate (other than human) or  
22 inanimate.

23 **Division 2 — Inspection and related functions**

24 **198. Purposes for which inspection may be carried out**

- 25 A wildlife officer may carry out an inspection for one or more  
26 of the following purposes —
- 27 (a) to search for or inspect any organism, ecological  
28 community, habitat or potential carrier or anything else  
29 prohibited, controlled, regulated or managed under this  
30 Act;

- 1 (b) to ascertain whether this Act or any instrument entered  
2 into, given or issued under it is being contravened;
- 3 (c) to inspect any records that are kept under or for the  
4 purposes of this Act or that are relevant to determining  
5 whether this Act or any instrument entered into, given or  
6 issued under it is being contravened;
- 7 (d) any other purpose that is prescribed.

8 **199. Power to enter places**

- 9 (1) For inspection purposes a wildlife officer may do one or more  
10 of the following —
- 11 (a) at any time enter licensed premises (including a  
12 dwelling);
- 13 (b) at any time enter a place that is not a dwelling;
- 14 (c) at any time enter a dwelling with the informed consent  
15 of an occupier of the dwelling;
- 16 (d) enter a place in accordance with an entry warrant.
- 17 (2) For the purposes of subsection (1)(c), an occupier gives  
18 informed consent if the occupier consents after being informed  
19 by the wildlife officer —
- 20 (a) of the powers that the wildlife officer wants to exercise  
21 in respect of the dwelling; and
- 22 (b) of the reason why the wildlife officer wants to exercise  
23 those powers; and
- 24 (c) that the person can refuse to consent to the wildlife  
25 officer entering the dwelling.

26 **200. Power to enter includes power to enter some other places**

- 27 (1) This section applies if under section 199 a wildlife officer may  
28 enter a place.
- 29 (2) If the place is one of 2 or more premises in one building, then,  
30 in order to enter the place, the wildlife officer may enter, but not

1 inspect, any part of the building that the occupiers of the  
2 premises use exclusively but in common with each other.

3 (3) If subsection (2) does not apply and the wildlife officer  
4 reasonably suspects that in order to enter the place it is  
5 necessary to enter another place, the wildlife officer may enter,  
6 but not inspect, the other place.

7 **201. Power to stop and enter vehicles and ancillary powers**

8 (1) For inspection purposes a wildlife officer may at any time stop  
9 and enter a vehicle other than a mobile home.

10 (2) If under subsection (1) a wildlife officer may stop a vehicle, the  
11 officer may use any means that are reasonably necessary in the  
12 circumstances to do so, including means that obstruct the  
13 passage of other vehicles.

14 (3) Subsection (2) does not authorise the use of means that are  
15 likely to cause death or grievous bodily harm to any person,  
16 whether or not in a vehicle.

17 (4) A wildlife officer who under subsection (1) stops a vehicle  
18 may —

- 19 (a) detain the vehicle for a reasonable period; and  
20 (b) move the vehicle to a place suitable for carrying out an  
21 inspection.

22 **202. Application of CI Act s. 31**

23 The CI Act section 31 (the *applied provision*) applies, with all  
24 necessary changes, to and in relation to the entry of a place  
25 under section 199(1)(a), (b) or (d) or 200 or a vehicle under  
26 section 201 as if references in the applied provision to —

- 27 (a) a place included references to a vehicle; and  
28 (b) an occupier included references to a person in charge of  
29 a vehicle; and  
30 (c) an officer were references to a wildlife officer; and

- 1 (d) a search warrant were references to an entry warrant;  
2 and  
3 (e) a search were references to an inspection.

4 **203. Other powers related to inspection**

5 For inspection purposes a wildlife officer may do one or more  
6 of the following —

- 7 (a) take onto or into, and use on or in, a place or vehicle any  
8 equipment or facilities that are reasonably necessary in  
9 order to carry out an inspection;
- 10 (b) make reasonable use of any equipment, facilities or  
11 services on or in a place or vehicle in order to carry out  
12 an inspection and for that purpose operate the equipment  
13 or facilities;
- 14 (c) remain on or in a place or vehicle for so long as is  
15 reasonably necessary to carry out an inspection;
- 16 (d) inspect and open any package, compartment, cupboard  
17 or container of any kind, and inspect its contents;
- 18 (e) inspect any cage, enclosure or similar structure on or in  
19 a place or vehicle;
- 20 (f) photograph or otherwise make a record of a place or  
21 vehicle and any thing in or on the place or vehicle;
- 22 (g) restrain, muster, round up, yard, draft or otherwise move  
23 or handle any animal;
- 24 (h) patrol and inspect any fence on or bounding a place;
- 25 (i) take samples or specimens of or from organisms,  
26 ecological communities, habitats, potential carriers,  
27 water or soil;
- 28 (j) apply an identifier to any organism;
- 29 (k) survey and mark out land for any purpose relevant to  
30 carrying out an inspection;
- 31 (l) label any thing.

1 **204. Obtaining records**

2 (1) In this section —

3 ***relevant record*** means a record that —

- 4 (a) contains information about the storage, handling,  
5 transport, possession, supply, use or distribution of an  
6 organism or potential carrier or anything else prohibited,  
7 controlled, regulated or managed under this Act; or
- 8 (b) is required to be kept under this Act; or
- 9 (c) contains information that is relevant to compliance with  
10 this Act or with an instrument entered into, issued or  
11 given under it.

12 (2) For inspection purposes a wildlife officer may do one or more  
13 of the following —

- 14 (a) direct a person who has the custody or control of a  
15 record to give the wildlife officer the record or a copy of  
16 it;
- 17 (b) direct a person who has the custody or control of a  
18 record, computer or thing to make or print out a copy of  
19 the record or to operate the computer or thing;
- 20 (c) operate a computer or other thing on which a record is  
21 or may be stored;
- 22 (d) direct a person who is or appears to be in control of a  
23 record that the wildlife officer reasonably suspects is a  
24 relevant record to give the wildlife officer a translation,  
25 code, password or other information necessary to gain  
26 access to or interpret and understand the record;
- 27 (e) take extracts from or make copies of, or download or  
28 print out, or photograph a record that the wildlife officer  
29 reasonably suspects is a relevant record;
- 30 (f) take reasonable measures to secure or protect a record,  
31 or computer or other thing on which a record is or may  
32 be stored, against damage or unauthorised removal or  
33 interference.

- 1 (3) If a wildlife officer is given a record, the wildlife officer must, if  
2 practicable, allow a person who is otherwise entitled to  
3 possession of it to have reasonable access to it.

4 **205. Directions**

- 5 (1) In this section —

6 *specified* means specified by the wildlife officer.

- 7 (2) A wildlife officer may do one or more of the following —

8 (a) for inspection purposes direct an occupier of a place or  
9 vehicle, or a person who is or appears to be in  
10 possession or control of a thing, to give to the wildlife  
11 officer, orally or in writing —

12 (i) any information in the person's possession or  
13 control as to the name and address of the owner  
14 of the place, vehicle or thing; and

15 (ii) any other information in the person's possession  
16 or control that is relevant to an inspection;

17 (b) for inspection purposes direct a person who is or appears  
18 to be in possession or control of an organism or potential  
19 carrier to give the wildlife officer any information in the  
20 person's possession or control as to the name and  
21 address of any person from whom the organism or  
22 potential carrier or to whom a similar organism or  
23 potential carrier has been supplied;

24 (c) for inspection purposes direct an occupier of a place or  
25 vehicle to answer questions;

26 (d) for inspection purposes direct an occupier of a place or  
27 vehicle to produce a specified thing or a thing of a  
28 specified kind;

29 (e) for inspection purposes direct an occupier of a place or  
30 vehicle to open or unlock any thing in or on the place or  
31 vehicle to which the wildlife officer requires access;



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- (f) direct an occupier of a place or vehicle to give the wildlife officer a plan, or access to a plan, of the place or vehicle;
- (g) direct an occupier of a place or vehicle, or a person who is or appears to be in possession or control of a thing, to give the wildlife officer any assistance that the wildlife officer reasonably needs to carry out the wildlife officer's functions in relation to the place, vehicle or thing;
- (h) direct an occupier of a vehicle to move the vehicle to a specified place for inspection or treatment;
- (i) direct a person who is or could be carrying an organism or potential carrier to go to a specified place for inspection or treatment;
- (j) direct a person who is or appears to be in control of a consignment of goods or a potential carrier to move the consignment or potential carrier to a specified place for inspection or treatment;
- (k) direct a person who is or appears to be in control of an organism to do anything necessary to identify the organism;
- (l) direct a person who is or appears to be in control of an animal to restrain, muster, round up, yard, draft or otherwise move or handle the animal or to remove the animal to a specified place for inspection or treatment;
- (m) direct a person who is or appears to be in control of any goods, vehicle, package or container to label it;
- (n) direct a person who is or appears to be in control of an organism, potential carrier or other thing prohibited, controlled, regulated or managed under this Act to keep that organism, potential carrier or other thing in the possession of that person until further directed by the wildlife officer;

1 (o) direct a person who is or appears to be in control of an  
2 organism, potential carrier or other thing prohibited,  
3 controlled, regulated or managed under this Act to leave  
4 that organism, potential carrier or other thing at a  
5 specified place until further directed by the wildlife  
6 officer.

7 (3) If a person does not comply with a direction under  
8 subsection (2)(h), (i), (j) or (l) the wildlife officer may do  
9 anything the wildlife officer considers necessary to achieve, so  
10 far as is practicable, the purpose of the direction.

11 (4) Without limiting subsection (3) or section 201(4)(b), a wildlife  
12 officer may move a vehicle to achieve the purpose of the  
13 direction.

14 **206. Seizure of thing relevant to an offence**

15 (1) If a wildlife officer when exercising a power under this Division  
16 finds a thing relevant to an offence, the wildlife officer may,  
17 subject to subsection (2), seize the thing.

18 (2) The wildlife officer may seize the thing only if the wildlife  
19 officer reasonably suspects one or more of the following —

- 20 (a) that the thing has been unlawfully obtained;
- 21 (b) that possession of the thing at that time and place by the  
22 person in possession of it is unlawful;
- 23 (c) that it is necessary to seize the thing for one or more of  
24 the following purposes —
- 25 (i) to prevent it from being concealed, damaged,  
26 destroyed, interfered with or lost;
- 27 (ii) to preserve its evidentiary value;
- 28 (iii) to do a forensic examination on it under  
29 section 209;
- 30 (iv) to prevent it from being used in the commission  
31 of another offence.

- 1       (3) The CI Act sections 147 to 151 apply, with all necessary  
2       changes, to and in relation to —  
3           (a) the seizure of a thing under this section; and  
4           (b) a thing that may be seized under this section; and  
5           (c) a thing seized under this section.

- 6       (4) The form prescribed for the CI Act section 147(1), as applied by  
7       subsection (3), may be adapted as necessary for the purposes of  
8       this section.

9       **207. Dealing with seized thing**

- 10      (1) In this section —  
11       *deal with* includes to preserve, to treat, to sell, to give away, to  
12       use and to destroy.
- 13      (2) If under section 206 or in the exercise of powers under the  
14       CI Act, a wildlife officer seizes a thing and, in the opinion of the  
15       wildlife officer, the thing is likely to suffer, deteriorate or perish  
16       if no action is taken to deal with it, the wildlife officer may deal  
17       with the thing in accordance with the directions of the CEO.
- 18      (3) Unless subsection (5) applies, the proceeds of the sale of a thing  
19       under subsection (2), after deduction of the expenses of and  
20       incidental to the sale, are to be credited to the Consolidated  
21       Account.
- 22      (4) Subsection (5) applies if —  
23       (a) under section 206 or in the exercise of powers under the  
24       CI Act a thing is seized in connection with an offence;  
25       and  
26       (b) the thing is sold under subsection (2); and  
27       (c) a decision is subsequently made not to commence a  
28       prosecution in respect of the offence or, after the  
29       prosecution has been completed, no person is convicted  
30       of the offence.

- 1 (5) The proceeds of the sale of the thing, after deduction of the  
2 expenses of and incidental to the sale, are to be paid to the  
3 person entitled to possession of the thing before it was seized.

4 **208. Dealing with seized live fauna**

- 5 (1) If under section 206 or in the exercise of powers under the  
6 CI Act, a wildlife officer seizes live fauna and, in the opinion of  
7 the wildlife officer, it is not practicable to keep the fauna, the  
8 wildlife officer may release the fauna into the wild.

- 9 (2) The power in subsection (1) is not to be exercised in  
10 circumstances where the wildlife officer reasonably suspects  
11 that another person is entitled to possession of the fauna.

12 **209. Forensic examination**

- 13 (1) In this section —

14 *do a forensic examination*, on a sample, specimen or other  
15 thing, means to do any or all of the following —

- 16 (a) to examine or operate it;  
17 (b) to photograph, measure or otherwise make a record of it;  
18 (c) to take an impression of it;  
19 (d) to take samples of or from it;  
20 (e) to do tests on it, or on any sample taken under  
21 paragraph (d), for forensic purposes.

- 22 (2) If a wildlife officer takes a sample or specimen under  
23 section 203(i) the wildlife officer may do a forensic examination  
24 on it or arrange for a forensic examination to be done on it.

- 25 (3) If a wildlife officer, when exercising a power under this  
26 Division, finds a thing that may be seized under section 206,  
27 then whether or not the wildlife officer seizes the thing, the  
28 wildlife officer may do a forensic examination on it or arrange  
29 for a forensic examination to be done on it.

- 1 (4) If it is reasonably necessary to do so in order to do a forensic  
2 examination, the sample, specimen or thing may be dismantled,  
3 damaged or destroyed.
- 4 (5) The power in subsection (3) must not be exercised in relation to  
5 a thing that may contain information that is privileged, as that  
6 term is defined in the CI Act section 151(1), until under that  
7 section (as applied by section 206(3) of this Act) —
- 8 (a) a decision is made that the information is not privileged;  
9 or
- 10 (b) orders have been made to enable the power to be  
11 exercised.

12 **Division 3 — Entry warrants**

13 **210. Applying for entry warrant**

- 14 (1) A wildlife officer may apply to a JP for an entry warrant  
15 authorising the entry of a place or vehicle for inspection  
16 purposes.
- 17 (2) A wildlife officer may apply for an entry warrant for a place or  
18 vehicle even if, under Division 2, a wildlife officer may enter  
19 the place or vehicle without an entry warrant.
- 20 (3) The application must be made in accordance with section 211  
21 and must include the prescribed information, if any.

22 **211. Making an application**

- 23 (1) In this section —  
24 ***application*** means an application under section 210;  
25 ***remote communication*** means any way of communicating at a  
26 distance including by telephone, fax, email and radio.
- 27 (2) A reference in this section to making an application includes a  
28 reference to giving information in support of the application.

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**Division 3** Entry warrants

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- 1 (3) An application must be made in person before a JP unless —  
2 (a) the warrant is needed urgently; and  
3 (b) the applicant reasonably suspects that a JP is not  
4 available within a reasonable distance of the applicant.
- 5 (4) If subsection (3)(a) and (b) apply —  
6 (a) the application may be made to the JP by remote  
7 communication; and  
8 (b) the JP may grant the application only if satisfied about  
9 the matters in subsection (3)(a) and (b).
- 10 (5) An application must be made in writing unless —  
11 (a) the application is made by remote communication; and  
12 (b) it is not practicable to send the JP written material.
- 13 (6) If subsection (5)(a) and (b) apply —  
14 (a) the application may be made orally; and  
15 (b) the JP must make a written record of the application and  
16 any information given in support of it.
- 17 (7) An application must be made on oath unless —  
18 (a) the application is made by remote communication; and  
19 (b) it is not practicable for the JP to administer an oath to  
20 the applicant.
- 21 (8) If subsection (7)(a) and (b) apply —  
22 (a) the application may be made in an unsworn form; and  
23 (b) if the JP issues an entry warrant, the applicant must as  
24 soon as is practicable send the JP an affidavit verifying  
25 the application and any information given in support  
26 of it.

27 **212. Further provisions relating to application for entry warrant**

- 28 (1) If, on an application made by remote communication under  
29 section 211 a JP issues an entry warrant, the JP must, if

- 1 practicable, send a copy of the original warrant to the applicant  
2 by remote communication, but otherwise —
- 3 (a) the JP must send the applicant by remote  
4 communication any information that must be set out in  
5 the warrant; and
- 6 (b) the applicant must complete a form of warrant with the  
7 information received and give the JP a copy of the form  
8 as soon as is practicable after doing so; and
- 9 (c) the JP must attach the copy of the form to the original  
10 warrant and any affidavit received from the applicant  
11 and make them available for collection by the applicant.
- 12 (2) The copy of the original warrant sent, or the form of the warrant  
13 completed, as the case may be, under subsection (1) has the  
14 same force and effect as the original warrant.
- 15 (3) If an applicant contravenes section 211(8)(b) or  
16 subsection (1)(b), any evidence obtained under the entry warrant  
17 is not admissible in proceedings in a court.

18 **213. Issuing entry warrant**

- 19 (1) A JP may issue an entry warrant if satisfied that it is necessary  
20 for a wildlife officer to enter a place or vehicle for inspection  
21 purposes.
- 22 (2) An entry warrant must contain the following information —
- 23 (a) a reasonably particular description of the place or  
24 vehicle to which it relates;
- 25 (b) a reasonably particular description of the inspection  
26 purpose for which entry to the place or vehicle is  
27 required;
- 28 (c) the period, not exceeding 30 days, during which it may  
29 be executed;
- 30 (d) the name of the JP who issued it;
- 31 (e) the date and time when it was issued.

- 1 (3) If a JP refuses to issue an entry warrant, the JP must record on  
2 the application the fact of, the date and time of, and the reasons  
3 for, the refusal.

4 **214. Effect of entry warrant**

5 (1) An entry warrant has effect according to its contents and this  
6 section.

7 (2) An entry warrant comes into force when it is issued by a JP.

8 (3) An entry warrant authorises the wildlife officer executing the  
9 warrant, during the period of the warrant —

10 (a) to enter the place or vehicle described in the warrant;  
11 and

12 (b) to exercise the powers conferred by Division 2.

13 **215. Execution of entry warrant**

14 (1) An entry warrant may be executed by the wildlife officer to  
15 whom it is issued or by any other wildlife officer.

16 (2) A wildlife officer executing an entry warrant must, at the  
17 reasonable request of a person apparently in charge of the place  
18 or vehicle, produce the warrant.

19 **Division 4 — Remedial action**

20 **216. Term used: relevant instrument**

21 In this Division —

22 *relevant instrument* means —

23 (a) a biodiversity conservation covenant; or

24 (b) an environmental pest notice; or

25 (c) a habitat conservation notice.



1   **217.   CEO may take remedial action**

- 2       (1) If, in the opinion of the CEO, a relevant instrument has been  
3       contravened, the CEO may take any action (***remedial action***)  
4       the CEO considers necessary to ensure compliance with it.
- 5       (2) Without limiting subsection (1), remedial action may include —
- 6           (a) stopping anything that is being done in contravention of  
7           the instrument; and
- 8           (b) doing anything required by the instrument to be done  
9           that has not been done; and
- 10          (c) carrying out work that is necessary to remedy anything  
11          done in contravention of the instrument; and
- 12          (d) doing anything incidental to action referred to in  
13          paragraph (a), (b) or (c).
- 14       (3) For the purposes of taking remedial action a wildlife officer  
15       may —
- 16           (a) enter on land with or without vehicles, plant and  
17           equipment; and
- 18           (b) remain on that land for as long as is necessary to  
19           complete the remedial action.
- 20       (4) The power in subsection (3)(a) must not be exercised unless —
- 21           (a) the consent of an owner or occupier of the land has been  
22           obtained; or
- 23           (b) an owner or occupier of the land has been given  
24           reasonable notice of the proposed entry and has not  
25           objected to the entry; or
- 26           (c) the entry is in accordance with an entry warrant.
- 27       (5) Division 3 applies, with all necessary changes, in relation to  
28       applications for, and the issue and execution of, entry warrants  
29       for the purposes of subsection (4)(c).

- 1 (6) Without limiting subsection (5), references in Division 3 to  
2 inspection purposes are to be taken to include the purposes of  
3 remedial action.

4 **218. Notice required before remedial action**

5 The CEO must not take remedial action unless —

- 6 (a) the CEO has given a person bound by the relevant  
7 instrument a written notice —  
8 (i) stating that in the opinion of the CEO the  
9 instrument has been contravened; and  
10 (ii) giving details of the action necessary to comply  
11 with the instrument; and  
12 (iii) informing the person that if the instrument is not  
13 complied with within the period specified in the  
14 notice the CEO may take remedial action;  
15 and  
16 (b) the relevant instrument has not been complied with  
17 within the period referred to in paragraph (a)(iii).

18 **219. Recovery of costs of remedial action**

- 19 (1) The CEO may recover the reasonable costs incurred in taking  
20 remedial action from a person bound by the relevant instrument  
21 in a court of competent jurisdiction as a debt due to the State.  
22 (2) If more than one person is bound by the relevant instrument,  
23 each of those persons is jointly and severally liable for the costs  
24 referred to in subsection (1).

25 **Division 5 — Other provisions**

26 **220. Time and place for compliance with direction**

27 A wildlife officer may specify the date and time when, and  
28 place where, a direction given under this Act must be complied  
29 with.

1 **221. Direction may be given orally or in writing**

- 2 (1) A direction under this Act may be given by a wildlife officer  
3 orally or in writing.
- 4 (2) A direction that is given orally must be confirmed in writing  
5 within 5 business days after it is given, unless within that period  
6 it is complied with or cancelled.
- 7 (3) Failure to comply with subsection (2) does not invalidate the  
8 direction.

9 **222. Exercise of power may be recorded**

10 A wildlife officer may record the exercise of a power under this  
11 Act, including by making an audiovisual recording.

12 **223. Assistance to exercise powers**

- 13 (1) A wildlife officer exercising a power under this Act may  
14 authorise as many other persons to assist in exercising the  
15 power as are reasonably necessary in the circumstances.
- 16 (2) A person who under subsection (1) is authorised by a wildlife  
17 officer to assist in exercising a power must obey any lawful and  
18 reasonable direction given to the person by the wildlife officer  
19 when assisting in exercising the power.
- 20 (3) For the purposes of section 273, a person who assists in  
21 exercising a power under this Act having been authorised by a  
22 wildlife officer to do so is to be taken to be performing a  
23 function under this Act.
- 24 (4) The protection from liability given to a person because of the  
25 operation of subsection (3) does not extend to anything done or  
26 omitted to be done by the person in contravention of a lawful  
27 and reasonable direction referred to in subsection (2).

1 **224. Use of force**

- 2 (1) When exercising a power under this Act a wildlife officer, and  
3 any person assisting a wildlife officer, may use any force  
4 against any person or thing that is reasonably necessary in the  
5 circumstances —  
6 (a) to exercise the power; and  
7 (b) to overcome any resistance to exercising the power that  
8 is offered, or that the wildlife officer reasonably  
9 suspects will be offered, by any person.
- 10 (2) However, if the use of force is likely to cause significant  
11 damage to property, a wildlife officer or person assisting a  
12 wildlife officer is not entitled to use force unless the CEO has,  
13 in the particular case, given the wildlife officer prior written  
14 authorisation to do so.
- 15 (3) Any use of force under this section against a person is subject to  
16 *The Criminal Code* Chapter XXVI.

17 **225. Evidence obtained improperly**

- 18 (1) This section applies if in the purported exercise of a power  
19 conferred by this Act or by an entry warrant issued or  
20 purportedly issued under this Act —  
21 (a) a thing relevant to an offence is seized or obtained; and  
22 (b) a requirement of this Act in relation to exercising the  
23 power or issuing the entry warrant, including a  
24 requirement that arises before or after the exercise of the  
25 power or the issue of the entry warrant, is contravened.
- 26 (2) Any evidence derived from the thing seized or obtained or from  
27 the exercise of the power is not admissible in any criminal  
28 proceedings against a person in a court unless —  
29 (a) the person does not object to the admission of the  
30 evidence; or  
31 (b) the court decides otherwise under subsection (3).

- 1       (3) The court may nevertheless decide to admit the evidence if it is  
2       satisfied that the desirability of admitting the evidence  
3       outweighs the undesirability of admitting the evidence.
- 4       (4) In making a decision under subsection (3) the court must take  
5       into account each of the following —
- 6           (a) any objection to the evidence being admitted by the  
7           person against whom the evidence may be given;
- 8           (b) the seriousness of the offence in respect of which the  
9           evidence is relevant;
- 10          (c) the seriousness of any contravention of this Act in  
11          obtaining the evidence;
- 12          (d) whether any contravention of this Act in obtaining the  
13          evidence —
- 14              (i) was intentional or reckless; or
- 15              (ii) arose from an honest and reasonable mistake of  
16              fact;
- 17          (e) the probative value of the evidence;
- 18          (f) any other matter the court thinks fit.
- 19       (5) The probative value of the evidence does not by itself justify its  
20       admission.

21       **226. Compliance with directions**

- 22       (1) A person must not contravene a direction given to the person by  
23       a wildlife officer under this Act.
- 24       Penalty for this subsection: a fine of \$10 000.
- 25       (2) It is a defence to a charge of an offence under subsection (1) to  
26       prove that the person charged had a reasonable excuse.

27       **227. False or misleading information**

- 28       (1) A person must not give false or misleading information to a  
29       wildlife officer who is carrying out a function under this Act.
- 30       Penalty for this subsection: a fine of \$10 000.

- 1 (2) For the purposes of subsection (1), a person gives false or  
2 misleading information to a wildlife officer if the person does  
3 one or more of the following —
- 4 (a) states anything to the wildlife officer that the person  
5 knows is false or misleading in a material particular;
- 6 (b) omits from a statement made to a wildlife officer  
7 anything without which the statement is, to the person’s  
8 knowledge, misleading in a material particular;
- 9 (c) gives or produces any record or other document to the  
10 wildlife officer that —
- 11 (i) the person knows is false or misleading in a  
12 material particular; or
- 13 (ii) omits anything without which the record or other  
14 document is, to the person’s knowledge,  
15 misleading in a material particular.

16 **228. Obstruction of wildlife officer**

17 A person must not obstruct a wildlife officer or a person  
18 assisting a wildlife officer in the exercise or attempted exercise  
19 of a power under this Act.

20 Penalty: a fine of \$20 000.

21 **229. Self-incrimination not an excuse**

22 (1) An individual is not excused from complying with a direction  
23 under this Act to provide information or answer questions, or to  
24 produce any record or thing, on the ground that the information,  
25 answer, record or thing might incriminate the individual or  
26 make the individual liable to a penalty.

27 (2) However, any information or answer provided, or document or  
28 thing produced, by an individual in compliance with a direction  
29 under this Act is not admissible in evidence in any proceedings  
30 against the individual other than proceedings for perjury or an  
31 offence against section 227.

1     **230.     Orders for forfeiture or disposal of seized things**

2           (1) In this section —

3           *seized thing* means a thing seized —

4           (a) under section 206; or

5           (b) under the CI Act in the exercise of powers in respect of  
6           an offence under this Act.

7           (2) A court that convicts a person of an offence under this Act may  
8           make an order for the forfeiture to the State, or the destruction  
9           or disposal, of a seized thing if the court is satisfied that the  
10          thing was the subject of, used in, or otherwise involved in, the  
11          commission of the offence.

12     **231.     Application of *Criminal and Found Property Disposal***  
13     ***Act 2006***

14          The *Criminal and Found Property Disposal Act 2006* applies to  
15          and in respect of —

16          (a) any thing seized under section 206 unless the thing is  
17          dealt with under section 207(2) or 208(1); and

18          (b) any thing forfeited under section 230.

1

## **Part 13 — Legal proceedings**

2

### **Division 1 — General provisions relating to offences**

3

#### **232. Who can commence prosecution**

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A prosecution for an offence under this Act may be commenced only by the CEO or a person authorised to do so by the CEO.

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#### **233. Time for commencing prosecution**

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(1) A prosecution for an offence under this Act must be commenced within 3 years after the day on which the offence is alleged to have been committed.

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(2) Despite subsection (1), if a prosecution notice alleging an offence under this Act specifies the day on which evidence of the alleged offence first came to the attention of a person who has authority to commence the prosecution —

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(a) the prosecution may be commenced within 3 years after that day; and

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(b) the prosecution notice need not contain particulars of the day on which the offence is alleged to have been committed.

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(3) The day on which evidence first came to the attention of a person who has authority to commence the prosecution is, in the absence of proof to the contrary, the day specified in the prosecution notice.

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#### **234. Attempt, incitement or accessory after the fact**

24

(1) In this section —

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*accessory after the fact to an offence* has the meaning given in *The Criminal Code* section 10.

26

27

(2) *The Criminal Code* section 555A applies to an offence under this Act as if it were a simple offence under that Code.

28



- 1 (3) A person who becomes an accessory after the fact to an offence  
2 under this Act (the *principal offence*) commits an offence and is  
3 liable on conviction to the penalty to which a person convicted  
4 of the principal offence is liable.

5 **235. Penalties for continuing offences**

6 For the purposes of the *Interpretation Act 1984* section 71, in  
7 relation to an offence committed under this Act, the penalty for  
8 each separate and further offence committed by a person is a  
9 fine of \$5 000.

10 **236. Court may cancel or suspend licence**

- 11 (1) If a court convicts a person of an offence under this Act, the  
12 court may, in addition to any other penalty it imposes in relation  
13 to the offence, cancel, or suspend for any period, any licence  
14 held by the person.
- 15 (2) A court must not cancel or suspend a licence under  
16 subsection (1) unless the prosecutor applies for its cancellation  
17 or suspension.

18 **Division 2 — Responsibility of certain persons**

19 **237. Liability of officers of body corporate for offence by body**

- 20 (1) In this section —  
21 *officer*, in relation to a body corporate, has the meaning given in  
22 the *Corporations Act 2001* (Commonwealth) section 9.
- 23 (2) This section applies to an offence under —  
24 (a) section 48(1), 65(1), 140(1), 150(1) or 173(1) or (2); or  
25 (b) section 152(1), 153(1), 157(1), 158(2), 159 or 160 if the  
26 offence involves a cetacean or threatened fauna; or  
27 (c) section 176(1), 177(1), 178(2) or 179 if the offence  
28 involves threatened flora; or

- 1 (d) a provision of the regulations that is prescribed for the  
2 purposes of this section.
- 3 (3) If a body corporate is guilty of an offence to which this section  
4 applies, an officer of the body corporate is also guilty of the  
5 offence if the officer failed to take all reasonable steps to  
6 prevent the commission of the offence by the body corporate.
- 7 (4) In determining whether things done or omitted to be done by the  
8 officer constitute reasonable steps, a court must have regard  
9 to —
- 10 (a) what the officer knew, or ought to have known, about  
11 the commission of the offence by the body corporate;  
12 and
- 13 (b) whether the officer was in a position to influence the  
14 conduct of the body corporate in relation to the  
15 commission of the offence; and
- 16 (c) any other relevant matter.
- 17 **238. Further provisions relating to liability of officers of body**  
18 **corporate**
- 19 (1) Section 237 does not affect the liability of a body corporate for  
20 any offence.
- 21 (2) Section 237 does not affect the liability of an officer of a body  
22 corporate, or any other person, under *The Criminal Code*  
23 Chapters II, LVII, LVIII and LIX.
- 24 (3) An officer of a body corporate may be charged with, and  
25 convicted of, an offence in accordance with section 237 whether  
26 or not the body corporate is charged with, or convicted of, the  
27 principal offence committed by the body corporate.
- 28 (4) If an officer of a body corporate who is charged with an offence  
29 in accordance with section 237 claims that the body corporate  
30 would have a defence if it were charged with the offence —
- 31 (a) the onus of proving the defence is on the officer; and

1 (b) the standard of proof required is the standard that would  
2 apply to the body corporate in relation to the defence.

3 (5) Subsection (4) does not limit any other defence available to the  
4 officer.

5 **239. Liability of partners**

6 (1) In this section —

7 *offence* means an offence under this Act committed or alleged  
8 to have been committed in the course of the activities of the  
9 relevant partnership.

10 (2) If a licence is granted in respect of a partnership each partner  
11 has the same rights and duties as a licensee, whether or not the  
12 partner is named in the licence.

13 (3) If a person (*partner A*) who is a partner in a partnership is  
14 charged with an offence, every other person who was a partner  
15 at the time of the alleged offence may also be charged with the  
16 offence.

17 (4) If a person (*partner B*) is charged as permitted by subsection (3)  
18 and partner A is convicted of the offence, partner B is to be  
19 taken to have also committed the offence, subject to  
20 subsection (7).

21 (5) If a person (*partner C*) who is a partner in a partnership  
22 commits an offence then, although partner C is not charged with  
23 the offence, every other person who was a partner at the time  
24 the offence was committed may be charged with the offence.

25 (6) If a person (*partner D*) is charged as permitted by subsection (5)  
26 and it is proved that partner C committed the offence, partner D  
27 is to be taken to have also committed the offence, subject to  
28 subsection (7).

- 1 (7) If under this section a person is charged with an offence it is a  
2 defence to prove that —
- 3 (a) the offence was committed without the person’s consent  
4 or connivance; and
- 5 (b) the person took all the measures to prevent the  
6 commission of the offence that the person could  
7 reasonably be expected to have taken having regard to  
8 the person’s functions and to all the circumstances.
- 9 **240. Liability of principals for offence by agent**
- 10 (1) If a person (the *agent*) acting, otherwise than as an employee,  
11 for or on behalf of another person (the *principal*) is charged  
12 with an offence under this Act, the principal may also be  
13 charged with the offence.
- 14 (2) If a principal is charged as permitted by subsection (1) and the  
15 agent is convicted of the offence, the principal is to be taken to  
16 have also committed the offence, subject to subsection (5).
- 17 (3) If a person (the *agent*) acting, otherwise than as an employee,  
18 for or on behalf of another person (the *principal*) commits an  
19 offence under this Act, then, although the agent is not charged  
20 with the offence, the principal may be charged with the offence.
- 21 (4) If a principal is charged as permitted by subsection (3) and it is  
22 proved that the agent committed the offence, the principal is to  
23 be taken to have also committed the offence, subject to  
24 subsection (5).
- 25 (5) If under this section a principal is charged with an offence it is a  
26 defence to prove that —
- 27 (a) the offence was committed without the principal’s  
28 consent or connivance; and
- 29 (b) the principal took all the measures to prevent the  
30 commission of the offence that the principal could  
31 reasonably be expected to have taken having regard to  
32 all the circumstances.

1 **241. Liability of employers for offence by employee**

- 2 (1) If an employee of another person (the *employer*) is charged as  
3 an employee with an offence under this Act, the employer may  
4 also be charged with the offence whether or not the employee  
5 acted without the employer's authority or contrary to the  
6 employer's orders or instructions.
- 7 (2) If an employer is charged as permitted by subsection (1) and the  
8 employee is convicted of the offence, the employer is to be  
9 taken to have also committed the offence, subject to  
10 subsection (5).
- 11 (3) If an employee of another person (the *employer*) commits an  
12 offence under this Act as an employee, then, although the  
13 employee is not charged with the offence, the employer may be  
14 charged with the offence whether or not the employee acted  
15 without the employer's authority or contrary to the employer's  
16 orders or instructions.
- 17 (4) If an employer is charged as permitted by subsection (3) and it  
18 is proved that the employee committed the offence, the  
19 employer is to be taken to have also committed the offence,  
20 subject to subsection (5).
- 21 (5) If under this section an employer is charged with an offence it is  
22 a defence to prove that —
- 23 (a) the offence was committed without the employer's  
24 consent or connivance; and
- 25 (b) the employer took all the measures to prevent the  
26 commission of the offence that the employer could  
27 reasonably be expected to have taken having regard to  
28 all the circumstances.

1 **Division 3 — Remediation orders**

2 **242. Terms used**

3 In this Division —

4 *environmental damage* means damage to a habitat or a  
5 threatened ecological community;

6 *relevant offence* means an offence under section 48(1), 149(1),  
7 150(1), 156, 171(1) or (2), 172(1), 173(1) or (2) or 175;

8 *remediation measures* means measures to repair, control or  
9 mitigate environmental damage caused by the commission of a  
10 relevant offence including measures involving the  
11 re-establishment and maintenance of vegetation;

12 *remediation order* means an order under section 243(1);

13 *specified*, in relation to a remediation order, means specified in  
14 the order.

15 **243. Making a remediation order**

16 (1) If a court convicts a person of a relevant offence, the court may  
17 order the offender —

18 (a) to take specified remediation measures within a  
19 specified time; or

20 (b) to pay to the CEO or any other specified person within a  
21 specified time an amount of money set by the court as  
22 compensation for costs reasonably incurred by the CEO  
23 or other person in taking remediation measures.

24 (2) An application for a remediation order must be made in  
25 accordance with the regulations.

26 (3) A remediation order may be made by a court on its own  
27 initiative or on the application of the prosecutor.

28 (4) A court that makes a remediation order may make any other  
29 order that is necessary to give effect to the remediation order.

1 **244. Limitation on making remediation order: damage to habitat**  
2 **on private land**

3 A court must not make a remediation order in respect of  
4 environmental damage consisting of damage to habitat on  
5 private land if —

- 6 (a) the offender, at the time of the relevant offence, was an  
7 owner or occupier of the private land; and  
8 (b) the relevant offence did not involve a threatened species,  
9 threatened ecological community or critical habitat.

10 **245. Enforcement of remediation order under s. 243(1)(a)**

11 (1) If the CEO considers that a remediation order made under  
12 section 243(1)(a) has been contravened, the CEO may apply to  
13 the court that made the remediation order for an order under  
14 subsection (3).

15 (2) The application must be made in accordance with the  
16 regulations.

17 (3) After considering the application, the court may —

- 18 (a) amend the remediation order; or  
19 (b) cancel the remediation order and make an order under  
20 section 243(1)(b); or  
21 (c) dismiss the application.

22 **246. Enforcement of remediation order under s. 243(1)(b)**

23 (1) If the amount payable to a person under a remediation order  
24 made under section 243(1)(b) is not paid within the specified  
25 time, the person may enforce the order by lodging a certified  
26 copy of it in a court of competent jurisdiction.

27 (2) When lodged, the remediation order is to be taken to be a  
28 judgment of the court and may be enforced accordingly.

29 (3) No fee is to be charged for a certified copy of the remediation  
30 order or for lodging it.

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**Division 4 — Evidentiary provisions**

**247. Terms used**

In this Division —

*authorisation* means a licence, approval, consent or other authorisation under this Act;

*exemption* means an exemption under this Act;

*offence* means an offence under this Act;

*specified*, in relation to a certificate or prosecution notice, means specified in the certificate or prosecution notice, as the case requires.

**248. Presumption as to identity of alleged offender**

In proceedings for an offence, if the name of the accused in the prosecution notice for the offence is the name given by the alleged offender at the time of, or immediately following, the occurrence giving rise to the offence, the accused is, in the absence of proof to the contrary, to be taken to be the alleged offender.

**249. Presumption as to place of offence**

In proceedings for an offence, an allegation in the prosecution notice that an act occurred on land of a particular description (for example, Crown land or private land), is, on the act being proved and in the absence of proof to the contrary, to be taken to be proved.

**250. Evidence as to authority or status**

In proceedings for an offence, an allegation in the prosecution notice of any of the following matters is, in the absence of proof to the contrary, to be taken to be proved —

- (a) that the prosecutor is authorised to commence the prosecution;



- 1 (b) that on a specified day or during a specified period a  
2 specified person was or was not the holder of an  
3 authorisation;
- 4 (c) that on a specified day or during a specified period a  
5 specified person was or was not authorised to do a  
6 specified thing under an authorisation;
- 7 (d) that on a specified day or during a specified period a  
8 specified place, vehicle or other thing was or was not the  
9 subject of an authorisation or exemption;
- 10 (e) that on a specified day or during a specified period a  
11 specified person was or was not the subject of an  
12 authorisation or exemption;
- 13 (f) that on a specified day or during a specified period an  
14 authorisation or exemption was cancelled, suspended or  
15 for any other reason of no effect;
- 16 (g) that on a specified day or during a specified period an  
17 authorisation or exemption was subject to a specified  
18 condition;
- 19 (h) that on a specified day or during a specified period a  
20 person was the owner or occupier of specified land;
- 21 (i) that on a specified day or during a specified period a  
22 person was a wildlife officer or a person assisting a  
23 wildlife officer;
- 24 (j) that on a specified day or during a specified period a  
25 person held a specified office.

26 **251. Evidence as to type of organism, species, ecological**  
27 **community or habitat**

28 In proceedings for an offence, an allegation in the prosecution  
29 notice of any of the following matters is, in the absence of proof  
30 to the contrary, to be taken to be proved —

- 31 (a) that on a specified day or during a specified period a  
32 specified animal or other organism was fauna;

- 1 (b) that on a specified day or during a specified period a  
2 specified plant or other organism was flora;
- 3 (c) that on a specified day or during a specified period a  
4 specified native species was a specially protected  
5 species or a specially protected species listed in a  
6 specified category;
- 7 (d) that on a specified day or during a specified period a  
8 specified native species was a threatened species or a  
9 threatened species listed in a specified category;
- 10 (e) that on a specified day or during a specified period a  
11 specified ecological community was a threatened  
12 ecological community or a threatened ecological  
13 community listed in a specified category;
- 14 (f) that on a specified day or during a specified period a  
15 specified habitat was a critical habitat;
- 16 (g) that on a specified day or during a specified period a  
17 specified species was an environmental pest for a  
18 specified area.

19 **252. Evidence of scientific matters**

- 20 (1) In this section —  
21 **authorised person** means a person declared under  
22 subsection (2) to be an authorised person.
- 23 (2) The Minister may, by notice published in the *Gazette*, declare a  
24 person who, in the opinion of the Minister, has relevant  
25 scientific knowledge to be an authorised person for the purposes  
26 of this section.
- 27 (3) In proceedings for an offence, production of a certificate  
28 purporting to be signed by an authorised person and stating that  
29 on a specified day or during a specified period —
- 30 (a) a specified thing was an animal of a specified class or  
31 description; or

- 1 (b) a specified thing was a plant of a specified class or  
2 description; or
- 3 (c) a specified animal, plant or other organism belonged to a  
4 specified species or taxonomic grouping of species; or
- 5 (d) a specified species was a native species; or
- 6 (e) a specified thing or place was an ecological community,  
7 a habitat or other biodiversity component; or
- 8 (f) a specified thing was a potential carrier,
- 9 is, without proof of the authorised person's signature, evidence  
10 of the facts stated in the certificate.
- 11 (4) Subsection (3) only applies if —
- 12 (a) at least 14 days before the hearing, written notice has  
13 been given to the accused of the prosecutor's intention  
14 to produce the certificate and of the content of the  
15 certificate; and
- 16 (b) the accused has not, within 7 days of receipt of the  
17 notice, delivered to the prosecutor a notice requiring that  
18 the authorised person's evidence be given in person.
- 19 (5) The court before which proceedings are held may, in addition to  
20 making any other order as to costs, make such order as it thinks  
21 fit as to the expenses and remuneration to be paid for the  
22 services of the authorised person.

23 **253. Evidence as to authorisations, notices and other documents**

- 24 (1) Subsection (2) applies to the following documents —
- 25 (a) an authorisation;
- 26 (b) an exemption;
- 27 (c) a notice given under this Act;
- 28 (d) a code or other document that has been adopted under  
29 the regulations.
- 30 (2) In proceedings for an offence, production of a copy of a  
31 document to which this subsection applies certified by the CEO

1 as a true copy as at any date or during any period is proof of the  
2 contents of the document as at that date or during that period.

3 (3) In the absence of proof to the contrary, it is to be presumed that  
4 a document purporting to have been signed by the Minister, the  
5 CEO or a wildlife officer was signed by a person who at the  
6 time was the Minister, the CEO or a wildlife officer, as the case  
7 requires.

8 **254. Provisions in addition to *Evidence Act 1906***

9 This Division is in addition to and does not affect the operation  
10 of the *Evidence Act 1906*.

1 **Part 14 — Regulations, orders and guidelines**

2 **Division 1 — Regulations**

3 **255. Regulations: general power**

4 (1) The Governor may make regulations prescribing matters —

5 (a) required or permitted by this Act to be prescribed; or

6 (b) necessary or convenient to be prescribed for giving  
7 effect to the purposes of this Act.

8 (2) Without limiting subsection (1), the regulations may provide  
9 for, prohibit, control, impose requirements in relation to, or  
10 otherwise regulate all or any of the matters referred to in  
11 Schedule 1.

12 (3) Terms used in Schedule 1 item 13 that are defined in the  
13 EPBC Act have the same meaning in that item as they have in  
14 that Act.

15 (4) The regulations may provide for offences against the regulations  
16 and prescribe penalties for those offences not exceeding a fine  
17 of \$50 000.

18 **256. Regulations: licensing**

19 (1) The regulations are to establish a licensing scheme under which  
20 the CEO may grant licences for the purposes of this Act.

21 (2) Regulations made for the purposes of subsection (1) may  
22 provide for or regulate the following —

23 (a) the kinds or classes of licences that may be granted  
24 including licences that confer exclusive or preferential  
25 rights;

26 (b) applications for or in relation to licences, the persons  
27 who are eligible to make applications and the manner in  
28 which applications are to be dealt with;

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**Division 1** Regulations

**s. 256**

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- 1 (c) requirements to be met by persons who make  
2 applications for or in relation to licences including —  
3 (i) requirements to produce information relevant to  
4 an application;  
5 (ii) requirements to undergo assessment or testing;  
6 (iii) requirements as to training, qualifications and  
7 experience;  
8 (d) the grant, amendment, renewal or transfer of licences;  
9 (e) fees payable in respect of the following —  
10 (i) applications for or in relation to licences;  
11 (ii) the grant, amendment, renewal or transfer of  
12 licences;  
13 (f) the imposition of conditions on licences, the kinds of  
14 conditions that can be imposed and the consequences of  
15 failing to comply with conditions;  
16 (g) the duration of licences;  
17 (h) the surrender, suspension or cancellation of licences;  
18 (i) the content of licence documents;  
19 (j) circumstances in which licence documents have to be  
20 returned to the CEO;  
21 (k) the issue by the CEO of guidelines in respect of  
22 licensing matters;  
23 (l) the review by the State Administrative Tribunal of  
24 decisions to amend, suspend or cancel licences or to  
25 refuse to grant, renew or transfer licences.
- 26 (3) Without limiting subsection (2)(f), the regulations may provide  
27 for the imposition of the following conditions —  
28 (a) a condition authorising bioprospecting activity that  
29 requires the licence holder to enter into an arrangement  
30 with the CEO or another person for the sharing of  
31 profits;

- 1           (b) a condition authorising the taking of fauna or flora that  
2           restricts the quantity of fauna or flora that may be taken.
- 3           (4) Without limiting subsection (2)(i), the regulations may provide  
4           for any licence or permit granted to a person under the  
5           CALM Act to be included in a licence document issued to the  
6           person under this Act.
- 7           (5) No person is entitled to the grant, renewal or transfer of a  
8           licence as of right unless the regulations expressly provide  
9           otherwise.
- 10          (6) If the regulations provide that a licence is transferable by the  
11          licence holder then, in accordance with paragraph (d) of the  
12          definition of *licence* in the *Personal Property Securities*  
13          *Act 2009* (Commonwealth) section 10, the licence is declared  
14          not to be personal property for the purposes of that Act.
- 15   **257. Regulations may adopt codes or legislation**
- 16          (1) In this section —
- 17                *code* means a code, code of practice, standard, rule,  
18                specification, administrative procedure, quality assurance  
19                scheme or other document, published in or outside Australia by  
20                any public authority or other person, including the Minister or  
21                the CEO, that does not by itself have legislative effect in this  
22                State;
- 23                *subsidiary legislation* includes rules, regulations, instructions,  
24                local laws and by-laws.
- 25          (2) The regulations may adopt, either wholly or in part or with  
26          modifications and either specifically or by reference —
- 27                (a) any code; or
- 28                (b) any subsidiary legislation made, determined or issued  
29                under any other Act or under any Act of the  
30                Commonwealth, another State or a Territory.

- 1 (3) If the regulations adopt a code or subsidiary legislation, it is  
2 adopted as existing or in force from time to time unless the  
3 regulations prescribe that a particular text is adopted.
- 4 (4) Particulars of any code or subsidiary legislation adopted by the  
5 regulations must be published on, or accessible through, the  
6 Department's website.

7 **Division 2 — Orders**

8 **258. Orders made by Minister**

- 9 (1) This section applies to an order made by the Minister under  
10 another provision of this Act if the other provision states that it  
11 so applies.
- 12 (2) An order to which this section applies is subsidiary legislation  
13 for the purposes of the *Interpretation Act 1984*.
- 14 (3) The Minister must cause a copy of each of the following orders  
15 to be laid before each House of Parliament as soon as is  
16 practicable after the order is published in the *Gazette* —
- 17 (a) an order to which this section applies;
- 18 (b) an order amending or repealing an order referred to in  
19 paragraph (a).
- 20 (4) Subsection (3) does not apply if the order is referred to in  
21 section 259.

22 **259. Certain orders subject to disallowance**

- 23 The *Interpretation Act 1984* section 42 applies to each of the  
24 following orders as if the order were a regulation —
- 25 (a) an order made by the Minister under a provision of this  
26 Act listed in the Table;
- 27 (b) an order amending or repealing an order referred to in  
28 paragraph (a).



1

**Table**

s. 9(1), (2), (3), (4) and (5)	s. 10(1) and (2)
s. 132(1)	s. 147(3)
s. 168(3)	s. 187(2)
s. 271(2)	

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**Division 3 — Guidelines**

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**260. Guidelines about listing**

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(1) The Minister may issue guidelines establishing criteria for, and setting out other matters relevant to, the following —

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(a) the listing of specially protected species under Part 2 Division 1 Subdivision 1;

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(b) the listing of threatened species under Part 2 Division 1 Subdivision 2;

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(c) the listing of extinct species under Part 2 Division 1 Subdivision 3;

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(d) the listing of threatened ecological communities under Part 2 Division 2;

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(e) the listing of key threatening processes under Part 2 Division 3;

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(f) the listing of critical habitats under Part 4 Division 1.

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(2) Without limiting subsection (1), guidelines issued under this section may provide for and in relation to —

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(a) the making of nominations under section 38(1) relating to threatened species or threatened ecological communities; and

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(b) the process for dealing with those nominations.

1 **261. Other guidelines**

2 (1) The Minister may issue guidelines setting out matters that the  
3 Minister considers to be of importance in respect of the  
4 performance by the CEO or any other person of a function  
5 under this Act.

6 (2) Guidelines issued under this section are intended —

7 (a) to assist the CEO and other persons in the performance  
8 of functions under this Act; and

9 (b) to provide information to —

10 (i) any person or body that may be affected by  
11 decisions under this Act; and

12 (ii) any person or body that has a special interest in  
13 species or ecological communities that may be  
14 affected by decisions under this Act or in  
15 biodiversity conservation generally; and

16 (iii) the general community.

17 **262. Publication, amendment and revocation of guidelines**

18 (1) Guidelines issued under section 260 or 261 must be published in  
19 the prescribed way.

20 (2) The Minister may at any time amend or revoke guidelines  
21 issued under section 260 or 261.

22 (3) An amendment or revocation under subsection (2) must be  
23 published in the prescribed way.

24 **263. Guidelines to be taken into account**

25 (1) In performing a function under this Act a person must take into  
26 account guidelines issued under section 260 or 261 that relate to  
27 the performance of the function.

28 (2) Nothing in subsection (1) —

29 (a) derogates from the person's duty to exercise the  
30 person's discretion in a particular case; or

- 1                    (b) precludes the person from taking into account matters  
2                    not set out in guidelines; or
- 3                    (c) requires the person to take into account guidelines that  
4                    are inconsistent with the provision of this Act that  
5                    confers the function.

6      **264.      Status of guidelines**

- 7            (1) Guidelines issued under section 260 or 261 are not subsidiary  
8            legislation for the purposes of the *Interpretation Act 1984*.
- 9            (2) If there is a conflict or inconsistency between a provision of this  
10           Act and a provision of guidelines issued under section 260  
11           or 261, the provision of this Act prevails.

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**Part 15 — Miscellaneous**

**Division 1 — Documents**

**265. Giving documents to CEO**

A document required or authorised to be given under this Act to the CEO may be given to the CEO —

- (a) by lodging the document at a prescribed address; or
- (b) by prepaid post addressed to the CEO; or
- (c) if the regulations authorise service of the document under this paragraph — by faxing a copy of the document to a fax number stated in the regulations; or
- (d) if the regulations authorise service of the document under this paragraph — by sending electronic data from which the document can be reproduced, in a prescribed format, to a prescribed email address.

**266. Giving documents generally**

(1) A document required or authorised to be given under this Act to a person other than the CEO may be given to the person by —

- (a) giving it to the person personally; or
- (b) leaving it at the person’s place of residence or business; or
- (c) sending it by prepaid post (including document exchange) addressed to the person —
  - (i) in accordance with the *Interpretation Act 1984* section 75(1); or
  - (ii) at an address appearing on recent correspondence addressed by or on behalf of the person to the CEO or otherwise notified to the CEO or published by the person; or
  - (iii) at an address shown in the rate book kept by a local government under the *Local Government*

- 1                                    *Act 1995* as the address for the service of rate  
2                                    notices under that Act on that person;
- 3                                    or
- 4                                    (d) faxing it to a fax number, or emailing it to an email  
5                                    address, provided by the person or appearing on recent  
6                                    correspondence addressed by or on behalf of the person  
7                                    to the CEO or otherwise notified to the CEO or  
8                                    published by the person; or
- 9                                    (e) communicating it in some other way agreed with the  
10                                    person.
- 11                                    (2) Where an address for service cannot be identified for the  
12                                    purposes of subsection (1), the document may be given by  
13                                    advertising the document at least twice in the prescribed way,  
14                                    with an interval of at least one week between the  
15                                    advertisements.
- 16                                    (3) The use of a particular method for giving a document to a  
17                                    person does not prevent the giving of other documents to the  
18                                    same person in a different way.
- 19                                    (4) Failure to properly give a document to one person does not  
20                                    affect whether or not it was properly given to another person.

21    **267. Giving documents to owner or occupier of land**

- 22                                    (1) A document given to a person because the person is an owner or  
23                                    occupier of land may be addressed to the person by the  
24                                    description of “the owner” or “the occupier” of the relevant  
25                                    land, describing it, without further name or description.
- 26                                    (2) If there are 2 or more owners or occupiers, a document is  
27                                    sufficiently given to all of them if it is given to one of them, and  
28                                    is addressed to that one with the addition of the words “and  
29                                    others” or “and another”, as the case requires.
- 30                                    (3) If a document is to be given to a person because the person is an  
31                                    owner of land, the document may be given to the person by

1                      addressing it to the owner and giving it under section 266 to the  
2                      occupier, if any, of the land.

3                      (4) If a document is to be given to a person because the person is an  
4                      owner or occupier of land, the document may be given to the  
5                      person by addressing it to the person and affixing it to a  
6                      conspicuous part of the land.

7                      (5) Subsections (3) and (4) only apply if it is not reasonably  
8                      practicable to give the document in any of the ways provided for  
9                      in section 266 and this Act does not otherwise state how the  
10                     document is to be given.

11                     **268. Giving certain notices**

12                     (1) In this section —

13                     *notice* means an environmental pest notice or a notice under  
14                     section 50(1).

15                     (2) If for any reason it is not reasonably practicable to give a notice  
16                     to a person in accordance with section 266, the notice may be  
17                     given by publishing a copy of the notice in the prescribed way.

18                     (3) A notice given under subsection (2) —

19                                 (a) may be directed to any number of owners or occupiers  
20                                 of land; and

21                                 (b) is to be taken to be given to the owner and occupier of  
22                                 any land specified in the notice.

23                     **269. Time when document given**

24                     (1) Except where a document is sent by post to an address outside  
25                     the State, given personally, or the contrary is proved, a  
26                     document is taken to be given on the business day following the  
27                     day on which the document was sent by post, faxed or emailed  
28                     to, or left for, the person to whom it was addressed.

29                     (2) A document sent by post to an address within Australia but  
30                     outside the State is taken to be given on the 5<sup>th</sup> business day

1 after the day on which the document was sent to the person to  
2 whom it is addressed.

3 (3) A document sent by post to an address outside Australia is taken  
4 to be given on the 10<sup>th</sup> business day after the day on which the  
5 document was sent to the person to whom it is addressed.

6 **270. Defects in document**

7 A document is not ineffective, nor is it to be regarded as having  
8 been not properly given, only because of an error,  
9 misdescription, or irregularity in the document or the way it is  
10 addressed that is not likely to mislead or does not in fact  
11 mislead.

12 **Division 2 — Other matters**

13 **271. Exemptions from Act**

14 (1) In this section —

15 *specified*, in relation to an exemption, means specified in the  
16 order made under subsection (2) that provides for the  
17 exemption.

18 (2) The Minister may, by order, exempt from a specified provision  
19 of this Act —

- 20 (a) a specified person or a specified class of persons; or  
21 (b) a specified activity or a specified class of activities; or  
22 (c) a specified place, vehicle or thing or a specified class of  
23 places, vehicles or things.

24 (3) An exemption may be granted on an application to, or on the  
25 initiative of, the Minister.

26 (4) An exemption may be granted indefinitely or for a specified  
27 period.

28 (5) An exemption may be expressed to apply —

- 29 (a) generally; or

- 1 (b) in specified circumstances; or  
2 (c) in respect of a specified area of the State.
- 3 (6) An exemption may be granted subject to specified conditions.
- 4 (7) If an exemption is granted subject to a specified condition, the  
5 exemption has no effect at any time when the condition is being  
6 contravened.
- 7 (8) A person to whom an exemption applies must not contravene  
8 any condition to which the exemption is subject.  
9 Penalty for this subsection: a fine of \$50 000.
- 10 (9) This section does not affect the operation of the *Interpretation*  
11 *Act 1984* section 43(8)(d).
- 12 (10) Section 258 applies to an order made under subsection (2).

13 **272. Resolution of matters relating to powers and duties of public**  
14 **authorities**

- 15 (1) In this section —  
16 ***matter*** includes a question, difference or dispute;  
17 ***responsible Minister***, in relation to a public authority, means —  
18 (a) if the public authority is a Minister of the State — that  
19 Minister; or  
20 (b) if the public authority is an agency or an organisation as  
21 defined in the *Public Sector Management Act 1994*  
22 section 3(1) — the Minister responsible for the  
23 administration of that agency or organisation; or  
24 (c) if the public authority is a local government or a  
25 regional local government — the Minister responsible  
26 for the administration of the *Local Government*  
27 *Act 1995*; or  
28 (d) in any other case — the Minister responsible for the  
29 administration of the written law under which the public  
30 authority, or the office held by the public authority, is  
31 established or continued.



- 1 (2) If, in the operation of this Act, a matter arises, or may arise,  
2 with respect to the exercise of any right, power or authority of,  
3 or the discharge of any duty by, a public authority under this  
4 Act or another written law, then the responsible Minister and the  
5 Minister may consult on the matter.
- 6 (3) If the Ministers reach agreement on the matter after consultation  
7 under subsection (2), the Ministers must give such directions as  
8 result from the agreement, and effect must be given to those  
9 directions.
- 10 (4) If no consultation under subsection (2) is concluded or the  
11 Ministers cannot reach agreement on the matter, the matter may  
12 be finally and conclusively determined by the Governor, and  
13 effect must be given to the determination.

14 **273. Protection from liability for wrongdoing**

- 15 (1) An action in tort does not lie against a person for anything that  
16 the person has done, in good faith, in the performance or  
17 purported performance of a function under this Act.
- 18 (2) The State is also relieved of any liability that it might otherwise  
19 have had for another person having done anything as described  
20 in subsection (1).
- 21 (3) The protection given by this section applies even though the  
22 thing done as described in subsection (1) may have been  
23 capable of being done whether or not this Act had been enacted.
- 24 (4) In this section, a reference to the doing of anything includes a  
25 reference to an omission to do anything.

26 **274. Information sharing**

- 27 (1) In this section —  
28 **authorised officer** means the CEO or a person designated under  
29 subsection (2);  
30 **guidelines** means guidelines issued under subsection (7);

- 1           **information sharing agency** means any of the following —
- 2           (a) the department of the Public Service principally
- 3           assisting in the administration of the *Animal Welfare*
- 4           *Act 2002*;
- 5           (b) the department of the Public Service principally
- 6           assisting in the administration of the *Biosecurity and*
- 7           *Agriculture Management Act 2007*;
- 8           (c) the department of the Public Service principally
- 9           assisting in the administration of the *Bush Fires*
- 10           *Act 1954*;
- 11           (d) the department of the Public Service principally
- 12           assisting in the administration of the *Environmental*
- 13           *Protection Act 1986*;
- 14           (e) the department of the Public Service principally
- 15           assisting in the administration of the *Fish Resources*
- 16           *Management Act 1994*;
- 17           (f) the department of the Public Service principally
- 18           assisting in the administration of the *Health Act 1911*;
- 19           (g) the department of the Public Service principally
- 20           assisting in the administration of the *Land*
- 21           *Administration Act 1997*;
- 22           (h) the department of the Public Service principally
- 23           assisting in the administration of the *Pearling Act 1990*;
- 24           (i) the Forest Products Commission established by the
- 25           *Forest Products Act 2000*;
- 26           (j) the Police Force of Western Australia;
- 27           (k) the Western Australian Land Information Authority
- 28           established by the *Land Information Authority Act 2006*;
- 29           (l) the Western Australian Museum constituted under the
- 30           *Museum Act 1969*;
- 31           (m) the agency of the Commonwealth principally assisting
- 32           in the administration of the EPBC Act;

- 1 (n) a public authority prescribed for the purposes of this  
2 definition;
- 3 (o) an agency of the Commonwealth, another State, or a  
4 Territory, prescribed for the purposes of this definition;
- 5 **officer**, in relation to an information sharing agency, means —
- 6 (a) an officer or employee in or of the agency; or
- 7 (b) if the agency is the Police Force of Western Australia —  
8 a member of the Police Force of Western Australia;
- 9 **relevant information** means information relevant to the  
10 administration or enforcement of this Act.
- 11 (2) The CEO may, in writing, designate a person employed in the  
12 Department as an authorised officer for the purposes of this  
13 section.
- 14 (3) An authorised officer may, in accordance with the guidelines,  
15 disclose relevant information to an officer of an information  
16 sharing agency.
- 17 (4) An authorised officer may, in accordance with the guidelines,  
18 request a public authority that holds relevant information to  
19 disclose the information to the authorised officer.
- 20 (5) Information may be disclosed under subsection (3), or in  
21 compliance with a request under subsection (4), despite any  
22 written law relating to confidentiality or secrecy.
- 23 (6) If information is disclosed, in good faith, under subsection (3),  
24 or in compliance with a request under subsection (4) —
- 25 (a) no civil or criminal liability is incurred in respect of the  
26 disclosure; and
- 27 (b) the disclosure is not to be regarded as a breach of any  
28 duty of confidentiality or secrecy imposed by law; and
- 29 (c) the disclosure is not to be regarded as a breach of  
30 professional ethics or standards or as unprofessional  
31 conduct.

1 (7) The CEO must issue guidelines as to the disclosure of  
2 information under subsection (3) and the requesting of  
3 information under subsection (4).

4 (8) The regulations may include provisions about —

5 (a) receiving and storing information disclosed for the  
6 purposes of this Act; and

7 (b) restricting access to such information.

8 **275. Confidentiality**

9 (1) A person who is or has been engaged in the performance of  
10 functions under this Act must not, directly or indirectly, record,  
11 disclose or make use of any information obtained in the course  
12 of duty except —

13 (a) for the purpose of, or in connection with, performing a  
14 function under this Act; or

15 (b) as required or allowed under this Act or another written  
16 law; or

17 (c) for the purposes of any legal proceedings arising under  
18 this Act; or

19 (d) with the written consent of the person to whom the  
20 information relates; or

21 (e) in prescribed circumstances.

22 Penalty for this subsection: a fine of \$20 000.

23 (2) Subsection (1) does not extend to the recording, disclosure or  
24 use of statistical or other information that could not reasonably  
25 be expected to lead to the identification of any person to whom  
26 it relates.

27 **276. Certain information may be kept confidential**

28 (1) In this section —

29 *strategic document* means any of the following —

30 (a) a biodiversity management programme;

- 1           (b) a recovery plan;
- 2           (c) an interim recovery plan.
- 3       (2) This section applies if the Minister considers that the survival of
- 4       a native species or ecological community could be threatened by
- 5       the disclosure of some or all of the following information, or by
- 6       the presence or actions of persons if some or all of the following
- 7       information were disclosed —
- 8           (a) the precise location of the species in the wild or of the
- 9           community;
- 10          (b) any other information about the species or community.
- 11       (3) It is sufficient compliance with this Act if only a general
- 12       description of the location of the native species or ecological
- 13       community is included in a strategic document or other
- 14       instrument made or issued under this Act.
- 15       **277. Review of Act**
- 16       (1) The Minister must carry out a review of the operation and
- 17       effectiveness of this Act as soon as is practicable after every
- 18       5<sup>th</sup> anniversary of the commencement of this section.
- 19       (2) In the course of each review the Minister must consider and
- 20       have regard to —
- 21           (a) the objects of this Act; and
- 22           (b) the adequacy of the penalties imposed under this Act;
- 23           and
- 24           (c) any other matters that appear to the Minister to be
- 25           relevant to the operation and effectiveness of this Act.
- 26       (3) The Minister must prepare a report based on each review and, as
- 27       soon as is practicable after the report is prepared, cause it to be
- 28       laid before each House of Parliament.

1 **Part 16 — Repeals and transitional provisions**

2 **Division 1 — *Repeal of Wildlife Conservation Act 1950***

3 **Subdivision 1 — Repeals**

4 **278. *Wildlife Conservation Act 1950* repealed**

5 The *Wildlife Conservation Act 1950* is repealed.

6 **279. **Subsidiary legislation repealed****

7 The following subsidiary legislation is repealed:

- 8 (a) the *Wildlife Conservation Regulations 1970*;
- 9 (b) the *Wildlife Conservation (Reptiles and Amphibians)*  
10 *Regulations 2002*;
- 11 (c) any notice made under the *Wildlife Conservation*  
12 *Act 1950* section 6(2), (4) or (6), 14(2) or (4), 18(1) or  
13 23F(2) that is in force immediately before the day on  
14 which section 278 comes into operation.

15 **Subdivision 2 — Transitional provisions**

16 **280. **Consents under *Wildlife Conservation Act 1950* s. 23F****

- 17 (1) In this section —  
18 ***commencement day*** means the day on which section 278 comes  
19 into operation.
- 20 (2) A consent to take rare flora given under the *Wildlife*  
21 *Conservation Act 1950* section 23F and in force immediately  
22 before commencement day is to be taken to be an authorisation  
23 given under section 40 to take that flora.

1 **Division 2 — Repeal of *Sandalwood Act 1929***

2 **Subdivision 1 — Repeals**

3 **281. *Sandalwood Act 1929* repealed**

4 The *Sandalwood Act 1929* is repealed.

5 **282. *Sandalwood Regulations 1993* repealed**

6 The *Sandalwood Regulations 1993* are repealed.

7 **Subdivision 2 — Transitional provisions**

8 **283. Licences under *Sandalwood Act 1929***

9 (1) In this section —

10 *commencement day* means the day on which section 281 comes  
11 into operation;

12 *sandalwood licence* means a licence referred to in the  
13 *Sandalwood Act 1929* section 3(1)(a) or (b).

14 (2) A sandalwood licence that was in force immediately before  
15 commencement day is to be taken to be a licence granted under  
16 this Act on the conditions (if any) applying to the licence  
17 immediately before commencement day and, subject to the  
18 regulations, has effect accordingly.

19 (3) An application for a sandalwood licence that was not  
20 determined before commencement day may be dealt with under  
21 the regulations as an application for a licence under this Act.

22 **Division 3 — Transitional regulations**

23 **284. Transitional regulations**

24 (1) In this section —

25 *publication day*, for transitional regulations, means the day on  
26 which those regulations are published in the *Gazette*;

- 1            **relevant commencement day**, in relation to transitional  
2 regulations, means —
- 3            (a) to the extent that the regulations deal with a transitional  
4 matter relating to the provisions of written laws repealed  
5 by Division 1 — the day on which that Division comes  
6 into operation; and
- 7            (b) to the extent that the regulations deal with a transitional  
8 matter relating to the provisions of the written laws  
9 repealed by Division 2 — the day on which that  
10 Division comes into operation;
- 11           **specified** means specified or described in transitional  
12 regulations;
- 13           **transitional matter** —
- 14           (a) means a matter that needs to be dealt with for the  
15 purpose of effecting the transition from the provisions of  
16 the written laws repealed by Divisions 1 and 2 to the  
17 provisions of this Act; and
- 18           (b) includes a saving or application matter;
- 19           **transitional regulations** means regulations under subsection (2).
- 20           (2) If there is no sufficient provision in this Part for dealing with a  
21 transitional matter, the regulations may prescribe matters —
- 22           (a) required to be prescribed for the purpose of dealing with  
23 the transitional matter; or
- 24           (b) necessary or convenient to be prescribed for the purpose  
25 of dealing with the transitional matter.
- 26           (3) Transitional regulations may provide that specified provisions  
27 of this Act —
- 28           (a) do not apply to or in relation to a specified matter; or  
29           (b) apply with specified modifications to or in relation to a  
30 specified matter.
- 31           (4) If transitional regulations provide that a specified state of affairs  
32 is to be taken to have existed, or not to have existed, on and



- 1            from a day that is earlier than publication day for those  
2            regulations but not earlier than the relevant commencement day,  
3            the regulations have effect according to their terms.
- 4            (5) If transitional regulations contain a provision referred to in  
5            subsection (4), the provision does not operate so as —
- 6                    (a) to affect, in a manner prejudicial to any person (other  
7                    than the State or an authority of the State), the rights of  
8                    that person existing before publication day for those  
9                    regulations; or
- 10                   (b) to impose liabilities on any person (other than the State  
11                   or an authority of the State) in respect of anything done  
12                   or omitted to be done before publication day for those  
13                   regulations.
- 14            (6) Transitional regulations can only be made within 24 months  
15            after the day on which this Act receives the Royal Assent.

**Division 4 — General**

16  
17    **285.    *Interpretation Act 1984 not affected***

18            This Part does not limit or otherwise affect the operation of the  
19            *Interpretation Act 1984* in relation to the repeals effected by  
20            Divisions 1 and 2.

1 **Part 17 — Consequential amendments to other Acts**

2 **Division 1 — *Conservation and Land Management***  
3 ***Act 1984* amended**

4 **286. Act amended**

5 This Division amends the *Conservation and Land Management*  
6 *Act 1984*.

7 **287. Long title amended**

8 In the long title before “**and for incidental or connected**  
9 **purposes.**” insert:

10  
11 **to confer functions relating to the conservation, protection**  
12 **and management of biodiversity and biodiversity**  
13 **components,**  
14

15 **288. Section 3 amended**

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

17 *biodiversity*

18 *biodiversity components*

19 *fauna*

20 *flora*

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

22

23 *biodiversity* has the meaning given in the *Biodiversity*  
24 *Conservation Act 2015* section 5(1);

25 *biodiversity components* has the meaning given in the  
26 *Biodiversity Conservation Act 2015* section 5(1);

27 *conserve* includes to maintain and to restore;

28 *fauna* has the meaning given in the *Biodiversity*  
29 *Conservation Act 2015* section 5(1);

1                    *flora* has the meaning given in the *Biodiversity*  
2                    *Conservation Act 2015* section 5(1);  
3

4    **289.    Section 13A amended**

5                    In section 13A(1):

- 6                    (a)    in paragraph (a) delete “and restoration”;  
7                    (b)    in paragraph (b) delete “indigenous”.

8    **290.    Section 13B amended**

9                    In section 13B(1):

- 10                   (a)    delete “and restoration”;  
11                   (b)    delete “indigenous”.

12   **291.    Section 19 amended**

13                   In section 19(1):

- 14                   (a)    in paragraph (d) delete “conservation” and insert:

15                                      conservation, protection  
16

- 17  
18                   (b)    after paragraph (g) insert:

19  
20                                      (haa)    to participate in the preparation of the following  
21                                      documents under the *Biodiversity Conservation*  
22                                      *Act 2015* Parts 5 and 6 when consulted in  
23                                      accordance with those Parts —

- 24                                      (i)    draft biodiversity management  
25                                      programmes;  
26                                      (ii)    draft recovery plans;  
27                                      (iii)    interim recovery plans;  
28

1 **292. Section 33 amended**

2 (1) In section 33(1):

3 (a) delete paragraph (ca) and insert:

4

5 (ca) to promote and encourage the use of fauna and  
6 flora for therapeutic, scientific, breeding,  
7 propagation or cultivation purposes for the  
8 good of the people in the State and elsewhere,  
9 and to undertake any project or operation  
10 relating to the use of fauna or flora for such a  
11 purpose; and  
12

13 (b) in paragraph (cc) delete “conservation of biodiversity  
14 throughout” and insert:

15

16 conservation, protection and management of  
17 biodiversity and biodiversity components in  
18

19 (c) delete paragraph (d) and insert:

20

21 (d) to promote, encourage and facilitate the  
22 conservation, protection and management of  
23 biodiversity and biodiversity components in the  
24 State; and

25 (daa) to promote, encourage and facilitate the  
26 planning for and establishment of a  
27 comprehensive, adequate and representative  
28 system of reserves for the purposes of  
29 conserving, protecting and managing  
30 biodiversity and biodiversity components in the  
31 State; and

32 (dab) to promote, facilitate and manage nature-based  
33 tourism and recreation, as defined in the  
34 *Biodiversity Conservation Act 2015*

1 section 190, in the State in accordance with this  
2 Act and the *Biodiversity Conservation*  
3 *Act 2015*; and  
4

5 (d) delete paragraph (e)(ii) and insert:

6 (ii) the conservation, protection and  
7 management of biodiversity and  
8 biodiversity components in the State;  
9 and  
10  
11

12 (e) after paragraph (e) insert:

13 (fa) to carry out or cause to be carried out surveys  
14 of biodiversity and biodiversity components in  
15 the State including surveys of the distribution  
16 and abundance of native species and ecological  
17 communities as those terms are defined in the  
18 *Biodiversity Conservation Act 2015*  
19 section 5(1); and  
20

21 (fb) to facilitate the implementation of agreements  
22 referred to in the *Environment Protection and*  
23 *Biodiversity Conservation Act 1999*  
24 (Commonwealth) section 45(2) to which the  
25 State is a party; and  
26

27 (f) after paragraph (g) insert:

28 (ha) to enter into collaborative arrangements with  
29 any department, public or private body or other  
30 person, whether in the State or elsewhere, for  
31 the purposes of performing a function referred  
32 to in any of paragraphs (a), (ca), (cc) to (ea) and  
33 (gb); and  
34

**Biodiversity Conservation Bill 2015**

**Part 17** Consequential amendments to other Acts

**Division 1** Conservation and Land Management Act 1984 amended

**s. 292**

---

- 1 (hb) to perform functions conferred on the CEO  
2 under the *Biodiversity Conservation Act 2015*;  
3 and  
4
- 5 (2) After section 33(1) insert:  
6
- 7 (2A) In subsection (1)(ca) —  
8 *use* includes use or development on a commercial  
9 basis.  
10
- 11 (3) Delete section 33(6) and insert:  
12
- 13 (6) To promote and encourage the use of fauna and flora  
14 for the purposes referred to in subsection (1)(ca), the  
15 Minister and the CEO may enter into an agreement  
16 with another person under which the Minister and the  
17 CEO agree to exercise the powers under the  
18 *Biodiversity Conservation Act 2015* and this Act to  
19 grant, issue or refuse licences or permits —
- 20 (a) to take flora in a manner that has the effect of  
21 conferring on the other person an exclusive or  
22 preferential right to take specified flora from  
23 specified land (other than private land); or
- 24 (b) to take fauna in a manner that has the effect of  
25 conferring on the other person an exclusive or  
26 preferential right to take specified fauna from  
27 specified land (including private land in  
28 circumstances where consent to enter the land  
29 is obtained from the occupier of the land).
- 30 (7A) In subsection (6) each of the following terms has the  
31 meaning given in the *Biodiversity Conservation*  
32 *Act 2015* section 5(1) —  
33 *occupier*

1                    *private land*  
2                    *take*

3            (7B)    An agreement under subsection (6) may provide for the  
4                    exercise of powers referred to in that subsection to be  
5                    conditional on the other person entering into an  
6                    arrangement with the CEO for the sharing of profits.  
7

8            (4)    Delete section 33(8).

9            (5)    In section 33(1) after each of paragraphs (a) to (bb), (cb), (cc),  
10                    (da) to (dd), (e), (f) and (g) insert:  
11

12                    and  
13

14    **293.    Section 34A amended**

15            (1)    In section 34A(1) delete “a project or operation undertaken for a  
16                    purpose mentioned in section 33(1)(ca) or (cc) —” and insert:  
17

18                    the performance of a function referred to in section 33(1)(a),  
19                    (ca), (cc) to (fb), (ha) or (hb) —  
20

21            (2)    In section 34A(3) delete “engage in any scheme, project or  
22                    operation referred to in subsection (1).” and insert:  
23

24                    engage in —

25                    (a)    a scheme for the establishment, management or  
26                    utilisation of tree plantations; or

27                    (b)    an activity related to a function referred to in  
28                    section 33(1)(a), (ca), (cc) to (fb), (ha) or (hb).  
29

1 **294. Section 37 amended**

2 In section 37 delete “*Wildlife Conservation Act 1950*” and  
3 insert:

4  
5 *Biodiversity Conservation Act 2015*  
6

7 **295. Section 45 amended**

8 Delete section 45(3), (3a) and (4) and insert:

9  
10 (3) An instrument under subsection (1) may limit the  
11 functions of the person designated to functions  
12 specified in the instrument.

13 (4) Subject to any limitation under subsection (3), wildlife  
14 officers —

15 (a) have the functions conferred on them under this  
16 Act and the *Biodiversity Conservation*  
17 *Act 2015*; and

18 (b) if authorised by the CEO for the purposes of  
19 this paragraph, have the functions conferred on  
20 them under the *Bush Fires Act 1954*; and

21 (c) have the functions conferred on them under any  
22 other written law.

23 (5A) Subject to any limitation under subsection (3), forest  
24 officers, rangers and conservation and land  
25 management officers —

26 (a) have the functions conferred on them under this  
27 Act; and

28 (b) if authorised by the CEO for the purposes of  
29 this paragraph, have the functions conferred on  
30 them under the *Bush Fires Act 1954*; and



1 (c) have the functions conferred on them under any  
2 other written law.  
3

4 **296. Section 46 amended**

5 In section 46(3) delete “by or under this Act or the *Wildlife*  
6 *Conservation Act 1950*” and insert:  
7

8 under this Act, the *Biodiversity Conservation Act 2015* or  
9 another written law  
10

11 **297. Section 48 amended**

12 In section 48(1) delete “1954 or the *Wildlife Conservation*  
13 *Act 1950*,” and insert:  
14

15 *1954*, the *Biodiversity Conservation Act 2015* or another written  
16 law,  
17

18 **298. Section 56 amended**

19 In section 56(1):

20 (a) in paragraph (c) delete “maintenance and restoration”  
21 and insert:  
22

23 conservation  
24

25 (b) in paragraph (c) delete “indigenous”;

26 (c) in paragraph (d) delete “maintain and restore” and  
27 insert:  
28

29 conserve  
30

1 (d) in paragraph (d) delete “indigenous”.

2 **299. Section 68 replaced**

3 Delete section 68 and insert:

4

5 **68. Biodiversity Conservation Account**

6 (1) An agency special purpose account called the  
7 Biodiversity Conservation Account is established under  
8 the *Financial Management Act 2006* section 16.

9 (2) The Biodiversity Conservation Account is a  
10 continuation of the Nature Conservation and National  
11 Parks Account referred to in section 68 of this Act as in  
12 force immediately before the commencement of the  
13 *Biodiversity Conservation Act 2015* section 299.

14 (3) The Biodiversity Conservation Account is to be  
15 credited with gifts, devises, bequests and donations  
16 made to that account.

17 (4) The CEO is to apply money standing to the credit of  
18 the Biodiversity Conservation Account for the purpose  
19 of scientific research relating to biodiversity and  
20 biodiversity components in the State.  
21

22 **300. Section 87 amended**

23 In section 87(1) in the definition of *forest produce* paragraph (a)  
24 delete “resin or sap; or” and insert:

25

26 resin, sap or seed; or  
27

1 **301. Section 101B amended**

2 (1) In section 101B(2a) delete the passage that begins with “in  
3 accordance with” and continues to the end of the subsection and  
4 insert:

5

6 in accordance with —

7 (a) a licence granted under regulations made under  
8 section 130; or

9 (b) a licence granted under regulations made under  
10 the *Biodiversity Conservation Act 2015*; or

11 (c) an authorisation given under the *Biodiversity*  
12 *Conservation Act 2015* section 40.

13

14 (2) In section 101B(3)(d) delete “notices issued or regulations made  
15 under the *Wildlife Conservation Act 1950*” and insert:

16

17 regulations made under the *Biodiversity Conservation Act 2015*,  
18 or an authorisation given under section 40 of that Act,

19

20 **302. Section 103A amended**

21 In section 103A(2) delete “*Wildlife Conservation Act 1950*” and  
22 insert:

23

24 *Biodiversity Conservation Act 2015*

25

26 **303. Section 106 amended**

27 In section 106(b) delete “indigenous”.

1 **304. Section 121 amended**

2 Delete section 121(6)(a) and insert:

3

- 4 (a) limits the powers conferred on an enforcement  
5 officer under another provision of this Act or  
6 under the *Biodiversity Conservation Act 2015*,  
7 the *Bush Fires Act 1954* or another written law;  
8 or

9

10 **305. Section 124 amended**

11 Delete section 124(2).

12 **306. Section 125 replaced**

13 Delete section 125 and insert:

14

15 **125. Application of *Criminal Investigation Act 2006* and**  
16 ***Criminal Investigation (Identifying People) Act 2002***  
17 **to enforcement officers**

18 (1) For the purposes of the *Criminal Investigation*  
19 *Act 2006* section 9(1) and the *Criminal Investigation*  
20 *(Identifying People) Act 2002* section 5(1), designation  
21 as any of the following officers is to be taken to be an  
22 appointment to an office —

- 23 (a) a wildlife officer under section 45(1)(a); or  
24 (b) a forest officer under section 45(1)(b); or  
25 (c) a ranger under section 45(1)(c); or  
26 (d) a conservation and land management officer  
27 under section 45(1)(d).

- 1           (2) For the purposes of the *Criminal Investigation*  
2           *Act 2006* —
- 3           (a) the office of wildlife officer is prescribed under  
4           section 9(1)(a) of that Act; and
- 5           (b) the following powers are prescribed under  
6           section 9(1)(b) of that Act in respect of that  
7           office —
- 8               (i) the powers in Part 2 of that Act;
- 9               (ii) the powers in Part 5 of that Act other  
10              than the power in section 44(2)(g)(iv) to  
11              do a strip search of a person;
- 12              (iii) the powers in Part 6 of that Act;
- 13              (iv) the powers in Part 8 of that Act to the  
14              extent that they authorise, or apply in  
15              relation to, the doing of a basic search  
16              of a person;
- 17              (v) the powers in Part 9 of that Act to the  
18              extent that they authorise, or apply in  
19              relation to, the doing of a non-intimate  
20              forensic procedure on a person;
- 21              (vi) the powers in Part 12 Divisions 2, 3 and  
22              5 of that Act;
- 23              (vii) the powers in Part 13 of that Act.
- 24           (3) Despite the *Criminal Investigation Act 2006*  
25           section 43(8)(b)(ii), a search warrant does not authorise  
26           a wildlife officer to do a strip search of a person.
- 27           (4) For the purposes of the *Criminal Investigation*  
28           *(Identifying People) Act 2002* —
- 29           (a) each of the following offices is prescribed  
30           under section 5(1)(a) of that Act —
- 31               (i) wildlife officer;
- 32               (ii) forest officer;

- 1 (iii) ranger;  
2 (iv) conservation and land management  
3 officer;  
4 (v) honorary wildlife officer;  
5 (vi) honorary forest officer;  
6 (vii) honorary ranger;  
7 (viii) honorary conservation and land  
8 management officer;  
9 and  
10 (b) the powers in Part 3 of that Act are specified  
11 under section 5(1)(b) of that Act in respect of  
12 each of those offices.

13 **126A. Department a prescribed agency for the *Criminal***  
14 ***and Found Property Disposal Act 2006***

15 The Department is a prescribed agency for the  
16 purposes of the *Criminal and Found Property Disposal*  
17 *Act 2006*.  
18

19 **307. Section 127 amended**

20 (1) In section 127 delete “The regulations” and insert:

21 (1) The regulations  
22  
23

24 (2) At the end of section 127 insert:

25  
26 (2) Without limiting subsection (1)(d), the regulations may  
27 provide for a licence granted to a person under the  
28 *Biodiversity Conservation Act 2015* to be included in a  
29 permit document or licence document issued to the  
30 person under this Act.  
31

1   **308.   Section 132 amended**

2       (1)   In section 132(1) delete “this Act or the *Wildlife Conservation*  
3           *Act 1950.*” and insert:

4  
5           this Act.

6  
7       (2)   In section 132(2) and (4) delete “or the *Wildlife Conservation*  
8           *Act 1950*”.

9   **309.   Section 133 amended**

10       (1)   In section 133(1) delete the passage that begins with “*Wildlife*  
11           *Conservation Act 1950,*” and continues to the end of the  
12           subsection and insert:

13  
14                   *Biodiversity Conservation Act 2015*, other than —

- 15                   (a)   this power of delegation; or  
16                   (b)   the power to make any instrument of legislative  
17                   effect; or  
18                   (c)   a function that the Minister has under the  
19                   *Biodiversity Conservation Act 2015* section 260  
20                   or 261.

21  
22       (2)   In section 133(2) delete the passage that begins with “*Wildlife*  
23           *Conservation Act 1950,*” and continues to the end of the  
24           subsection and insert:

25  
26                   *Biodiversity Conservation Act 2015*, other than —

- 27                   (a)   this power of delegation; or  
28                   (b)   a function delegated to the CEO under  
29                   subsection (1); or

- 1 (c) a function that the CEO has under the  
2 *Biodiversity Conservation Act 2015*  
3 section 122, 125 or 126.  
4

5 **Division 2 — Other Acts amended**

6 **310. *Animal Welfare Act 2002* amended**

- 7 (1) This section amends the *Animal Welfare Act 2002*.

- 8 (2) In section 5(1) delete the definitions of:

9 ***CALM***

10 ***fauna***

- 11 (3) In section 5(1) insert in alphabetical order:

12 ***Biodiversity Conservation Department*** means the  
13 department of the Public Service principally assisting  
14 with the administration of the *Biodiversity*  
15 *Conservation Act 2015*;

16 ***fauna*** has the meaning given in the *Biodiversity*  
17 *Conservation Act 2015* section 5(1);

18 ***lawfully taken***, in relation to fauna, means taken in  
19 circumstances that do not involve a contravention of  
20 the *Biodiversity Conservation Act 2015* or any other  
21 written law;  
22

- 23  
24 (4) In section 7(2) delete “*Wildlife Conservation Act 1950*” and  
25 insert:  
26

27 *Biodiversity Conservation Act 2015*  
28



- 1      (5) Delete section 33(2)(a)(iii) and insert:  
2  
3                      (iii) the Biodiversity Conservation Department; or  
4
- 5      (6) In section 41(2)(a) delete “CALM; or” and insert:  
6  
7                      the Biodiversity Conservation Department; or  
8
- 9      (7) In section 44(1) delete “taken under the *Wildlife Conservation*  
10      *Act 1950.*” and insert:  
11  
12                      taken.  
13
- 14      (8) In section 45:  
15                      (a) delete “taken under the *Wildlife Conservation*  
16                      *Act 1950,*” and insert:  
17  
18                      taken,  
19
- 20                      (b) delete “CALM.” and insert:  
21  
22                      the Biodiversity Conservation Department.  
23
- 24      (9) In section 55(2)(b)(i):  
25                      (a) delete “taken under the *Wildlife Conservation*  
26                      *Act 1950,*” and insert:  
27  
28                      taken,  
29

**Biodiversity Conservation Bill 2015**

**Part 17** Consequential amendments to other Acts

**Division 2** Other Acts amended

**s. 311**

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1 (b) delete “CALM; or” and insert:  
2  
3 the Biodiversity Conservation Department; or  
4

5 (10) Delete section 64(1)(c) and insert:  
6

7 (c) the Biodiversity Conservation Department; and  
8

9 **311. *Biosecurity and Agriculture Management Act 2007* amended**

10 (1) This section amends the *Biosecurity and Agriculture*  
11 *Management Act 2007*.

12 (2) Before section 4(2)(c) insert:  
13

14 (cb) the *Biodiversity Conservation Act 2015*;  
15

16 (3) In section 6 delete the definitions of:

17 ***CALM Act Minister***

18 ***Minister for the Environment***

19 (4) In section 45(5)(b) delete “CALM Act Minister.” and insert:  
20

21 Minister administering the *Biodiversity Conservation Act 2015*.  
22

23 (5) In section 184(1) in the definition of ***information sharing***  
24 ***agency*** paragraph (f) delete “*Wildlife Conservation Act 1950*,”  
25 and insert:  
26

27 *Biodiversity Conservation Act 2015*;  
28

1    **312.    *Bush Fires Act 1954* amended**

- 2            (1) This section amends the *Bush Fires Act 1954*.
- 3            (2) In section 7(1) delete the definition of ***authorised CALM Act***  
4            ***officer*** and insert:

5

6                            ***authorised CALM Act officer*** means —

- 7                            (a) a wildlife officer who is authorised for the  
8    purposes of the *Conservation and Land*  
9    *Management Act 1984* section 45(4)(b); or
- 10                            (b) a forest officer, ranger or conservation and land  
11    management officer who is authorised for the  
12    purposes of the *Conservation and Land*  
13    *Management Act 1984* section 45(5A)(b);

14

15    **313.    *Constitution Acts Amendment Act 1899* amended**

- 16            (1) This section amends the *Constitution Acts Amendment Act 1899*.
- 17            (2) In Schedule V Part 3 delete the item relating to the Western  
18            Australian Wildlife Authority.

19    **314.    *Environmental Protection Act 1986* amended**

- 20            (1) This section amends the *Environmental Protection Act 1986*.
- 21            (2) In Schedule 5 clause 1:

22                            (a) in paragraph (a) delete “biological diversity; or” and  
23    insert:

24

25    biodiversity; or

26

27                            (b) in paragraph (b) delete “fauna indigenous to Western  
28    Australia; or” and insert:

29

30    fauna; or

31

**Biodiversity Conservation Bill 2015**

**Part 17** Consequential amendments to other Acts

**Division 2** Other Acts amended

**s. 315**

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- 1 (c) in paragraph (c) delete “rare flora; or” and insert:  
2  
3 threatened flora; or  
4
- 5 (3) In Schedule 5 clause 2 delete the definitions of:  
6 *rare flora*  
7 *threatened ecological community*
- 8 (4) In Schedule 5 clause 2 insert in alphabetical order:  
9  
10 *biodiversity* has the meaning given in the *Biodiversity*  
11 *Conservation Act 2015* section 5(1);  
12 *fauna* has the meaning given in the *Biodiversity*  
13 *Conservation Act 2015* section 5(1);  
14 *threatened ecological community* has the meaning given in  
15 the *Biodiversity Conservation Act 2015* section 5(1);  
16 *threatened flora* has the meaning given in the *Biodiversity*  
17 *Conservation Act 2015* section 5(1);  
18
- 19 (5) Delete Schedule 6 items 4, 5 and 6 and insert:  
20  
21 4. Clearing consisting of the taking of flora —  
22 (a) as authorised by a licence under the *Biodiversity*  
23 *Conservation Act 2015*; or  
24 (b) as authorised by an authorisation under the  
25 *Biodiversity Conservation Act 2015* section 40; or  
26 (c) by a person referred to in the *Biodiversity*  
27 *Conservation Act 2015* section 171(2) for the  
28 purposes of supply in accordance with a licence  
29 under that Act.  
30

31 **315. *Financial Management Act 2006* amended**

- 32 (1) This section amends the *Financial Management Act 2006*.

1       (2) In section 23(1) in the definition of *prescribed receipts*  
2       paragraph (b) delete “fauna or”.

3   **316.   *Firearms Act 1973* amended**

4       (1) This section amends the *Firearms Act 1973*.

5       (2) Delete section 23(10b) and insert:

6

7           (11A) For the purposes of subsections (10) and (10a), the fact  
8           that a person uses or carries a firearm for the purposes  
9           of an activity authorised under the *Biodiversity*  
10          *Conservation Act 2015* is not a reasonable excuse.  
11

12   **317.   *Forest Products Act 2000* amended**

13       (1) This section amends the *Forest Products Act 2000*.

14       (2) In section 10(5) delete “*Wildlife Conservation Act 1950*” and  
15       insert:

16

17           *Biodiversity Conservation Act 2015*  
18

19   **318.   *Land Administration Act 1997* amended**

20       (1) This section amends the *Land Administration Act 1997*.

21       (2) In section 117:

22           (a) delete paragraph (d) and insert:

23

24                   (d) the *Biodiversity Conservation Act 2015*; or

25

26           (b) after paragraph (a) insert:

27

28                   or  
29

1 **319. *Land Tax Assessment Act 2002* amended**

2 (1) This section amends the *Land Tax Assessment Act 2002*.

3 (2) After section 41 insert:  
4

5 **42A. Land under biodiversity conservation covenant,  
6 exemption for**

7 Land is exempt for an assessment year if the land is the  
8 subject of a biodiversity conservation covenant under  
9 the *Biodiversity Conservation Act 2015* that is  
10 expressed to have effect in perpetuity and that was in  
11 force at midnight on 30 June in the financial year  
12 before the assessment year.  
13

14 **320. *Soil and Land Conservation Act 1945* amended**

15 (1) This section amends the *Soil and Land Conservation Act 1945*.

16 (2) In the Schedule delete “*Sandalwood Act 1929*”.

17 (3) In the Schedule insert in alphabetical order:  
18

19 *Biodiversity Conservation Act 2015*  
20

1 **Schedule 1 — Matters for which regulations may be made**

2 [s. 255(2)]

- 3 1. The taking, possession, disturbance, keeping, breeding, feeding,  
4 release, buying, import, export, supply, storage and transportation of  
5 fauna and the conduct of any business involving one or more of those  
6 activities.
- 7 2. The processing of fauna (other than fish or pearl oyster), whether for a  
8 commercial purpose or not, and the operation of fauna processing  
9 establishments.
- 10 3. The taking, growing, cultivation, buying, import, export, supply,  
11 storage and transportation of flora and the conduct of any business  
12 involving one or more of those activities.
- 13 4. Bioprospecting activity.
- 14 5. Activity that is, or is likely to be, detrimental or harmful to fauna or  
15 flora or the habitat of fauna or flora.
- 16 6. Activity that interferes with the taking of fauna or flora carried out in  
17 accordance with a licence, exemption or other authorisation under  
18 this Act.
- 19 7. Activity that interferes with the modification of a threatened  
20 ecological community carried out in accordance with an authorisation  
21 under section 45.
- 22 8. The conservation, protection and management of threatened species  
23 and threatened ecological communities.
- 24 9. The prevention, eradication, reduction and containment of key  
25 threatening processes.
- 26 10. The control of environmental pests.
- 27 11. The keeping, breeding, cultivation, culturing, import, propagation,  
28 supply, transportation, and release into the environment of,  
29 environmental pests.
- 30 12. Activity that interferes with the conduct of any research project  
31 relating to biodiversity or biodiversity components in the State.

- 1 13. The conservation, protection and management of —
- 2 (a) the natural heritage of any declared World Heritage property
- 3 in the State in a way that is consistent with the Australian
- 4 World Heritage management principles and any
- 5 management plan for the property; or
- 6 (b) the natural heritage of any National Heritage place in the
- 7 State in a way that is consistent with the National Heritage
- 8 management principles and any management plan for the
- 9 place; or
- 10 (c) the ecological character of any declared Ramsar wetland in
- 11 the State in a way that is consistent with the Australian
- 12 Ramsar management principles and any management plan
- 13 for the wetland; or
- 14 (d) any Biosphere reserve in the State in a way that is consistent
- 15 with the Australian Biosphere reserve management
- 16 principles and any management plan for the reserve.
- 17 14. Places, plant or equipment used for the holding or storage of fauna,
- 18 flora or environmental pests and the duties of persons operating or in
- 19 control of such places, plant or equipment.
- 20 15. The issue, use and application of identifiers in respect of fauna, flora
- 21 and other organisms.
- 22 16. The imposition, payment, collection and recovery of fees and charges
- 23 in respect of prescribed matters, including, without limiting the
- 24 *Interpretation Act 1984* section 45, provision for —
- 25 (a) the payment of any fee or charge by instalments; and
- 26 (b) the imposition of a surcharge in respect of any fee or charge
- 27 paid by instalments.
- 28 17. The recovery of costs and expenses incurred under this Act.
- 29 18. A requirement for particular money paid or recovered under the
- 30 regulations to be credited to the account referred to in the CALM Act
- 31 section 68
- 32 19. The review by the State Administrative Tribunal or another specified
- 33 person or body of decisions made under the regulations.
- 34 20. If this Act is a prescribed Act for the purposes of the *Criminal*
- 35 *Procedure Act 2004* Part 2, offences for which infringement notices





## Defined terms

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

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